

# General Scheme of the Regulation of Artificial Intelligence Bill

2026

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# Part 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 (EU) 2024/1689 of the European Parliament and Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)” and also to establish Oifig IS na hÉireann/the AI Office of Ireland, and for those purposes to amend the following acts:

### **Explanatory Note**

It is standard to provide each Bill with a LONG TITLE, giving detail as to its scope and purpose, as well as a succinct SHORT TITLE, providing a convenient reference thereto.

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

### **To provide that:**

1. This Act may be cited as Regulation of Artificial Intelligence Act 2026.
2. This Act shall come into operation on such day or days, as may be fixed by order or orders made by the Minister, either generally or by reference to any particular purpose or provision, and different days may be so fixed for different purposes or different provisions.

### **Explanatory Note**

This Head provides for the short title of the proposed Act and makes provision for its commencement whether in full or in part.

**Subhead (1)** provides for the name of this Act to be the Regulation of Artificial Intelligence Act.

**Subhead (2)** provides for the commencement arrangements. The Minister for Enterprise, Tourism and Employment has policy responsibility for the implementation of the Artificial Intelligence Regulation.

However, some of these Heads propose to insert new provisions into Acts and Regulations which are the policy responsibility of the corresponding Ministers, and the commencement date will be set in consultation with those ministers.

Minister for Culture, Communications and Sport  
Minister for Climate, Energy and the Environment  
Minister for Finance  
Minister for Health  
Minister for Housing, Local Government and Heritage  
Minister for Justice, Home Affairs and Migration  
Minister for Transport

## Head 3 – Interpretation

### To provide that:

In this Act, except where the context otherwise requires:

“ADCO” means the standing subgroup for market surveillance which is the administrative cooperation group (ADCO) for the AI Act;

“AI Act” means REGULATION (EU) 2024/1689 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 June 2024 on laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and EU 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act);

*“national competent authority” has the meaning assigned to it in Article 3(48), which defines national competent authority, as a notifying authority or a market surveillance authority;*

“Commission” means the European Commission;

“Chief Executive Officer” means the Chief Executive Officer of the Office appointed under Head 11;

“Economic Operator” is in accordance with Article 74(1) (a) of the AI Act, where it states that any reference to an economic operator under the Market Surveillance Regulation shall be understood as including all operators identified in Article 2 (1) of the AI Act;

“EU AI Office” means the European AI Office established by the Commission to develop Union expertise and capabilities in the field of AI and to contribute to the implementation of Union law on AI;

“General Product Safety Regulation” means the Regulation (EU) 2023/988 on general product safety, amending Regulation (EU) No 1025/2012 and Directive (EU) 2020/1828, and repealing Directive 2001/95/EC and Directive 87/357/EEC;

“Market Surveillance Regulation” means REGULATION (EU) 2019/1020 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No. 765/2008 and (EU) No. 305/2011;

“Minister for Public Expenditure” means the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation;

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

“NAIAIC” means the National AI Act Implementation Committee;

“relevant competent authorities” means both the sectoral market surveillance authorities and notifying authorities assigned under SI 366/2025 (and S.I. XXX/2025 as amended);

“relevant contravention” includes, in relation to any provision of the AI Act, a failure to comply with that provision, and also includes an economic operator supplying incorrect, incomplete or misleading information to notified bodies or competent authorities in accordance with Article 99 (5) of the AI Act;

“relevant Market Surveillance Authorities” means the sectoral Market Surveillance Authorities designated under SI 366/2025 (and S.I. XXX/2025 as amended);

“Union Harmonised Legislation” means sector specific legislations listed in Annex 1, Part A of the EU AI Act;

The AI Office of Ireland is the Single Point of Contact as designated under the EU (Artificial Intelligence) (Designation) Regulations S.I. No. 366 of 2025 in Head 8;

“the Board” means the Board of the AI Office of Ireland;

“the Office” means Oifig IS na hÉireann/the AI Office of Ireland established under Head 8.

For the purposes of this Act, the definitions in Article 3 of Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 shall apply.

A word or expression that is also used in the AI Act has, unless the context otherwise requires, the same meaning as it has in that Regulation.

Unless the context otherwise requires, a reference to a numbered Article is a reference to the Article so numbered of the AI Regulation.

#### **Explanatory Note**

This head provides for certain definitions and interpretations.

It enables the definitions set out in the AI Act Article 3 to apply, and also that words have the same meaning and Article numbers.

## Head 4 – Expenses

### **To provide that:**

The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, be paid out of moneys provided by the Oireachtas.

### **Explanatory Note**

This is a standard provision in all Acts to provide for the funding of the administration of the Act.

## Head 5 – Regulations and Orders

### **To provide that:**

- 1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.
- 2) Regulations made under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister, to be necessary or expedient for the purposes of the regulations.
- 3) The Minister shall cause every regulation made under this Act to be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which the House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

### **Explanatory Note**

This is to provide the Minister with the relevant powers, to draft and issue regulations for prescribed matters.

## Head 6 – 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 taken from Part 1, Section 4, [the Digital Services Act 2024](#).

# Part 2 – Oifig IS na hÉireann / AI Office of Ireland

## Chapter 1 Establishment

### Head 7 – Establishment Day

#### **To provide that:**

The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Act.

#### **Explanatory Note**

This Head provides for the formal designation of an Establishment Day by ministerial order, marking the legal commencement of the Oifig IS na hÉireann / AI Office of Ireland as a statutory body under this Act.

The Establishment Day should be set on or before 1 August 2026, to ensure that the Office is operational in time to meet key obligations under the EU AI Act, which is being implemented in a phased manner over 36 months from its entry into force on 2 August 2024.

Under Article 70 of the AI Act, Member States were required by 2 August 2025 to designate:

- One or more Market Surveillance Authorities (MSAs) and Notifying Authorities, and
- A Single Point of Contact (SPOC) for the purposes of the Regulation.

Ireland fulfilled this obligation via Statutory Instrument ([366/2025](#)). By way of this instrument, the Minister for Enterprise, Tourism and Employment is designated as the interim SPOC for the AI Act. The AI Office of Ireland Unit within the Department currently performs this role on an administrative basis, pending the formal establishment of the statutory Office. The designation of an Establishment Day will:

- On that day legally constitute the AI Office of Ireland as a statutory entity;
- On that day, enable the Office to assume its full statutory role as the central coordinating authority for AI regulation in the State.

This Head ensures that the transition from interim arrangements to a permanent statutory structure is legally and operationally seamless. It provides the Minister with the power to decide the date on which this will happen post enactment of the Bill.

## Head 8 – Establishment of the Office

### To Provide That:

- (1) There shall stand established on the establishment day a body, which shall be known as Oifig IS na hÉireann<sup>1</sup> or, in the English language, the AI Office of Ireland (in this Act referred to as “the Office”), to perform the functions conferred on it by or under this Act.
- (2) The Office shall be a body corporate with perpetual succession and an official seal and power to sue and be sued in its corporate name and shall, with the consent of the Minister and the Minister for Public Expenditure, have the power to acquire, hold and dispose of any other property.
- (3) The seal of the Office shall be authenticated by the signatures of –
  - a. The chairperson or another member of the Board authorised by it to act in that behalf, or
  - b. The Chief Executive Officer or a member of staff of the Office authorised by the Board.
- (4) Judicial notice shall be taken of the seal of the Office, and any document shall, unless the contrary is provided, be received in evidence and deemed to be such instrument without further proof.
- (5) The Office will operate independently in performing its functions, ensuring impartiality and integrity in its role.
- (6) The Office shall have all such powers as are necessary or expedient for the performance of its functions.
- (7) Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal, may be entered or executed on behalf of the Board by any person generally or specially authorised by the Office in that behalf.

### Explanatory Note

Precedent for this text is taken from S.7 of Tailte Eireann Act 2022.

This Head establishes a new statutory independent body - Oifig IS na hÉireann or the AI Office of Ireland.<sup>2</sup> This convention is in accordance with the Official Languages Act 1995, which provides that the name of public bodies established on and after 21 December 2024 must be in Irish.

Oifig IS na hÉireann/the AI Office of Ireland, which is to be established as the central coordinating authority for the implementation and enforcement of the EU AI Act in the State, will be an independent administrative authority with its own legal identity. The Office will operate as an independent authority under the aegis of the Department of Enterprise, Tourism and Employment with all requisite powers for the achievement of its objectives. The background, functions and rationale for the Office are covered in more detail under Head 9.

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<sup>1</sup> Acronyms such as AI are internationally recognised and the Irish equivalent IS (Intleacht Shaorga) is equally well known among Irish language speakers.

## Head 9 – Functions of the Office

### **To Provide That:**

- (1) The Office shall, in addition to the other functions conferred on it by this Act—
  - (a) Facilitate, in cooperation with the competent authorities, the consistent enforcement of the AI Act.
  - (b) Enable cooperation between the competent authorities designated under the AI Regulation;
  - (c) Promote AI innovation and adoption and foster AI literacy;
  - (d) Facilitate access to technical expertise for Competent Authorities;
- (2) The Office shall perform its functions through or by the Chief Executive Officer or any member of the staff of the Authority duly authorised in that behalf by the Chief Executive Officer.
- (3) The Office is designated, for the purposes of Article 70 (1) of the AI Regulation as a Market Surveillance Authority.
- (4) The Office is designated, for the purposes of Article 70 (2) of the AI Regulation as the Single Point of Contact.

### **Explanatory Note**

In March 2025 Government agreed to adopt a distributed model of competent authorities, and subsequently in July, it also decided that a new entity would be established to act as the central coordinating authority for the AI Act, will also act as single point of contact for the EU Commission and would establish a centralised pool of technical experts.

This Head sets out the statutory functions of the Office, which will serve as the central coordinating authority for the implementation of the EU AI Act in Ireland. Operating as an independent Office under the aegis of the Department of Enterprise, Tourism and Employment, the Office will seek to ensure a coherent, harmonised, and effective national approach to AI regulation.

The functions set out below reflect the Office's mandate and have been informed by a detailed consultancy report on the implementation of the AI Act in Ireland. The primary mandate of the Office is to ensure the consistent and effective governance and implementation of the AI Act across all regulated sectors. The provisions of the Head are explained below:

**(a) Coordinate the activities of Market Surveillance Authorities to support consistent enforcement and supervision of the AI Regulation.**

The Office, in cooperation with all national competent authorities will oversee the national rollout and ongoing supervision and enforcement of the EU AI Act.

**(b) Enable cooperation between the Competent Authorities designated under the AI Regulation**

The Office will act as a facilitator of collaboration among MSAs and Notifying Authorities, supporting information-sharing, joint initiatives, and coordinated responses to regulatory challenges. It will not direct enforcement at a sectoral level but will support a unified approach. This will be supported by

detailed Memoranda of Understandings, and the Cooperation Forum established at Head 34. It will facilitate access to an adjudication panel for enforcement decisions.

**(c) Promoting AI Innovation and Adoption**

The Office will have a role in promoting the adoption of AI, fostering AI literacy and enabling innovation. It will ensure the establishment of a regulatory sandbox and particularly that there will be access to it for SMEs and start-ups. It may also facilitate access to EU-level resources such as the Scientific Panel and AI testing support structures.

**(d) Facilitate access to expertise for Competent Authorities**

The Office will host a centralised pool of technical expertise in AI technologies as well as legal and regulatory affairs and provide access to a framework of expertise, ensuring that MSAs and other authorities have the resources needed to fulfil their mandates.

**(3) Powers of the Office**

It will be empowered to take all necessary or expedient actions to fulfil its statutory remit.

**(4) Operational Structure**

Functions will be carried out by the Chief Executive Officer or authorised staff, ensuring accountability and operational efficiency.

**(5) Designation as Market Surveillance Authority**

Under Article 70(1) of the AI Regulation, the Office is designated as an MSA, fulfilling Ireland's obligation to establish national oversight. Under Article 70(1) of the AI Act, each Member State is required to designate at least one Market Surveillance Authority and one Notifying Authority. The AI Office of Ireland is designated as an MSA for the purposes of this Article, and so that it can be the single point of contact as required under Article 70 (2) of the AI Act. It does not have an area or sector of supervision at this point in time. According to Article 70(2) of the AI Act: 'Member States shall designate a market surveillance authority to act as the single point of contact for this Regulation.' Regulation 6 of S.I. No. 366/2025 - European Union (Artificial Intelligence) (Designation) Regulations 2025 will be amended accordingly.

**(6) Designation as Single Point of Contact**

Pursuant to Article 70(2), the Office will act as the SPOC, facilitating communication with the European Commission and other Member States. This designation supports coordination of EU-level reporting and participation in the EU governance framework, in cooperation with national competent authorities. The Office will also fulfil the obligations set out in Recital 153 of the AI Act, which emphasises the importance of a centralised authority to act as a SPOC and facilitate coordination among national and EU counterparts. Regulation 6 of S.I. No. 366/2025 - European Union (Artificial Intelligence) (Designation) Regulations 2025 will be amended accordingly.

Reference: Section 7 of the Tailte Éireann Act 2022.

## Head 10 – Conferal of additional functions

### To provide that:

- (1) The Minister may, after consulting with the Office, the Minister for Public Expenditure, and any other Minister of the Government who, in the Minister's opinion, is concerned, by order confer on the Office additional functions, that are incidental to, or consequential to the provisions conferred on the Office under the other provisions of this Act.
- (2) An order under this section may contain such incidental, supplemental and consequential provisions as the Minister considers necessary or expedient to give full effect to the conferal of additional functions on the Office.
- (3) An order made under this section shall be laid by the Minister before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which the House sits after that order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

### Explanatory Note

This Head provides for a mechanism by which the Minister may, by order, confer additional functions on the AI Office of Ireland, subject to consultation and parliamentary oversight. The provision is designed to ensure that the Office can respond flexibly and effectively to the evolving regulatory landscape surrounding AI, particularly considering the novelty and complexity of the technology and the dynamic nature of the AI Act.

The AI Act and the Digital Omnibus Simplification proposal 2025 introduces a comprehensive framework for the regulation of AI systems across the EU. However, as a new and rapidly developing area of law, the full scope of regulatory needs and operational requirements may not be immediately apparent. This provision enables the Minister to adapt the remit of the Office over time, ensuring that Ireland's implementation of the AI Act remains responsive and is, as far as possible, future proofed.

The power to confer additional functions is limited to functions that are connected with the Office's, and existing remit and relate to the regulation of AI. These powers are only incidental to existing powers under this Act. The Minister must consult with the Office and any other relevant Ministers before making such an order, reflecting the cross-sectoral nature of AI regulation and the distributed model of competent authorities adopted by the Government. This mirrors the delegated powers granted to the European Commission under Article 97 of the AI Act, which allow for the adoption of delegated acts to address emerging regulatory needs.

## Head 10A – Directions of Minister

- (1) The Minister may, in relation to the performance by the Office of its functions, give a direction in writing to the Office requiring it to comply with such policies of the Government as are specified in the direction.
- (2) The Minister shall lay a copy of a direction under *subsection (1)* before each House of the Oireachtas.
- (3) The Office shall comply with a direction under *subsection (1)*.

### **Explanatory note:**

Based on Section 20 of the Competition and Consumer Protection Act 2014 which establishes the Competition and Consumer Protection Commission (CCPC), this Head empowers the Minister to issue written directions to the Office requiring it to comply with specified Government policies in the performance of its functions. It ensures that the Office operates in alignment with overarching Government policy objectives while maintaining transparency and accountability.

Subsection (2) requires that any such direction be laid before both Houses of the Oireachtas, providing parliamentary oversight. Subsection (3) obliges the Office to comply with directions issued under this section.

The purpose of this provision is to balance the operational independence of the Office with the need for consistency in implementing Government policy.

## Chapter 2 - Chief Executive Officer of the Office

### Head 11 – Chief Executive Officer

#### **To provide that:**

- (1) There shall be a Chief Executive Officer of the Office (in this Act referred to as the “Chief Executive Officer”).
- (2) The Minister shall request the Public Appointments Service to hold a selection process for the purpose of identifying and recommending a person who it is satisfied is suitable for appointment as Chief Executive Officer from time to time when the position of Chief Executive Officer becomes vacant or the Office anticipates it is to become vacant.
- (3) The Public Appointments Service shall, when requested to do so under subsection (2), hold a selection process and recommend to the Minister such person or persons whom it is satisfied is or are suitable for appointment as Chief Executive Officer.
- (4) Subject to subsections (6) and (7), the Minister shall, from among the persons recommended under subsection (3), appoint a person to be the Chief Executive Officer.
- (5) Subject to subsection (7), the Chief Executive Officer shall hold office for such period, not exceeding 5 years from the date of his or her appointment, as the Minister shall determine.
- (6) The Minister may, subject to subsection (2) and (3), designate a person to be appointed the first Chief Executive Officer of the Office.
- (7) Where, immediately before the establishment day, a person stands designated by the Minister under subsection (6), the Minister shall appoint that person to be the first Chief Executive Officer for such period, not exceeding 5 years from the date of his or her appointment, as the Minister shall determine.
- (8) Subject to subsection (9), a Chief Executive Officer whose term of office expires with the passage of time shall be eligible for reappointment by the Minister.
- (9) A person who is reappointed by the Minister in accordance with subsection (8) shall not hold office for periods the aggregate of which exceeds 10 years.
- (10) The Chief Executive Officer shall hold office under contract in writing upon and subject to such terms and conditions (including terms and conditions relating to remuneration, allowances for expenses and superannuation) as may be determined, with the consent of the Minister for Public Expenditure, by the Minister.
- (11) The Chief Executive Officer shall not hold any other office or employment or carry on any business without the consent of the Minister.
- (12) The Chief Executive Officer may be removed from office by the Minister, for stated reasons.

#### **Explanatory Note**

This Head provides for the establishment of the position of Chief Executive Officer of the Office, with the Minister of Enterprise, Tourism and Employment appointing the CEO. The appointment of the CEO by the Minister ensures strong accountability and alignment with national policy objectives, given the strategic importance of the AI Office in implementing the EU AI Act. Ministerial involvement in the appointment process provides democratic oversight and guarantees that the

leadership of the Office reflects Government priorities while maintaining operational independence under the governance framework.

This approach is consistent with the governance model for similar statutory bodies in Ireland, such as the Workplace Relations Commission (WRC), where the Minister responsible for the sector appoints the CEO following an open, merit-based selection process conducted by the Public Appointments Service. It also ensures transparency, fairness, and compliance with the Public Service Management (Recruitment and Appointment) Act 2004.

Early designation of the first CEO by the Minister, following a competitive process, is critical to avoid delays in establishing the Office and to ensure continuity in preparatory work before the statutory commencement date.

The Chief Executive Officer will be responsible for the operational leadership and day-to-day management of the Office and will play a central role in ensuring the effective delivery of its statutory functions.

The CEO will report to an independent Board (to be appointed by the Minister of Enterprise, Tourism and Employment). The governance model will be in line with the Department of Public Expenditure and Reform's [Code of Practice for the Governance of State Bodies](#) taking account of best practice examples domestically and internationally and the scale of the implementation of the EU AI Act.

As part of the preparatory arrangements for the establishment of the Office, and subject to the necessary approvals, it is envisaged that a Chief Executive Officer will be appointed on an administrative basis within the Department of Enterprise, Tourism and Employment until such time that the AI Office is established on a statutory footing. The early appointment of a CEO for the new AI Office of Ireland is considered essential to minimise the time between the enactment of the legislation and the date on which the AI Office commences its statutory operations.

The first CEO of the AI Office of Ireland will be appointed by the Minister of Enterprise, Tourism and Employment on the recommendation of the Public Appointments Service after an open, public competition has been held. Subject to the successful conclusion of this appointment process by the Public Appointments Service, the Minister for Enterprise, Tourism and Employment may, before the establishment day of the Office, designate the successful candidate to be appointed as the first CEO. Until the statutory establishment of the Office, the CEO will work on an administrative basis (including payment of salary etc) under the auspices of the Department of Enterprise, Tourism and Employment and report to the Secretary General.

The selection of governance structure typically aligns with an authority's statutory requirements, the breadth of its scope and the complexity of issues it handles. For the Office, which will be more limited in size and scope than some regulators with a Commission governance model, the Chief Executive Officer model has been identified as the most appropriate. It will seek to ensure centralised leadership and enable the integration of diverse, knowledgeable stakeholders, while balancing flexibility, accountability and strategic oversight. This is based on the establishment of similar such organisations both national and internationally.

## Head 12 – Functions of Chief Executive Officer

### **To provide that:**

- (1) The Chief Executive Officer shall—
  - a. carry on, manage and control generally, the administration of the Office and;
  - b. perform such other functions (if any) as may, be determined by the Board.
- (2) The Chief Executive Officer shall perform his or her functions subject to such policies as may be determined from time to time by the Board and shall be responsible to the Board for the efficient and effective management of the Office and for the due performance of his or her functions.
- (3) The Chief Executive Officer may make proposals to the Board on any matter relating to its functions.
- (4) The Chief Executive Officer shall provide the Board with such information in respect of the performance of his or her functions as the Office may require.
- (5) The Chief Executive Officer may consult with or request the advice of the Board on any matter relating to a function of the Office.

### **Explanatory Note**

This Head sets out the functions of the Chief Executive Officer of the Office and is modelled on Section 22 of the Gambling Regulation Act 2024. The CEO will be responsible to the Board and may consult and make proposals to the Board. Head 17 empowers the Minister to designate an Acting CEO.

The Office will be governed by a 7-member (including chairperson) Board.

## Head 13 – Delegation of Functions of Chief Executive Officer

### To provide that:

- (1) The Chief Executive Officer may, with the consent of the Board in writing, delegate any of his or her functions to a member of staff of the Office and the member of staff shall be accountable to the Chief Executive Officer for the performance of the functions so delegated.
- (2) The Chief Executive Officer shall be accountable to the Board for the performance of functions delegated by him or her under subsection (1).
- (3) The Chief Executive Officer may, with the consent of the Board in writing, revoke a delegation made by him or her under subsection (1).
- (4) In this section, “functions” does not include a function delegated by the Board to the Chief Executive Officer subject to a condition that the function shall not be delegated by the chief executive to another person.

### Explanatory Note

This Head provides for the internal delegation of functions by the CEO to other staff members of the Office. It is modelled on Section 23 of the Gambling Regulation Act 2024

Subhead (1) allows the CEO, with the prior written consent of the Board, to delegate any of his or her functions to a member of staff. This ensures that delegation is subject to oversight and that the delegated functions are exercised under the authority of the CEO. The staff member to whom functions are delegated remains accountable to the CEO for their performance.

Subhead (2) reinforces the CEO’s accountability to the Board for any functions delegated under this Head. This maintains a clear line of responsibility and ensures that the Board retains oversight of the performance of delegated functions.

Subhead (3) provides that the CEO may revoke any delegation made under subhead (1), again with the written consent of the Board. This allows for flexibility in managing operational responsibilities and ensures that the Board is informed of changes in delegation arrangements.

Subhead (4) clarifies that the functions which may be delegated under this Head do not include any functions that have been delegated to the CEO by the Board subject to a condition prohibiting further delegation. This preserves the integrity of conditional delegations made by the Board and ensures that such functions remain with the CEO.

This Head supports effective operational management within the Office while maintaining appropriate checks and balances through Board oversight and defined lines of accountability.

## Head 14 – Resignation, removal or disqualification of Chief Executive Officer

### To provide that:

- (1) The Chief Executive Officer may resign from office by giving notice in writing to the Minister of his or her resignation and the resignation shall take effect on the day on which the Minister receives the notice.
- (2) The Minister may, at any time, remove the Chief Executive Officer from office if the Minister is satisfied that—
  - (a) the Chief Executive Officer has become incapable through ill-health of performing his or her functions,
  - (b) the Chief Executive Officer has committed stated misbehaviour, or
  - (c) the removal of the Chief Executive Officer appears to the Minister to be necessary for the effective performance by the Office of its functions.
- (3) If the Chief Executive Officer is removed from office in accordance with subsection (2), the Minister shall provide the Chief Executive Officer with a statement of reasons for the removal.
- (4) The Chief Executive Officer shall cease to be qualified for office and shall cease to hold office if he or she—
  - (a) is adjudicated bankrupt,
  - (b) makes a composition or arrangement with creditors,
  - (c) is sentenced by a court of competent jurisdiction to a term of imprisonment,
  - (d) is convicted of any indictable offence in relation to a company or any other body corporate,
  - (e) is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not, or
  - (f) is, or is deemed to be, the subject of an order under section 160 of the Companies Act 1990 or a disqualification order within the meaning of Chapter 4 of Part 14 of the Companies Act 2014.

### Explanatory Note

This Head sets out the provisions to govern the resignation, removal, and disqualification of the Chief Executive Officer of the AI Office. These provisions are essential to ensure the integrity, accountability, and effective functioning of the Office. This reflects standard practice in Irish legislation.

## Head 15 – Accountability of Chief Executive Officer to Public Accounts Committee

**To provide that:**

- (1) The Chief Executive Officer shall, whenever required in writing to do so by the Public Accounts Committee, give evidence to that Committee in relation to—
  - (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account that the Office is required by this Act to prepare (being a book or record of account that is subject to audit by the Comptroller and Auditor General),
  - (b) the economy and efficiency of the Office in the use of its resources,
  - (c) the systems, procedures and practices employed by the Office for the purpose of evaluating the effectiveness of its operations, and
  - (d) any matter affecting the Office referred to in a special report of the Comptroller and Auditor General under Section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General (in so far as that other report relates to a matter specified in paragraph (a), (b) or (c)) that is laid before Dáil Éireann.
- (2) In giving evidence under this section, the Chief Executive Officer shall not question or express an opinion on the merits of—
  - (a) any policy of the Government or a Minister of the Government, or (b) the objectives of such a policy.
- (3) In this section, “Public Accounts Committee” means the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General.

### **Explanatory Note**

This Head is modelled on Section 24 of the Gambling Regulation Act 2024 and provides for accountability to an Oireachtas Committee, rather than to the Minister and Department, will serve to underpin the independence of the Office while ensuring adequate financial control.

## Head 16 – Accountability of Chief Executive Officer to other Oireachtas Committees

### **To provide that:**

- (1) Subject to subsection (2), the Chief Executive Officer shall, whenever required in writing to do so by a Committee, attend before it to give account for the general administration of the Office.
- (2) The Chief Executive Officer shall not be required to give account before a Committee for any matter which is, has been, or may at a future time be, the subject of proceedings before a court or tribunal in the State.
- (3) Where the Chief Executive Officer is of the opinion that a matter in respect of which he or she is required to give an account before a Committee is a matter to which subsection (2) applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the Chief Executive Officer is before it, the information shall be so conveyed in writing.
- (4) Where the Chief Executive Officer has informed a Committee of his or her opinion in accordance with subsection (3) and the Committee does not withdraw the requirement in writing referred to in subsection (1)—the Chief Executive Officer may, not later than 21 days after being informed by the Committee of its decision not to withdraw the requirement, apply to the High Court in a summary manner for determination of the question whether the matter is one to which subsection (2) applies, or the chairperson of the Committee may, on behalf of the Committee, apply to the High Court in a summary manner for determination of the question whether the matter is one to which subsection (2) applies, and the High Court shall determine the matter.
- (5) If the High Court determines that the matter concerned is one to which subsection (2) applies, the Committee shall withdraw the requirement in writing, but if the High Court determines that subsection (2) does not apply, the Chief Executive Officer shall attend before the Committee and give account for the matter.
- (6) In the performance of his or her duties under this section, the Chief Executive Officer shall not question or express an opinion on the merits of—(a) any policy of the Government or a Minister of the Government, or (b) the objectives of such a policy.
- (7) In this section, “Committee” means a Committee (other than the Public Accounts Committee referred to in section 24, the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas or a subcommittee of such a Committee.

### **Explanatory Note**

This is a standard provision so the Chief Executive Officer can be required to attend before other Committees. This head is modelled on Section 25 of the Gambling Regulation Act 2024.

## Head 17 –Acting Chief Executive Officer

(1) Subject to *subsection (2)*, the Minister may appoint a person to perform the functions of the Chief Executive Officer during—

- (a) any period or periods when the Chief Executive Officer is absent from duty or from the State or is, for any other reason, unable to perform the functions of Chief Executive Officer,
- (b) any suspension from office of the Chief Executive Officer, or
- (c) any vacancy in the office of Chief Executive Officer.

(2) A person shall not be appointed to perform the functions of the Chief Executive Officer for a continuous period of more than 12 months during a vacancy in the office of Chief Executive Officer.

(3) The Minister may at any time terminate an appointment under this section.

### **Explanatory note:**

This Head provides for the appointment of an Acting Chief Executive Officer by the Minister in circumstances where the Chief Executive Officer is unable to perform their functions. These circumstances include temporary absences, suspension from office, or a vacancy in the position. The provision ensures continuity in the performance of the organisation’s functions during such periods.

Subsection (2) limits the duration of an acting appointment during a vacancy to a maximum continuous period of 12 months, preventing indefinite acting arrangements. Subsection (3) gives the Minister discretion to terminate an acting appointment at any time.

## Chapter 3 - Board of the Office

### Head 18 – Membership of the Board

#### To provide that:

- (1) There will be a Board of the Office, which will be responsible for the governance and oversight of the Office's functions.
- (2) The Board shall consist of 7 ordinary members including the Chairperson.
- (3) The Board shall include the Chief Executive Officer as an *ex officio* member but will not count towards the number of ordinary members.
- (4) The chairperson and the members of the Board shall be appointed by the Minister.
- (5) The Minister shall appoint persons who appear to the Minister to have experience of, and to have shown capacity in, matters relevant to the Office's functions.
- (6) The Minister shall, in so far as is practicable, endeavour to ensure that among the members of the Board there is an equitable balance between men and women.
- (7) The chairperson of the Board shall hold office for the period of 5 years from the date of his or her appointment.
- (8) A member of the Board appointed may hold office for the period of up to five years from the date of his or her appointment.
- (9) Subject to *subparagraph (10)*, a member of the Board whose term of office expires by the efflux of time shall be eligible for reappointment to the Board.
- (10) A person who is reappointed to the Board in accordance with *subparagraph (9)* shall not hold office for periods the aggregate of which exceeds 10 years.
- (11) A member of the Board may resign from office by giving notice in writing to the Minister of his or her resignation, specifying the date on which the resignation takes effect, or the resignation shall take effect on the day on which the Minister receives the notice, whichever is later.
- (12) A member of the Board shall, subject to the provisions of this Act, hold office upon such terms and conditions as may be determined by the Minister, with the consent of the Minister for Public Expenditure.
- (13) There may be paid by the Minister to members of the Board such allowances in respect of expenses (if any) incurred by them as the Minister may, with the consent of the Minister for Public Expenditure, determine.
- (14) If a member of the Board dies, resigns, ceases to be qualified for office and ceases to hold office or is removed from office, the Minister may appoint a person to be a member of the Board.

#### Explanatory Note

This Head provides for there to be a Board of the Office which will be responsible for the governance and oversight of the Office.

It provides for the appointment of suitably qualified members to the Board.

There will be 7 members of the board, one of whom will be appointed as chairperson.

The Chief Executive Officer of the Office will be an *ex officio* member of the Board. This will ensure continuity between executive and governance functions, and accountability to the board. The Chief

Executive Officer will not be counted among the appointed members and would not be eligible to chair the board.

The term of office on the board will be up to 5 years, with a maximum of 10. The first schedule and part IV of Industrial Development Act 1986 allow for a chairperson to be re-appointed for a second term by the Minister.

Subsection (3) specifies that those appointed should have experience of, and to have shown capacity in, matters relevant to the Office functions. It is clear that there will be broad range of types of experience and expertise required so to refer to it as such means that there is flexibility to appoint across a wide field for the functions of the Office.

The Board of the AI Office of Ireland will follow the Code of Practice for the Governance of State Bodies (2016) with the secretariat support provided by the Operational Directorate of the AI Office of Ireland. Specifically, as outlined in the General Scheme, the Board's functions include:

#### Governance Responsibilities

- Approve strategic plans, annual reports, and budgets.
- Monitor performance of the Chief Executive Officer and overall organisational effectiveness.
- Ensure compliance with disclosure of interests and conflict-of-interest policies.

#### Operational Oversight

- Convene meetings (minimum quorum membership of five).
- Establish committees to advise on technical, ethical, and regulatory matters.
- Approve delegation of functions and internal controls.
- Publish Board agendas, minutes, and decisions where appropriate.
- Engage in public consultations on major policy initiatives.

#### Accountability Framework

- Annual Reporting: Submit comprehensive reports to the Minister and lay before the Oireachtas.
- Financial Oversight: Ensure audited accounts and compliance with public expenditure guidelines.
- Strategic Planning: Prepare a three-year strategy statement, updated regularly to reflect technological and regulatory developments.

#### Risk Management and Compliance

- Implement robust systems for identifying and mitigating regulatory risks.
- Ensure adherence to EU and national obligations, including confidentiality and cybersecurity measures.

#### Ethics and Integrity

- Enforce disclosure of pecuniary or beneficial interests.
- Maintain transparency and impartiality in decision-making.

## Head 19 – Recommendations for appointment of members of the Board

### **To provide that:**

- (1) This section shall apply in relation to the filling of a vacancy that arises in the membership of the Board.
- (2) The Minister shall invite the Public Appointments Service to undertake a selection competition for the purpose of identifying and recommending to the Minister persons who are suitable for appointment as ordinary members of the Board.
- (3) The Minister shall agree with the Public Appointments Service the requirements relating to knowledge, ability and suitability for appointment as an ordinary member of the Board of the AI Office of Ireland for the purposes of a selection competition under this section.
- (4) Where making recommendations of persons who are suitable for appointment as ordinary members of the Board under this section, the Public Appointments Service shall have regard to the desirability of the members of the Board to have experience of, and to have shown capacity in, matters relevant to the Office functions.
- (5) Where recommending to the Minister persons for appointment as ordinary members of Board, the Public Appointments Service shall, in so far as practicable, endeavour to ensure that among the ordinary members of the Board there is an equitable balance between men and women.
- (6) The Public Appointments Service shall provide the Minister with particulars of experience, training and expertise of each person whom it recommends under this section.
- (7) In exceptional circumstances, where the Minister, for substantial and stated reasons, is unable to accept the recommendation by the Service of a particular person for appointment as an ordinary member, it shall inform the Public Appointments Service of that fact and the reasons for it and shall request the Service to recommend another person for appointment as an ordinary member.

### **Explanatory Note**

This Head is modelled on the provisions of Section 11 of the Electoral Reform Act 2022 and provides the Minister with the powers to appoint suitable members to the Board of the AI Office of Ireland by drawing on the expertise of the Public Appointments Service.

## Head 20 – Removal of member of the Board

### To provide that:

- (1) The Minister may remove a member of the Board if, in the opinion of the Minister, the member has—
  - (a) without reasonable excuse, failed to discharge the functions of the office,
  - (b) become incapable through ill-health of effectively performing the functions of the office,
  - (c) committed stated misbehaviour,
  - (d) a conflict of interest of such significance that, in the opinion of the Minister, the person should cease to hold the office, or
  - (e) the member's removal appears to be necessary for the effective performance of the functions of the relevant office.
- (2) A member of the Board shall cease to be qualified for office and shall cease to hold office if he or she—
  - (a) is adjudicated bankrupt,
  - (b) makes a composition or arrangement with creditors,
  - (c) is sentenced by a court of competent jurisdiction to a term of imprisonment,
  - (d) is convicted of any indictable offence in relation to a company,
  - (e) is convicted of any indictable offence in relation to a company or any other body corporate,
  - (f) is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not, or
  - (g) is, or is deemed to be, the subject of an order under Section 160 of the Companies Act 1990 or a disqualification order within the meaning of Chapter 4 of Part 14 of the Companies Act 2014.
- (3) Where the Minister proposes to remove a member pursuant to 1(a-e), he or she shall notify the member in writing of that proposal.
- (4) A notification under *subsection (1)* shall include a statement—
  - (a) of the reasons for the proposed removal,
  - (b) that the member concerned may, within 30 days of the sending of the notification or such other period as the Minister, having regard to the requirements of natural justice, may specify, make representations in such manner as may be specified in the notice to the Minister as to why the member should not be removed from office, and
  - (c) that, where no representations are received within the period specified under *paragraph (b)*, the Minister will, without further notice, proceed with the removal of the member from office in accordance with this section.

(5) In considering whether to remove a member from office, the Minister shall take into account—

- (a) any representations made pursuant to *subsection (4)(b)*, and
- (b) any other matter that the Minister considers relevant for the purpose of his or her decision.

(6) Where, having taken into account the matters referred to in subsection (4), the Minister decides to remove the member from office, he or she shall notify the member in writing of his or her decision and of the reasons for it.

**Explanatory Note**

This Head sets out the Minister's powers to remove a Board member from office and is modelled on the Section 13 Electoral Reform Act 2022. It also sets out the reasons for which a member of the Board may cease to be qualified for office. The Head provides the right for that board member to make representations. In tandem with the ability to oversee the appointment of members to the board of the Office, a balanced governance arrangement is required to ensure the Minister to equally have the right to remove a board member should the need ever arise.

## Head 21 – Meetings of the Board

### **To provide that:**

(1) The Board shall hold such and so many meetings as may be necessary for the due performance of its functions but in each year shall hold not less than one meeting in each period of 3 months.

(2) The Board may hold or continue a meeting by the use of any means of communication by which all the participants can hear and be heard at the same time.

(3) The Minister, in consultation with the chairperson of the Board, shall fix the date, time and place of the first meeting of the Board.

(4) The quorum for a meeting of the Board shall be 5.

(5) At a meeting of the Board—

(a) the chairperson shall, if present, be the chairperson of the meeting, and

(b) if and so long as the chairperson is not present or if the office of chairperson is vacant, the members of the Board who are present shall choose one of their number to act as the chairperson of the meeting.

(6) Each member of the Board present at a meeting of the Board shall have a vote.

(7) At a meeting of the Board, a question on which a vote is required shall be determined by a majority of the votes of the members of the Board present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.

(8) Subject to this Act, the Board may determine its own procedures.

(9) The Board may act notwithstanding one or more vacancies in its membership.

### **Explanatory Note**

This Head sets out the procedural framework for meetings of the Board of the Office. It is modelled on Section 19 of the Gambling Regulation Act 2024, with modifications to reflect the specific governance needs of the AI Office.

Subhead (1) provides flexibility by allowing the Board to meet as often as necessary to fulfil its statutory function but prescribes that it will meet at least quarterly

Subhead (2) enables the Board to conduct meetings using remote communication technologies, provided all participants can hear and be heard simultaneously. This reflects modern working practices and supports the participation of members who may be geographically dispersed or otherwise unable to attend in person.

Subhead (3) ensures that the first meeting of the Board is convened promptly and in coordination with the Minister, providing a clear starting point for the Board's operations.

Subhead (4) sets the quorum at five members. This is considered appropriate for a Board of this size, balancing the need for effective decision-making with operational flexibility.

Subhead (5) outlines the procedure for chairing meetings. It ensures continuity by allowing members

to appoint an acting chairperson if the designated chairperson is unavailable or the position is vacant.

Subheads (6) and (7) establish voting procedures. Each member present has a vote, and decisions are made by majority. In the event of a tie, the chairperson has a casting vote. These provisions support democratic decision-making and ensure clarity in resolving deadlock.

Subhead (8) allows the Board to determine its own procedures, subject to the provisions of the Act. This enables the Board to adopt standing orders or other internal governance mechanisms suited to its operational needs.

Subhead (9) confirms that the Board may continue to act despite vacancies in its membership. This ensures that the Board's functions are not unduly disrupted by delays in appointments or other changes in composition.

## Head 22 – Committees of the Board

### **To provide that:**

- (1) The Board may establish committees to assist and advise it in relation to the performance of any of its functions.
- (2) The Board may delegate to a committee any of its functions which, in its opinion, can be better or more conveniently exercised or performed by a committee.
- (3) The Board shall decide the terms of reference for any committee and may regulate the procedure of any such committee.
- (4) The members of a committee shall be appointed by the Board.
- (5) A committee shall consist of such number of members as the Board thinks proper.
- (6) A committee may include persons who are not members of the Board or staff of the Office.
- (7) A member of a committee who fails to perform his or her functions may be removed at any time for stated reasons by the Board.
- (8) The Board may at any time dissolve a committee.
- (9) The Board may appoint a person to be chairperson of a committee.
- (10) The acts of a committee shall be subject to confirmation by the Board save where the Board dispenses with the necessity for such confirmation.
- (11) There may be paid by the Office, out of resources at its disposal, such allowances for expenses (if any) incurred by the members of a committee, as the Minister may, with the consent of the Minister and the Minister for PER determine.

### **Explanatory Note**

This Head is modelled on Section 20 of the Gambling Regulation Act 2024. This Head is to provide for the Board to establish (and dissolve) committees as required. It will be important that the Board can set up specific committees to support the Office in its work. By way of example, the Food Safety Authority of Ireland, has committees that are used to facilitate the general discharge of the Authority's functions, such as coordinating with EU and international bodies, enabling stakeholder engagement, and allowing participation from individuals with specialist knowledge who are not part of the Board or staff.

## Head 23 – Disclosure of interests

### To provide that:

(1) Where the Chief Executive Officer, a member of the Board, a member of the staff of the Office, a member of a committee established under Head 21, or a consultant, adviser or other person engaged by the Office, has a pecuniary interest or other beneficial interest in, or material to, any matter which falls to be considered by the Board, or a committee established under this Act or the board of a subsidiary, he or she shall—

(a) disclose to the Board or committee as the case may be, the nature of his or her interest in advance of any consideration of the matter,

(b) neither influence nor seek to influence a decision in relation to the matter,

(c) take no part in any consideration of the matter,

(d) if he or she is the Chief Executive Officer, a member of the Board, the staff of the Office or a member of a committee established under Head 21, withdraw from the meeting for so long as the matter is being discussed or considered and shall not vote or otherwise act as such Chief Executive Officer or member in relation to the matter.

(2) For the purposes of this section, but without prejudice to the generality of subsection (1), a person shall be regarded as having a beneficial interest if—

(a) he or she or any connected relative, or any nominee of his or her or any connected relative, is a member of a company or any other body which has a beneficial interest in, or material to, a matter referred to in that subsection,

(b) he or she or any connected relative is in partnership with or is in the employment of a person who has a beneficial interest in, or material to, such a matter,

(c) he or she or any connected relative is a party to any arrangement or agreement (whether or not enforceable) concerning land to which such a matter relates, or

(d) any connected relative has a beneficial interest in, or material to, such a matter.

(3) For the purposes of this section a person shall not be regarded as having a beneficial interest in, or material to, any matter by reason only of an interest of his or her or of any company or of any other body or person mentioned in subsection (2) which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or in voting on, any question with respect to the matter, or in performing any function in relation to that matter.

(4) Where a question arises as to whether or not a course of conduct, if pursued by a person, would constitute a failure by the person to comply with subsection (1), the question may, subject to subsection (5), be determined by the chairperson of the meeting, whose decision shall be final, and where the determination is so made shall be recorded in the minutes of the meeting.

(5) Where a disclosure is made to the Board or a committee pursuant to subsection (1) particulars of the disclosure shall be recorded in the minutes of the meeting concerned.

(6) Where a person referred to in this section fails to make a disclosure in accordance with this section, the Board shall decide the appropriate action (including removal from office or termination of contract) to be taken.

(7) Where, at a meeting of the Board, the chairperson of the meeting is the person in respect of whom a question to which subsection (4) applies fails to be determined, the other members of the Board attending the meeting shall choose one of their members to be the chairperson of the meeting for the purposes of determining the question concerned.

(7) Where a disclosure under subsection (1) is made to the Board, particulars of the disclosure shall be recorded in the minutes of the meeting concerned and for so long as the matter which is the subject of the disclosure is being dealt with at the meeting, the person by whom the disclosure is made shall not be counted in the quorum for the meeting.

(8) Where the Minister is satisfied, on being informed by the Board, that a member of the Board has contravened subsection (1), the Minister shall determine the appropriate action (including removal from office) to be taken in relation to that person.

(9) Where the Board is satisfied that a person other than a member of the Board has contravened subsection (1), the Board shall determine the appropriate action (including termination of contract) to be taken.

(9) In this section—

(a) “connected relative”, in relation to a person, means—

- (i) a spouse, civil partner, parent, brother, sister or child of that person, or
- (ii) a spouse or civil partner of a child of that person,

and

(b) a reference to the Board includes a reference to a committee of the Board appointed under Head 21.

#### **Explanatory Note**

This Head is modelled on Section 21 of the Táillte Eireann Act 2022.

This Head provides for the disclosure of pecuniary or other beneficial interests by persons involved in the governance, operation, or advisory functions of the AI Office of Ireland. It is intended to safeguard the integrity and impartiality of the Office’s decision-making processes.

Given the Office’s role in coordinating supervision of the AI Act, it is essential that its actions are, and are seen to be, free from conflicts of interest. This provision ensures that individuals with a material interest in matters under consideration do not influence or participate in related decisions.

The Head sets out clear procedures for disclosure, withdrawal from meetings, and the recording of interests, and provides for appropriate consequences in the event of non-compliance. It reflects best practice in public governance and supports public confidence in the independence and transparency of the Office.

## Chapter 4 - Accountability and Funding of the Office

### Head 24 – Annual Report

#### **To provide that:**

(1) The Office shall, not later than 6 months after the end of each year, make a report (in this section referred to as the “annual report”) to the Minister on the performance of its functions during the preceding year.

(2) Notwithstanding subsection (1), if, but for this subsection, the first annual report under this section would relate to a period of less than 6 months, the report shall relate to that period and to the year immediately following that period and shall be made as soon as may be, but not later than 6 months after the end of that year.

(3) An annual report shall be in such form and include such information in respect of the performance by the Office of its functions, as the Office considers appropriate or as the Minister may direct.

(4) The Minister shall, as soon as is practicable after receipt of an annual report, cause a copy of the annual report to be laid before each House of the Oireachtas.

#### **Explanatory Note**

This Head is modelled on Section 22 of the Industrial Development (Enterprise Ireland) Act 1998 which established Enterprise Ireland.

This Head provides for the preparation and publication of an annual report by the public body. The requirement to produce an annual report is a standard feature of good governance frameworks and is intended to promote transparency, accountability, and public confidence in the operations of the body.

The Department considers it appropriate to include a statutory requirement for an annual report to ensure that the body operates in a transparent and accountable manner, consistent with best practice in public administration.

## Head 25 – Strategy Statement

### To provide that:

- (1) The Office shall, as soon as practicable after the establishment day and thereafter within 6 months before each third anniversary of the establishment day, prepare and submit to the Minister, a strategic plan for the ensuing 3-year period immediately following the year in which the strategy statement is submitted.
- (2) The Minister may issue a direction in writing to the Office in relation to the form and manner in which a strategy statement shall be prepared under subsection (1) and the Office shall comply with that direction.
- (3) The Minister shall, as soon as practicable after a strategy statement has been submitted to him or her under subsection (1), cause a copy of the strategy statement to be laid before each House of the Oireachtas.
- (4) In this section, "strategy statement" means a statement of the key objectives, outputs and related strategies, including the use of the resources of the Office.

### Explanatory Note

This Head provides for the preparation, submission, and publication of a strategy statement by the Office. It is designed to ensure that the Office operates with a clear, forward-looking plan that aligns with its statutory functions and policy objectives. The provision reflects standard governance practice in public sector bodies and supports transparency, accountability, and strategic oversight. The Head is modelled on Section 30 of the Gambling Regulation Act 2024.

Subsection (1): This subsection requires the Office to prepare and submit a strategy statement to the Minister, initially, as soon as practicable after the establishment day and subsequently, within six months before each third anniversary of the establishment day. The strategy statement must cover the three-year period immediately following the year in which it is submitted. This rolling planning cycle ensures regular review and updating of priorities and objectives.

Subsection (2): This subsection empowers the Minister to issue a written direction to the Office regarding the form and manner in which the strategy statement is to be prepared.

Subsection (3): Laying Before the Oireachtas: This subsection ensures that the Minister shall lay the strategy statement before each House of the Oireachtas as soon as practicable after receiving it. This supports public accountability and transparency.

Subsection (4): This subsection defines "strategy statement" as a document setting out key objectives, expected outputs and related strategies, including resource use.

## Head 26 – Annual Accounts

### **To provide that:**

- (1) The Office shall keep, in such form as may be approved by the Minister with the consent of the Minister for Public Expenditure, all proper and usual accounts (in this section referred to as “annual accounts”) of all money received or expended by it.
- (2) Annual accounts shall be submitted by the Office to the Comptroller and Auditor General for audit not later than 1 April in the year immediately following the financial year to which they relate or on such earlier date as the Minister may specify.
- (3) The Office shall, immediately after the audit referred to in subsection (2), present to the Minister a copy of—
  - (a) the annual accounts, and
  - (b) the report of the Comptroller and Auditor General on those accounts.
- (4) The Minister shall cause a copy of the annual accounts and report presented to him or her under subsection (3) to be laid before each House of the Oireachtas as soon as practicable after such presentation.
- (5) The Office shall, whenever so requested by the Minister, permit any person appointed by the Minister to examine the books or other records of account of the Office in respect of any financial year or other period and shall facilitate any such examination, and the Office shall pay such fee for the examination as may be fixed by the Minister.

### **Explanatory Note**

This Head is modelled on Section 19 of the Gambling Regulation Act 2024. This is a standard provision for legislation of this kind.

A provision for the Office to allow the Minister to examine the records of the account is also included.

## Head 27 – Grants to the Office

### **To provide that:**

In each financial year, the Minister may advance to the Office out of moneys provided by the Oireachtas such sums as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine.

### **Explanatory Note**

The Office will require exchequer funding to carry out its work.

This Head provides that the Minister may, with the consent of the Minister for Public Expenditure, advance monies to the Office for the performance of its functions. Text of head is based on Section 21 of the Competition and Consumer Protection Act 2014.

## Chapter 5 – Employees and Advisers

### Head 28 - Staff of the Office

#### **To provide that:**

- (1) The Office may, subject to the approval of the Minister given with the consent of the Minister for Public Expenditure, appoint such number of persons to be members of its staff as it may determine.
- (2) The Office shall, subject to the approval of the Minister given with the consent of the Minister for Public Expenditure, determine the grades of members of its staff and the numbers in each grade.
- (3) Members of staff of the Office shall be civil servants within the meaning of the Civil Service Regulation Act 1956.
- (4) Terms of service as to remuneration and allowances to be paid by the Office are subject to the approval of the Minister given with the consent of the Minister for Public Expenditure
- (5) Subject to subsection (6), the Office may enter into an arrangement with the employer of a public sector employee for the secondment of the employee to be a member of staff of the Office for the duration of the secondment.
- (6) A secondment under subsection (2) may only be made with the consent of the public sector employee concerned and the Minister.
- (7) The remuneration, superannuation (where appropriate) and allowances (if any) of the staff of the Office are payable by the Office out of funds at the Office's disposal.
- (8) In this section, "public sector employee" means a person whose emolument is paid, funded or partly funded directly or indirectly by the State.

#### **Explanatory Note**

This Head provides the Office with the power to appoint staff and pay staff, and outlines that they would not be double counted for payment or time as service when on secondment for particular types of secondments. This is based on Section 26 of the Gambling Regulation Act 2024, which established the Gambling Regulation Authority.

The Head provides that staff of the Office will be civil servants within the meaning of the Civil Service Regulation Act 1956 which is consistent with another DETE newly established organisation, the Corporate Enforcement Agency and with the Data Protection Commission.

Recital 128 of the EU AI act stresses the importance of adequate resourcing levels for AI Act enforcement at national level, to ensure functioning at the financial level and adequate staffing. There is a particular onus on Member States as result of Article 70 (3) to "ensure that their national competent authorities are provided with adequate technical, financial and human resources, and with infrastructure to fulfil their tasks effectively under this Regulation."

## Head 29 – Consultants and advisers

### **To provide that:**

- (1) The Office may engage such consultants or advisers as it considers necessary for the performance of its functions.
- (2) Any fees due to a consultant or adviser engaged under this section shall be paid by the Office out of moneys at its disposal.

### **Explanatory Note**

This head is modelled on Section 18, of the Gambling Regulation Act. This provision allows the Office to engage consultants and advisors as it deems necessary for the performance of its function. This provision is important for particularly (but not limited to) the first years of operation it will support an emerging new organisation with the relevant expertise in a rapidly evolving sector and will provide operational flexibility. This provision is similarly available to other public sector bodies such as Enterprise Ireland and IDA. Consultants are designed to enable an entity to scale its capacity without permanent staffing increases.

## Head 30 – Disclosure of interests

### **To provide that:**

(1) Where a member of the staff of the Office, a member of the Board, a consultant or adviser engaged under [Head 29], in a category specified before engagement by the Office, has an interest, has an interest, otherwise than in his or her capacity as such, in any contract, or any proposed contract to which the Office is or is proposed to be a party, or in any agreement or arrangement or proposed agreement or arrangement to which the Office is or is proposed to be a party, that person—

- (a) shall disclose to the Office his or her interest and the nature of it,
- (b) shall take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by members of the Office or the committee or members of the staff of the Office in relation to it,
- (c) shall not influence or seek to influence a decision to be made in the matter, and
- (d) shall not make any recommendation in relation to the contract, agreement or arrangement.

(2) Subsection (1) does not apply to a person as regards a contract or proposed contract of employment of that person as a member of the staff of the Office.

(3) Subsection (1) does not apply to a person as regards a contract or proposed contract for services in respect of that person.

(4) Where a person to whom subsection (1) applies fails to comply with a requirement of this section, the Office shall decide the appropriate action (including removal from office or termination of contract) to be taken.

### **Explanatory Note**

This Head provides that staff of the Office are obliged to disclose certain interests to the Office in relation to any actual or proposed contract, arrangement or agreement entered into by the Office. This head is based on Section 37 of the Broadcasting Act, 2009 (as amended).

## Head 31 – Prohibition on unauthorised disclosure of confidential information

### **To provide that:**

(1) A relevant person shall not disclose confidential information obtained by him or her while performing functions under this Act unless he or she is required or permitted by law or duly authorised by the Office to do so.

(2) Subsection (1) shall not operate to prevent the disclosure by a relevant person of information—

- (a) in a report to the Chief Executive Officer or the Board,
- (b) to a Minister of the Government, and
- (c) to a public authority, whether in the State or otherwise, for the purposes of facilitating cooperation between the Office and such authority in the performance of their respective functions.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a class A fine.

(4) In this section—

“confidential information” includes information that is expressed by the Office to be confidential either as regards particular information or as regards information of a particular class or description;

“relevant person” means—

- (a) the Chief Executive Officer,
- (b) a member of staff of the Office,
- (c) a member of the Board,
- (d) any other person engaged under a contract for services by the Office or a member of the staff of such a person, or
- (e) a person who has acted in a capacity referred to in any of paragraphs (a) to (d).

### **Explanatory Note:**

Given the nature of the information that staff of the Office are likely to be exposed to, it is prudent to include an explicit provision to prohibit disclosure of confidential information. This will provide assurance to regulated entities that procedures are in place to prevent the release of commercially sensitive information and trade secrets.

This Head is based on Section 26 of the Data Protection Act 2018. In performing its functions, the Office must adhere to the confidentiality obligations set out in Article 78 of the AI Act. These obligations require the protection of intellectual property rights, trade secrets, and sensitive information, and mandate the implementation of robust cybersecurity measures. Data collected must be strictly necessary, securely handled, and deleted when no longer required.

## Chapter 6 - Central Coordinating Authority for the AI Act

### Head 32 - Single Point of Contact

#### **To provide that:**

The Office carries out its role as the Single Point of Contact for the AI Act. This will entail:

1. Acting as a central coordinator providing advice, guidance and support including development of regulatory framework and tools.
2. Acting as the central contact point for engagement with European Commission, AI Office, EU bodies and agencies, and other Member States.
3. Delivering a programme of support for Competent Authorities.
4. Leading cooperation at EU level.
5. Facilitating cooperation at national level.

#### **Explanatory Note**

This Head transposes the provisions of Article 70(2), which designates a market surveillance authority at national level as single point of contact.

The AI Office of Ireland is being established with the role of coordinating on matters related to the implementation of the AI Act between the relevant national competent authorities, market surveillance bodies, and notifying authorities. This Office will ensure consistent application of the regulation across sectors and across the EU Member States. This Office will act as a national relay point, to facilitate communication with the European Artificial Intelligence Office and other Member States. It will compile and share data on AI incidents, compliance issues, and enforcement actions.

The Single point of contact will be expected to function as national representative at EU AI Board meetings, and to report to the Board; it will send representation to the relevant subgroups.

## Head 33 - Cooperation with other bodies

### **To provide that:**

- (1) The Office may, in the interests of the effective discharge of its functions, co-operate and enter into co-operation agreements with a body established in the State.
- (2) The Office may, in the interests of the effective discharge of its functions, co-operate, and enter into co-operation agreements, with a body not established in the State, if that body performs similar functions to the Office.
- (3) If the Office enters into an agreement under this section—

- (a) it shall provide the Minister and the Joint Oireachtas Committee with a copy of the agreement, and
- (b) it may publish the agreement on a website maintained by it, with the consent of all parties to the agreement, and subject to such redaction as may be agreed between them.

### **Explanatory Note**

This Head provides for the Office to enter into cooperation agreements with other bodies as it sees fit. This Head is based on Section 32 of the Broadcast Act 2009 and is providing the Office with the ability to cooperate with bodies in the State, and if they perform a similar function, with those established outside the State. This is consistent with the role of the Office – a central coordinating authority, to ensure consistency across a number of regulators supervising a new EU regulation it must be able to enter into cooperation agreements with those bodies. Given the mandate of the Office as the Single Point of Contact for Ireland it should also have the ability to enter into cooperation agreements with counterparts in other countries.

Chapter 6 of the [Law Reform Commission's report on Regulatory Powers](#) and Corporate Offences highlights the benefits of cooperation agreements for regulatory bodies. The recommendations of the report are relevant and highlight that the use of a framework agreement or Memorandum of Understanding can be used to facilitate coordination.

*R 6.01 The Commission recommends that, where the jurisdiction of different regulators overlaps, the regulators concerned should implement a Framework Agreement or Memorandum of Understanding, which may, but need not necessarily, be in statutory form, to facilitate the coordination of standard setting, monitoring, and enforcement activities between regulators.*

*R 6.02 The Commission recommends that, where regulators operate within the same sector, appropriate mechanisms, taking account of relevant statutory requirements including as to data protection, should be implemented to ensure the sharing of information and expertise between regulators.*

## Head 34 - Cooperation Forum

### **To provide that:**

- (1) The Office will establish a Cooperation Forum.
- (2) The Forum will enable cooperation, coordination, and information exchange among competent authorities responsible for the supervision and enforcement of the AI Act.
- (3) Membership of the Forum
  - (a) The Forum will comprise representatives from each competent authority designated under national law for the purposes of supervising and enforcing the AI Act in their respective sectors.
  - (b) The Office shall chair the Forum and may invite additional participants, including experts or observers, as necessary.
- (4) Meetings
  - (a) The Forum shall meet at least quarterly and may convene additional meetings as required.
  - (b) The Forum may establish working groups to address specific thematic or sectoral issues.
  - (c) The Forum shall adopt its own rules of procedure, subject to approval by the AI Office of Ireland.
- (5) The Office shall provide secretariat support to the Forum and ensure that it is adequately resourced to fulfil its functions.

### **Explanatory Note**

This Head provides for the establishment of a Cooperation Forum by the Office. The Forum is intended to serve as a structured mechanism for cooperation and coordination among the competent authorities responsible for supervision and enforcement of the AI Act. The functions of the Forum may include:

- Promoting consistent interpretation and application of the AI Act;
- Facilitating the exchange of technical expertise, regulatory approaches, and emerging risk assessments;
- Advising the Office on cross-sectoral challenges and opportunities;
- Supporting Ireland's engagement with EU-level bodies such as the European Artificial Intelligence Office.

The Forum will be chaired by the Office and composed of representatives from designated competent authorities. The Forum will meet regularly and may establish working groups to address specific issues such as high-risk AI systems, conformity assessments, or sectoral guidance.

## Head 35 - AI Regulatory Sandbox

### **To provide that:**

- (1) The Office shall ensure —
  - (a) the establishment of a national AI regulatory sandbox, or
  - (b) Ireland's participation in an AI regulatory sandbox established at EU level, or both.
- (2) For the purposes of subhead (1), the Office, may—
  - (a) issue guidelines and procedures for the operation of a national AI regulatory sandbox;
  - (b) set conditions and criteria for participation in any AI regulatory sandbox under its supervision;
  - (c) monitor and supervise activities within any such AI regulatory sandbox;
  - (d) provide SMEs, including start-ups (with a registered office or a branch in the European Union), with priority access to the AI regulatory sandboxes, to the extent that they fulfil the eligibility conditions and selection criteria;
  - (e) coordinate activities with relevant competent authorities and cooperate within the framework of the EU AI Board (Article 57 (15));
  - (f) where appropriate, enter into arrangements with EU institutions and bodies for Ireland's participation in an EU-level AI regulatory sandbox;
  - (g) where appropriate, enter into arrangements with other regulatory boxes, nationally and/or at European and international levels;
  - (h) where appropriate, cooperate with other competent authorities to support the functions of the Office;
  - (i) take any other necessary measures to discharge its functions under subsection (1), including developing framework for collaboration with market surveillance authorities designated under this Act and other national bodies and agencies.
- (3) The Data Protection Commission must supervise the sandbox where there is processing of personal data within the sandbox environment (Article 57(10)).

### **Explanatory Note**

This Head provides that the AI Office shall ensure that Ireland establishes a national AI regulatory sandbox or participates in one established at EU level. The AI Office may collaborate with market surveillance authorities and other national authorities to establish and administer a sandbox, including issuing guidelines, entering EU arrangements, setting participation criteria, and monitoring activities. This implements Ireland's obligations under Article 57, Article 60 and 78.

The Head also provides that access for SMEs is prioritised. This facilitation of participation in AI regulatory sandboxes is mandated under Article 62 (1), which provides that Member States shall ensure that SMEs have priority access to such sandboxes, free of charge, and that procedures for participation are simple and clearly communicated.

The Data Protection Commission must be involved where there is a processing of the personal data within sandbox.

The overarching objectives of the AI regulatory sandbox will echo those of the EU AI Act: to support the sharing of best practices through cooperation with the authorities involved in the AI regulatory sandbox; foster innovation and competitiveness and facilitate the development of an AI ecosystem; contribute to evidence-based regulatory learning; facilitate and accelerate access to the Union market for AI systems for SMEs, including start-ups.

The National AI Sandbox can only come into effect once the relevant EU Implementing Acts (Article 58) have been passed in the Comitology Committee, and this is expected in February 2026.

## Head 36 - Disclosure of personal data

### To provide that:

(1) The Office may, in the circumstances referred to in *subsection (2)*, disclose personal data to any of the following:

- (a) any competent authority designated for the purposes of the AI Act;
- (b) An Garda Síochána;
- (c) European Union bodies;
- (d) a body prescribed in regulations by the Minister;
- (e) fundamental rights bodies identified according to Article 77 (1) of the AI Act.

(2) The circumstances referred to in subsection (1) are:

(a) in the case of subsection (1) (a), (c) and (e) where the Office considers that the disclosure is necessary and proportionate—

- (i) for the effective implementation of the AI Act; or
- (ii) for the purposes of directing a complaint to the relevant Competent Authority where the complaint, or part of the complaint, made to the Office relates to an infringement of the AI Act.

(b) in the case of *subsection (1)(b)*, where the Office considers that the disclosure may be necessary and proportionate for the prevention or investigation of a criminal offence;

(c) in the case of any paragraph of *subsection (1)*, where the Office considers that the disclosure is necessary and proportionate in such other circumstances as may be prescribed in regulations made by the Minister.

(3) Where the Office discloses a person's personal data under this section the Office shall notify the person of the disclosure in so far as it is practicable to do so.

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

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

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

- (a) may be processed for as long as it is required for such prevention, investigation, detection or prosecution, and
- (b) shall be permanently deleted after it is no longer required for such prevention, investigation, detection or prosecution.

(7) The matters that section 19 (1) of the Data Sharing and Governance Act 2019 requires to be specified or included in a data-sharing agreement shall be specified or included in any agreement entered into by the Office for the disclosure to another body of personal data in accordance with *subsection (1)*, subject to the following modifications to the description of those matters in section 19 (1) of that Act:

(a) references to the data-sharing shall be construed as references to any disclosure under the agreement;

(b) the reference in *paragraph (d)* to the public body concerned shall be construed as a reference to the body with whom the agreement is entered into;

(c) the reference in *paragraph (f)* to a public body shall be construed as a reference to a party to the agreement;

(d) the following paragraph shall be substituted for *paragraph (r)*:

“(r) include in a schedule to the agreement a statement summarising the grounds on which the Office considers the disclosure of the information to be necessary and proportionate as described in any paragraph of this Section (insert section number, Regulation of Artificial Intelligence Act 2026).”.

(8) The Minister shall make regulations under *subsection (1)(d)* only where he or she is satisfied that disclosure by the Office of personal data to a body prescribed under the regulations, in the circumstances referred to in *subsection (2)*, is necessary for the performance by the Office or the body prescribed of functions in the public interest.

(9) The Minister shall consider whether it is necessary to carry out an assessment of the impact of regulations made under *subsection (1)(d)* on the processing of personal data before making the regulations and, where he or she considers it necessary to do so, shall carry out the assessment.

(10) Regulations made under this section shall be laid by the Minister before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling the regulations is passed by either such House within the next 21 days on which the House sits after the regulations are laid before it, the regulations shall be annulled accordingly, but without prejudice to the validity of anything previously done under them.

(11) The Office shall give a copy of any agreement referred to in *subsection (7)* to the Minister.

#### **Explanatory Note**

Note: The Data Protection Commission will be formally consulted on this provision as required under Article 36 (4) of the GDPR.

This Head is to enable the Office to disclose personal data for certain purposes including directing a complaint or part of a complaint to the relevant market surveillance authorities, where a complaint, or part of a complaint made under Head 49 relates to a failure to comply with the Regulation of Artificial Intelligence Act.

As the coordinating authority, the Office can be expected to receive some ‘stray’ complaints and must be able to direct these complaints to the relevant competent authorities. In some cases that

information may include personal data. All parties to this information sharing are bound by professional secrecy requirements pursuant to Article 78 of the Regulation. This Head provides the Office with the requisite mechanisms to disclose personal information on a needs-only basis.

This Head provides the Office with the necessary legal basis to disclose personal data on a strictly needs-only basis. It also enables the Office to share such data with An Garda Síochána where it considers that the disclosure may be necessary and proportionate for the prevention or investigation of a criminal offence.

The Head provides the Minister with the power to prescribe additional bodies to whom personal data may be disclosed, subject to a public interest test and, where appropriate, a data protection impact assessment. It also includes safeguards for the processing of special categories of personal data, in line with the Data Protection Regulation and the Data Protection Act 2018.

Subhead (d) re Fundamental Rights Fundamental Rights Authorities (e.g. equality bodies, data protection authorities) may request access to documentation created or maintained under the AI Act, where necessary to fulfil their mandate. MSAs must be informed of such requests and facilitate access to documentation in an accessible language and format

To ensure transparency and accountability, the Head requires that any data-sharing agreement entered into by the Office must comply with the requirements of section 19(1) of the Data Sharing and Governance Act 2019, with modifications to reflect the specific context of AI regulation. The Office must also notify individuals of disclosures where practicable and ensure that personal data processed for law enforcement purposes is deleted once no longer required. This head is designed to reinforce the building trust and engagement among users of AI, and to build transparency in how AI is used in public services, in particular where personal data is involved.

The Office may consult the Data Sharing Support Suite, prepared by OGCIO for data sharing in accordance with the Data Sharing and Governance Act 2019, for further guidance on governance and transparency.

This text was guided by Section 33 of the Broadcasting Act – as amended. Reference: [Digital Services Act 2024, Section 47](#)

## Head 37 - National Register and Reporting Obligations

### To provide that:

- (1) The Office shall establish and maintain a national register of:
  - a. all instances of prohibited AI practices under Article 5;
  - b. High-risk AI systems referred to in point 2 of Annex III in compliance with Article 49(5) of the AI Act.
  - c. any other AI-related cases or notifications required to be recorded under Union law.
- (2) The Office shall act as the central contact point for the purposes of fulfilling the reporting obligations under AI Act.
- (3) For the purposes of subsection (2), each competent authority shall:
  - a. transmit the relevant documentation and information to the Office in electronic form and in a format specified by the Office;
  - b. do so within a timeframe that enables the Office to comply with Union-level reporting obligations.
- (4) The Office shall ensure that the register is:
  - a. maintained in a secure and accessible format;
  - b. updated regularly to reflect new notifications, decisions, and enforcement actions;
  - c. available for inspection by designated authorities and, where appropriate, the public, subject to confidentiality and data protection requirements.

### Explanatory Note

This Head provides for the creation and maintenance of a national register of AI systems and practices, with a particular focus on prohibited practices under Article 5 and High-Risk AI Systems in Annex III, point 2. This will be done in cooperation with the EU AI Office, where appropriate. The register will serve as a centralised repository of compliance and enforcement data, supporting transparency, coordination, and oversight.

As the Single Point of Contact and central coordinating authority for the AI Act, the Office will fulfil or oversee various reporting obligations to the European Commission and other Union bodies, such as:

- Article 57(16): Annual reports on Regulatory Sandbox
- Article 73: reporting on serious incidents and corrective actions;
- Article 70(6): status of financial and human resources of competent authorities
- Article 74(2): submission of annual activity reports;
- Article 99(11): reporting on administrative sanctions imposed;
- Article 112(8): responding to Commission inquiries and requests for information.
- Article 49(5) of the AI Act. High-risk AI systems referred to in point 2 of Annex III are to be registered at national level.

To enable the Office to meet these obligations, competent authorities will be required to transmit relevant documentation in a standardised electronic format. This ensures consistency and efficiency in national and EU-level reporting.

The register will also support Ireland's broader AI governance framework by facilitating data sharing, public accountability, and informed policymaking. Appropriate safeguards will be applied to protect sensitive information and ensure compliance with data protection law.

# Part 3 Market Surveillance of AI Systems

## Chapter 1 Powers and Functions of Market Surveillance Authorities

### Head 38 - Functions and Powers of Market Surveillance Authorities

#### To provide that:

- (1) The designated relevant Market Surveillance Authorities [SI 366/2025 and *amending SI (being drafted)*] shall conduct their market surveillance activities with the objective of ensuring the application of EU AI Act 2024/1689.
- (2) A relevant Market Surveillance Authority may use the powers conferred on a Market Surveillance Authority under Article 14 of the Market Surveillance Regulation in respect of a relevant product.

These are:

- a. the power to require economic operators to provide relevant documents, technical specifications, data or information on compliance and technical aspects of the product, including access to embedded software in so far as such access is necessary for the purpose of assessing the product's compliance with applicable Union harmonisation legislation, in any form or format and irrespective of the medium of storage or the place where such documents, technical specifications, data or information are stored, and to take or obtain copies thereof;
- b. the power to require economic operators to provide relevant information on the supply chain, on the details of the distribution network, on quantities of products on the market and on other product models that have the same technical characteristics as the product in question, where relevant for compliance with the applicable requirements under Union harmonisation legislation;
- c. the power to require economic operators to provide relevant information required for the purpose of ascertaining the ownership of websites, where the information in question is related to the subject matter of the investigation;
- d. the power to carry out unannounced on-site inspections and physical checks of products
- e. the power to enter any premises, land or means of transport that the economic operator in question uses for purposes related to the economic operator's trade, business, craft or profession, in order to identify non-compliance and to obtain evidence;
- f. the power to start investigations on market surveillance authorities' own initiative in order to identify non-compliances and bring them to an end;
- g. the power to require economic operators to take appropriate action to bring an instance of non-compliance to an end or to eliminate the risk;
- h. the power to take appropriate measures where an economic operator fails to take appropriate corrective action or where the non-compliance or the risk persists, including the power to prohibit or restrict the making available of a product on the market or to order that the product is withdrawn or recalled;
- i. the power to impose penalties in accordance with Article 41 of the Market Surveillance Regulation and penalties in accordance with Article 99 of the AI Act;
- j. the power to acquire product samples, including under a cover identity, to inspect those samples and to reverse-engineer them in order to identify non-compliance and to obtain evidence;
- k. the power, where no other effective means are available to eliminate a serious risk:

- (i) to require the removal of content referring to the related products from an online interface or to require the explicit display of a warning to end users when they access an online interface; or
- (ii) where a request according to point (i) has not been complied with, to require information society service providers to restrict access to the online interface, including by requesting a relevant third party to implement such measures.

(3) Relevant Market Surveillance Authorities may use any information, document, finding statement or any intelligence as evidence for the purpose of their investigations, irrespective of the format in which and medium on which they are stored.

(4) For the purpose of ensuring the effective supervision and enforcement of the AI Act and without prejudice to the powers of the relevant Market Surveillance Authorities under Article 14 Market Surveillance Regulation, relevant Market Surveillance Authorities MSAs may exercise the powers referred to in Article 14(4), points (d) and (j), of that Regulation remotely, as appropriate.

(5) Relevant Market Surveillance Authorities shall be granted access to the source code of the high-risk AI system upon a reasoned request and only when both of the following conditions are fulfilled:

- (i) access to source code is necessary to assess the conformity of a high-risk AI system with the requirements set out in Chapter III, Section 2 of the AI Act; and
- (ii) testing or auditing procedures and verifications based on the data and documentation provided by the provider have been exhausted or proved insufficient.

(6) Where a relevant Market Surveillance authority suspects that a system classified by a provider as non-high-risk under Article 6(3), may be otherwise, the relevant Market Surveillance Authority may request an evaluation of the system by means of the Article 6(3) criteria and Commission guidelines.

#### **Explanatory Note**

Article 74(3) of the EU AI Act provides that the market surveillance authorities responsible for the high-risk AI systems related to the 12 products covered by the Union harmonisation legislation listed in Section A of Annex I, shall be automatically responsible for market surveillance activities designated under those legal acts, unless a Member State chooses to derogate from this approach. Ireland will not derogate from the default approach in the Act. On this basis, the six established authorities in Ireland are automatically designated as MSAs for the Act. These were formally designated by the Minister for ETE in [S.I. No 366 of 2025](#) (European Union (Artificial Intelligence) (Designation) Regulations 2025) signed on 25 July 2025. These MSAs, and the associated product categories, are listed in Table 1.

The AI Act is linked to the Market Surveillance Regulation (2019/1020) as certain procedures, tasks or measures to be applied or conferred in the Artificial Intelligence Act are defined with reference to or align with those of the EU Market Surveillance Regulation. This can be seen in particular with reference to Annex I.

Table 1

<b>AIA, Annex I, Section A</b>	<b>MSA</b>	<b>Statutory Instrument(s)</b>
<b>Directive 2006/42/EC</b>	H.S.A.	<a href="#"><u>S.I. No. 407/2008 - European Communities (Machinery) Regulations 2008 (irishstatutebook.ie)</u></a>
<b>Directive 2009/48/EC</b>	CCPC	<a href="#"><u>S.I. No. 15/2022 - European Communities (Safety of Toys) (Amendment) (No. 3) Regulations 2022 (irishstatutebook.ie)</u></a>
<b>Directive 2013/53/EU</b>	Marine Survey Office (MSO)	<a href="#"><u>S.I. No. 65/2017 - European Union (Recreational Craft and Personal Watercraft) Regulations 2017. (irishstatutebook.ie)</u></a>
<b>Directive 2014/33/EU</b>	H.S.A.	<a href="#"><u>S.I. No. 232/2017 - European Union (Lifts and Safety Components for Lifts) Regulations 2017. (irishstatutebook.ie)</u></a>
<b>Directive 2014/34/EU</b>	H.S.A.	<a href="#"><u>S.I. No. 230/2017 - European Union (Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres) Regulations 2017. (irishstatutebook.ie)</u></a>
<b>Directive 2014/53/EU</b>	ComReg	<a href="#"><u>S.I. No. 248/2017 - European Union (Radio Equipment) Regulations 2017. (irishstatutebook.ie)</u></a>
<b>Directive 2014/68/EU</b>	H.S.A.	<a href="#"><u>S.I. No. 233/2017 - European Union (Pressure Equipment) Regulations 2017. (irishstatutebook.ie)</u></a>
<b>Regulation (EU) 2016/424</b>	CRR Commission for Railway Regulation	<a href="#"><u>S.I. No. 543/2020 - European Union (Cableway Installations) Regulations 2020 (irishstatutebook.ie)</u></a>
<b>Regulation (EU) 2016/425</b>	CCPC (domestic)	<a href="#"><u>S.I. No. 325/2022 - European Union (Personal Protective Equipment) (Amendment) Regulations 2022 (irishstatutebook.ie)</u></a>
	HSA (non-domestic)	<a href="#"><u>S.I. No. 136 of 2018 PPE</u></a>
<b>Regulation (EU) 2016/426</b>	CCPC (domestic)	<a href="#"><u>S.I. No. 13/2022 - European Union (Appliances Burning Gaseous Fuels) (Amendment) Regulations 2022 (irishstatutebook.ie)</u></a>
	HSA (non-domestic)	<a href="#"><u>S.I. No. 126/2018 - European Union (Appliances Burning Gaseous Fuels) Regulations 2018 (irishstatutebook.ie)</u></a>
<b>Regulation (EU) 2017/745</b>	HPRA	<a href="#"><u>S.I. No. 261/2021 - Medical Devices Regulations 2021 (irishstatutebook.ie)</u></a>
<b>Regulation (EU) 2017/746</b>	HPRA	<a href="#"><u>S.I. No. 256/2022 - In Vitro Diagnostic Medical Devices Regulations 2022 (irishstatutebook.ie) and SI <a href="https://www.irishstatutebook.ie/eli/2022/si/257/made/en/print">https://www.irishstatutebook.ie/eli/2022/si/257/made/en/print</a></u></a>

There is no central body responsible for market surveillance and no single piece of overarching market surveillance legislation. Responsibility for community harmonisation legislation is allocated to Government Departments according to competence.

In addition to the six sectoral Market Surveillance Authorities designated for the AI Act by virtue of their role as MSA for the harmonised legislation listed in Annex I, Section A of the AI Act, there are a further seven public bodies that have been designated as Market Surveillance Authorities for their respective sectors. These are listed below in Table 2. The first eight MSAs agreed by Government in

March were designated in statute by [S.I. No 366 of 2025 in July 2025](#), and the additional five that were agreed by Government in July 2025 are being formally designated by an amendment to that S.I.

These organisations will require the powers set out in Regulation 2019/1020 and any additional AI Act powers. This Head gives them the required powers to function as AI regulators drawing on the relevant powers of the MSR 2019/1020 and those specific to the AI Act.

Table 2

<b>Central Bank of Ireland</b>	Article 74 (6), Prohibited Practices and Annex III (5) in respect of financial services regulated by the Central Bank.
<b>Coimisiún na Meán</b>	In respect of online platforms defined by the Digital Services Regulation, audiovisual media services and sound broadcasting: Article 50 and prohibited Practices (certain parts) in respect of the same.
<b>Commission for Regulation of Utilities (CRU)</b>	Annex III (point 2) supply of water, gas, heating or electricity
<b>Commission for Communications Regulation (ComReg)<sup>3</sup></b>	Annex III (point 2) digital infrastructure
<b>Data Protection Commission (DPC)</b>	Article 74 (8), Prohibited Practices (certain parts) and Annex III (certain parts)
<b>Health Service Executive (HSE)</b>	Annex III (point 5) for essential public health services and emergency triage.
<b>National Transport Agency (NTA)</b>	Annex III (point 2) Road Traffic
<b>Workplace Relations Commission (WRC)</b>	Annex III (point 4) for employment, and Prohibited Practices 5(1)(f) used in employment

**In this Head:**

**Subhead (1)** provides that the Market Surveillance Authorities will exercise their functions as MSAs for the EU AI Act.

**Subhead (2)** confirm that those MSAs will draw on the powers of the Market Surveillance Regulation 2019/1020 in particular at Article 14 and Article 14.4 a to k, and 14.5. While some of these bodies will have been designated as MSAs for their respective products already, the Department of Enterprise, Tourism and Employment considers that to avoid any gaps or misalignment across the sectors in regulation of AI Systems that the powers should be conferred on them in totality here. These powers are replicated directly here from the Market Surveillance Regulation 2019/1020; however, it may not be necessary to include this in the Bill and will be subject to discussions and guidance from the OPC.

**Subhead (3)** is to ensure that MSAs are not limited to formal or traditional types of media for evidence. It could include emails or digital communications, logs or metadata from AI systems, physical documents, digital files (PDFs, spreadsheets, databases), audio or video recordings. This is particularly relevant for AI systems, where evidence might be embedded in machine logs, training datasets, or algorithmic outputs, and stored across distributed infrastructures.

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<sup>3</sup> ComReg is also MSA for Annex I, Directive 2014/53/EU (Radio Equipment Directive)

**Subhead (4)** is to ensure compliance with the obligations of Article 74(5) AI Act, all MSAs need to have a further two powers making them exercisable remotely (Article 14(4)(d) and (J) Regulation 2019/1020). These powers are as follows:

*Article 14 (4)(d) 'The power to carry out unannounced on-site inspections and physical checks of products'.*

While physical entry is traditionally implied, remote exercise could include:

- Virtual inspections: using live video feeds (e.g. via smart glasses or mobile devices) to guide on-site staff through inspections.
- Remote interviews or interrogations: conducted via secure video conferencing tools.

*Article 14 (4)(j) 'The power to require economic operators to take appropriate action to bring an instance of non-compliance to an end or to eliminate the risk.'*

Examples of this being done remotely could include:

- Ordering samples online: MSAs may purchase products from e-commerce platforms under a cover identity to test them.
- Requesting samples by post: economic operators may be required to send samples to designated labs.
- Digital product testing: for software-based products, MSAs may request access to code, APIs, or digital twins for remote analysis.

**Subhead (5)** is required to ensure the MSAs have the requisite power to request source code once certain conditions have been met. This does not already feature in Regulation 2019/1020. Under Article 74(13) of the AI Act, MSAs are granted a conditional power to access the source code of high-risk AI systems. This is a last-resort investigative tool designed to ensure compliance with the strict requirements set out in Chapter III, Section 2 of the Act, which covers: Risk management, data governance, transparency, human oversight, accuracy, robustness and cybersecurity.

To ensure that this access is proportionate, targeted, and used only when essential. MSAs can only request access to source code if both of the following conditions are met.

- 1.Necessity: Access is necessary to assess whether the AI system complies with the legal requirements.
- 2.Exhaustion of other methods: All other methods—like reviewing documentation, testing, and auditing—have been exhausted or proved insufficient.

**Subhead (6)** enables the MSA to request an evaluation if it suspects a system is incorrectly classified as non-high risk. Under Article 6(3) of the AI Act, providers of AI systems can self-assess and decide that their system is not high-risk, even if it falls under a category listed in Annex III. However, this classification must be justified and documented. To prevent misuse or under-classification, the AI Act gives Market Surveillance Authorities (MSAs) a specific power that if it suspects that a system classified as non-high-risk is actually high-risk the MSA can request a formal evaluation of the system using the criteria in Article 6(3), require the provider to apply the Commission's guidelines on classification and potentially reclassify the system as high-risk, triggering all the obligations under Chapter III.

**Note:** Article 6 (5) of the AI Act provides that the Commission will provide guidelines specifying the practical implementation of this classification and to include a comprehensive list of practical examples of use cases of AI systems that are high-risk and not high-risk. These are due to be published no later than February 2026 and are currently being drafted.

## Chapter 2 – Market Surveillance Authority for Regulated Financial Services – the Central Bank of Ireland

### Head 39 - Application

To provide that:

Parts 4, 5 and 6 do not apply to the Central Bank of Ireland.

#### Explanatory Note

The Central Bank's role under the AI Act and the Market Surveillance Regulation is limited to regulated financial service providers. The Central Bank has an extensive suite of existing powers under its financial legislative framework. Once the AI Act and the Market Surveillance Regulation are included in that framework by virtue of designation under the Central Bank Act 1942, the Central Bank's powers including information gathering and the Administrative Sanctions Procedure will apply in respect of the AI Act and the Market Surveillance Regulation.

This means, for example, that the Administrative Sanction Procedure will apply to any investigations carried out by the Bank in respect of the breaches of the AI Act by regulated financial services providers. Designation under the 1942 Act will also switch on provisions related to complaints and complaints procedures.

Consequently, it will therefore be necessary to exclude the Central Bank from certain provisions, and this will be subject to discussion with the OPC.

## Head 40 - Amendments to Central Bank Act 1942

### To provide that:

1. Amendment to Section 33 AK (5) of the Central Bank Act 1942 [Disclosure of Information]

Provides that:

The Central Bank Act 1942 is amended –

[bd] The European Commission, market surveillance authorities and notified bodies and any other natural or legal person involved in the application of Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence, including for the purposes of the performance of functions or powers under Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products.

(a) In section 33AK(10), in the definition of “supervisory EU legal acts” –

(i) In paragraph (aq), by the substitution of “2023” with “2023;”, and

(ii) By the insertion of the following paragraph after paragraph (aq):

(ar) Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024;

(as) Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019.

### Explanatory Note:

To amend Section 33 Ak to provide an information gateway for the Central Bank to share information with relevant competent authorities, the AI Office of Ireland, the European Commission and any other natural or legal person involved in the application of the AI Act.

Section 33AK provides for the obligations of professional secrecy imposed on the Central Bank and its staff –the Central Bank cannot disclose confidential information where such disclosure is prohibited by the EU legal acts.

Where such disclosure is not prohibited by EU law, the Bank must nonetheless have a ‘gateway’ for disclosure. Section 33AK(5) provides a “gateway” by which “*confidential information*” may be disclosed to those entities listed.

Including ‘...the European Commission, market surveillance authorities and notified bodies and any other natural or legal person involved in the application of Regulation (EU) 2024/1689’ in the list in Section 33AK (5) means that, subject to the requirements of EU law, confidential information can be shared by the Bank with those bodies.

This amendment will mean the Bank can:

- Exchange confidential information with other domestic agencies and structures subject to requirements of EU law and in respect of the operation of the EU AI Act.

- Exchange non-confidential information with other domestic agencies and structures in respect of the operation of the EU AI Act.
- Exchange information (confidential and non-confidential information) with EU level agencies and structures subject to relevant EU law.

2. To provide that the EU AI Act, Regulation 2019/1020, (S.I. No. 366 of 2025) and this Act be added as designated enactments and designated statutory instruments for the purposes of the Central Bank Act 1942.

Provides that:

“The Central Bank Act 1942 is amended –

(a) In section 2(2A) by-

Inserting after paragraph (bk) the following:

‘(bl) Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024;

(bm) Regulation (EU) 2019/2010 of the European Parliament and of the Council of 20 June 2019’<sup>4</sup>

(b) “The Central Bank Act 1942 is amended –

In Part 1 of Schedule 2 by inserting the following item at the end-

No.	No xxxxxx	Regulation of Artificial Intelligence Act	[List those parts that are relevant to the Central Bank of Ireland]

In Part 2 of Schedule 2 by inserting the following item at the end –

“No.	S.I. No 366 of 2025	European Union Artificial Intelligence) (Designation) Regulations 2025	Regulation 4(1)”

<sup>4</sup> \*\* this is included for completeness in order to bring Regulation (EU) 2019/2010 within the definition of ‘financial services legislation’ (insofar as the powers thereunder are being exercised by the Central Bank in relation to regulated financial service providers).

### **Explanatory Note**

The purpose of this provision is to designate the AI Act, Regulation (EU) 2019/1020 and the relevant S.I.s as ‘designated enactments’ and ‘designated statutory instruments’ for the purposes of the Central Bank Act 1942.

This has the effect of including those enactments within the scope of the Bank’s powers and functions under, for example, Part 3 [Information Gathering] of the Central Bank (Supervision and Enforcement) 2013 (the 2013 Act), as well as the Administrative Sanctions Procedure in Part IIIC of the Central Bank Act 1942. In accordance with Article 74(6) of the A.I. Act, the Central Bank’s role under the AI Act is limited to monitoring the placing on the market, putting into service or use of A.I. systems by financial institutions in direct connection with the provision of financial services.

‘Financial institution’ will be covered within the definition of ‘regulated financial service provider’ in the Central Bank Act 1942. In addition, because the AI Acts will fall within the definition of ‘financial services legislation’ in Section 3 of the 2013 Act, Part 5 of the 2013 applies [Protection for Persons Reporting Breaches].

## Head 40A - Amendments to the Administrative Sanctions Procedure under IIIC of the Central Bank 1942

### **To provide that:**

- 1) The power of the Bank to impose any of the administrative penalties and other administrative measures referred to in Article 99 of the AI Act is in addition to and not in substitution for its powers to impose any of the sanctions specified in section 33AQ of the Act of 1942.
- 2) Any reference in the Act of 1942 to the sanctions set out in section 33AQ of that Act is to be read as including a reference to the administrative penalties and other administrative measures referred to in [Chapter XII of the AI Act]
- 3) “Where [a sanction set out in section 33AQ of the Act of 1942 [OR] an administrative penalty referred to in Article X of EU Regulation] is imposed in respect of a contravention of the provisions specified in points [Article x of EU Regulation], the type and level of [any sanction or sanctions [OR] any such penalty or penalties,] to be imposed in respect of such a contravention shall be determined in accordance with Article 99 of the EU Regulation.”

### **Explanatory Note**

In addition to designating the AI Act (see previous Head) so that it falls within the scope of the Central Bank's remit of Part IIIC of the Central Bank Act 1942, the AI Act contains its own provisions in relation to monetary penalties (Article 99). It needs to be clear what effect these will have on section 33AQ of the 1942 Act sanctions available as part of the ASP under Part IIIC. Any prescribed EU sanctions set out in the AI Act should be in addition to the existing ASP sanctions under Section 33AQ and not instead of them.

Part IIIC of the Central Bank Act 1942 applies in respect of regulated financial service providers only. The language in the Head aligns with other transpositions done for the Central Bank of Ireland.

Subhead (1) clarifies that the penalties in the AI Act are in addition to those in S.33AQ of the Act of 1942.

Subhead (2) is included to confirm that the reference to Section 33AQ sanctions also means those sanctions set out in the AI Act. The aim of this is to ensure that the EU-prescribed contraventions fit into the architecture and mechanics of Part IIIC.

Subhead (3) suggested amendments to the language, will need to be considered in collaboration with the OPC.

## Chapter 3 Coordination at National and International Level

### Head 41 - Market Surveillance Authorities and Oifig IS na hÉireann/the AI Office of Ireland

To provide that:

- (1) The Office will coordinate reporting at a national level and when relevant Market Surveillance Authorities report to the Commission, the same report will be routed to the Office.
- (2) The Office may issue and update guidelines and processes for reporting mechanisms and it may develop technical systems to streamline reporting from relevant Market Surveillance Authorities and coordinate national reporting to the EU.
- (3) The relevant Market Surveillance Authorities will actively participate in the Cooperation Forum established by the Office under Head 34 to ensure communication and coordination with their counterparts.

#### Explanatory Note

The Head provides that the Office may issue guidelines and develop technical systems to coordinate reporting of key regulatory developments and incidents, and that MSAs are integrated into national and EU-level cooperation structures.

Subhead (1) sets out that the Office, as the Single Point of Contact will receive the same reports as the European Commission in relation to the relevant Market Surveillance Authorities reporting obligations under the AI Act and Market Surveillance Mechanisms.

Subhead (2) the Office, as Ireland's Single Point of Contact under the AI Act, may issue guidelines and develop technical systems to facilitate consistent and streamlined reporting by MSAs. This supports a coordinated national approach to reporting and ensures that Ireland meets its obligations under EU law.

Subhead (3) sets out that MSAs must actively participate in the Cooperation Forum established by the AI Office of Ireland. The Forum will serve as a platform for communication and cooperation among competent authorities, supporting the consistent application of the AI Act, sharing of best practices, and effective supervision and enforcement at national level. This is provided for in Head 34.

## Head 42 - Serious incidents

### To provide that:

- (1) Relevant Market Surveillance Authorities will receive reports of serious incidents from providers of High-Risk AI (HRAI) systems where the incident occurred.
- (2) Procedures to manage the reporting of serious incidents will be carried out in accordance with Article 19 of the Market Surveillance Regulation or union harmonisation legislation.
- (3) The relevant Market Surveillance Authority that received the relevant report will notify public authorities, the Commission, the AI Office of Ireland or bodies designated under Article 77(1).
- (4) The relevant Market Surveillance Authorities for high-risk AI systems in Annex III AI Act, that are already subject to equivalent Union reporting obligations the notifications are limited to serious incident reports specific only to Article 3, point (49)(c) from providers operating in these respective subject domains.
- (5) The Market Surveillance Authority designated in regulation 3 of SI No. 366 of 2025 will receive reports of serious incidents in relation to medical devices and safety components of devices covered by Regulations (EU) 2017/745 and (EU) 2017/746.

### Explanatory Note:

Incident reporting is required under Article 73 and Article 76 of the AI Act. This Head sets out that the relevant Market Surveillance Authorities will ensure mechanisms are in place for providers to report serious incidents, and that the procedures outlined in the Market Surveillance Regulation 2019/1020 are followed, as well as notifying public authorities, the Commission and Office. Article 73 (7) of the AI Act states that the Commission will develop dedicated guidelines to facilitate compliance with the reporting obligation in Article 73 (1). Draft guidelines were published by the European Commission on 26 September 2025<sup>5</sup>, for stakeholder and public consultation and when finalised they will provide further information and clarification for this provision.

Providers must notify all serious incidents to the market surveillance authorities of the Member States where the incident occurred. The notification must be made immediately after the provider has established a causal link between the AI-system and between the serious incident or the reasonable likelihood of such a connection, and in each case no later than 15 days after the serious incident has come to the attention of the provider or, as the case may be, the deployer.

In the case of a fatality, the notification must be made no later than 10 days after the date on which the serious incident has come to the attention of the provider or, as the case may be, the deployer.

However, in the event of a 'widespread incident or a serious incident as defined in Article 3(49)(b) *(b) a serious and irreversible disruption of the management and operation of critical infrastructure*', the report must be provided immediately and no later than 2 days after the provider or deployer becomes aware of the incident.

The provider must immediately carry out the necessary investigations related to the serious incident and the artificial intelligence system in question. This must include a risk assessment of the incident and corrective measures.

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<sup>5</sup> [AI Act: Commission issues draft guidance and reporting template on serious AI incidents, and seeks stakeholders' feedback | Shaping Europe's digital future](#)

Article 3 (49) of the AI Act defines serious incident as follows:

*any incident or malfunctioning of an AI system that directly or indirectly leads to any of the following:*

- (a) the death of a person or serious damage to a person's health;*
- (b) a serious and irreversible disruption of the management and operation of critical infrastructure;*
- (c) the infringement of obligations under Union law intended to protect fundamental rights."*

**Subhead (1)** Market: Surveillance Authorities must ensure mechanisms are in place for providers to report serious incidents, as defined in Article 3(49) of the AI Act—covering harm to health, disruption of critical infrastructure, or breaches of fundamental rights.

**Subhead (2)** provides a procedural reference to Article 19 of Regulation 2019/1020 which outlines the procedures MSAs must follow to manage incident reports, including investigation, coordination, and enforcement actions. It also provides for the sector specific harmonised legislation. E.g. for medical devices there are separate definitions, processes and systems in place to receive reports of incidents, to investigate and to report incidents on separate systems.

**Subhead (3)** is about the actions that need to be taken upon receiving a report, where an MSA must inform the relevant national public authorities or bodies listed in Article 77(1) of the AI Act, ensuring coordinated response and oversight. It is provided for in Article 73 (7) of the AI Act that the Commission will develop dedicated guidelines to facilitate compliance with the reporting obligation in Article 73 (1). The guidelines have not been published yet, but they will provide further information and clarification for this provision.

**Subhead (4)** specifies that for high-risk AI systems under Annex III that are already subject to equivalent Union reporting obligations, notification is limited to incidents involving breaches of fundamental rights (Article 3(49)(c)).

**Subhead (5)** is a specific requirement of the AI Act, and addresses the regulator of medical devices, The Health Products Regulatory Authority (HPRA), which will handle serious incident reports related to AI medical devices or safety components of medical devices governed by Regulations (EU) 2017/745 and 2017/746.

## Head 43 - Temporary authorisation of High-Risk AI Systems for exceptional circumstances

### To provide that:

- (1) A relevant Market Surveillance Authority may, upon receiving a duly justified request in a format from a provider, authorise the placing on the market or putting into service of a high-risk AI system without prior completion of the conformity assessment procedures where such authorisation is necessary to address exceptional circumstances.
- (2) A derogation may be granted only where:
  - (a) the high-risk AI system is required to respond to an urgent public need, including but not limited to public health, safety, or national security;
  - (b) the full conformity assessment cannot be completed in time to meet that need; and
  - (c) the provider demonstrates that the system complies with applicable safety and fundamental rights protections to the extent feasible.
- (3) Any authorisation granted under this section shall:
  - (a) be limited in scope and duration to what is strictly necessary;
  - (b) specify the conditions under which the system may be used;
  - (c) require ongoing monitoring and reporting by the provider to the Market Surveillance Authority.
- (4) The relevant Market Surveillance Authority shall:
  - (a) notify the AI Office of Ireland of any derogation granted under this section;
  - (b) publish a summary of the derogation decision, including its justification and conditions, unless doing so would compromise public safety or national security.
- (5) The Market Surveillance Authority may review and, where appropriate, revoke the derogation if:
  - (a) the conditions under which it was granted are no longer met;
  - (b) the system is found to pose a risk to health, safety, or fundamental rights.

### Explanatory Note:

This Head provides that a Market Surveillance Authority may authorise the placing on the market or the putting into service of specific high-risk AI systems within the State, for exceptional reasons of public security or the protection of life and health of persons, environmental protection or the protection of key industrial and infrastructural assets (Article 43 derogation), as a time-specific measure.

Article 43 of the AI Act sets out the rules for conformity assessment—the process by which providers of high-risk AI systems must prove that their systems meet the legal requirements before they can be placed on the EU market. The conformity assessment is a formal check to ensure that a high-risk system complies with the rules in Chapter III, Section 2.

The derogation from Article 43 is provided for and set out in detail in Article 46 of the AI Act. It allows a Market Surveillance Authority (MSA) to authorise the placing on the market of a high-risk AI system without a full conformity assessment, but only in exceptional cases.

Conditions for Derogation:

- The provider must submit a duly justified request.
- The derogation is granted only when necessary, for example:
  - in response to urgent public needs;
  - for testing in real-world conditions under supervision;
  - when the full assessment is not feasible in time, but the system is needed (e.g. during a public emergency).

Such a derogation might be used in a scenario where an AI system is used for emergency response during a natural disaster and there is not time for full conformity assessment. It would be in very exceptional circumstances and for a defined time.

## Head 44 - Request to organise testing of a high-risk AI system

### To provide that:

- (1) A relevant Market Surveillance Authority shall, upon receiving a reasoned request from a Fundamental Rights Authority identified pursuant to Article 77 of the AI Act take all necessary steps to assess the high-risk AI system concerned, including but not limited to:
  - a) requesting and reviewing relevant documentation from the provider or user of the AI system;
  - b) conducting or commissioning technical testing of the AI system;
  - c) engaging with the Fundamental Rights Authority to clarify the nature of the concerns raised.
- (2) A request under subsection (1) shall be made in writing and shall include a statement of the grounds upon which the Fundamental Rights Authority considers that the AI system may present a risk to fundamental rights.
- (3) The relevant Market Surveillance Authority shall respond to the requesting authority within a reasonable time following receipt of the request indicating:
  - a. the actions it proposes to take; or
  - b. the reasons why no action is considered necessary.
- (4) Where the relevant Market Surveillance Authority determines that testing is required, it shall ensure that such testing is carried out in a timely manner and that the results are communicated to the requesting authority.
- (5) The Minister may issue guidelines or regulations specifying procedures for the making, handling, and responding to requests under this section.

### Explanatory Note

This Head sets out how a relevant Market Surveillance Authority should fulfil its obligation in Article 77 (3) of the AI Act which means that a Fundamental Rights body 'may make a reasoned request to the MSA to organise testing of the high-risk AI System through technical means'.

Article 77 is further explained in an interpretative note produced by the AI Office in October 2024, which says:

*Article 77 of the AI Act seeks to address the situation in which, in a case of misuse or malfunctioning of high-risk AI systems falling under Annex III, the result is a fundamental rights violation. Therefore, national authorities or bodies that are responsible to enforce or supervise Union laws intended to protect fundamental rights, such as, for example, the right to protection of personal data or the principle of non-discrimination, in relation to the use of high-risk AI systems referred to in Annex III, should have access to the data collected in the market surveillance of AI systems where this is necessary for them to effectively perform their task and supervise and enforce obligations under such other laws. Accordingly, Article 77 empowers such authorities or bodies to request access to documentation or to even request that market surveillance authorities perform further testing of high-risk AI systems.*

If, having requested the documentation, the documents available to the Fundamental Rights Authority are not adequate to tell whether an AI system has broken any laws that protect people's rights, the

Fundamental Rights Authority can ask the market surveillance authority to test the AI system. The market surveillance authority must then carry out the testing, working closely with the FRA that made the request, and do so within a reasonable amount of time.

Ireland currently has listed nine Fundamental Rights Authorities.

- An Coimisiún Toghcháin
- Coimisiún na Meán
- Data Protection Commission
- Environmental Protection Agency
- Financial Services and Pensions Ombudsman
- Irish Human Rights and Equality Commission
- Ombudsman
- Ombudsman for Children's Office
- Ombudsman for the Defence Forces

Several of these authorities are also designated as competent authorities for the Act (CCPC, CnAM, DPC). But, for those that are not, as Fundamental Rights Authorities, no further obligations, responsibilities or tasks assigned to them under the AI Act. Rather, these authorities will get additional powers to facilitate them in carrying out their current mandates in circumstances involving the use of AI systems. For example, the authorities will have the power to access documentation that developers and deployers of AI systems are required to hold under the AI Act.

**Subhead (1):** This provision sets out the core obligation of the relevant MSA when it receives a request from a Fundamental Rights Authority (FRA) under Article 77 of the AI Act. The MSA must take all necessary steps to assess the AI system, which may include:

- Reviewing documentation from the provider or user to understand how the system operates and whether it complies with legal requirements.
- Conducting or commissioning technical testing, which may involve simulations, audits, or other forms of analysis to detect risks or violations.
- Engaging with the FRA to clarify the concerns raised, ensuring that the testing is targeted and relevant to the rights at risk.

**Subhead (2):** This subhead ensures that requests from FRAs are formalised and substantiated. The request must be in writing, ensuring traceability and accountability and include a statement of grounds, explaining why the FRA believes the AI system may pose a risk to fundamental rights. This helps the MSA understand the context and urgency of the request.

**Subhead (3):** This provision introduces the requirement that the MSA responds within a reasonable time following the receipt of the request and requires it to indicate what actions it proposes to take, such as initiating testing or further investigation or explain why no action is necessary, providing transparency and allowing the FRA to consider further steps if needed. This ensures timely and reasoned communication between authorities.

**Subhead (4):** If the MSA decides that testing is warranted, it must ensure the testing is done promptly and communicate the results to the FRA. This reinforces the procedural follow-through after a request is accepted.

**Subhead (5):** This subhead allows the Minister to issue guidelines or regulations to standardise how requests are made, handled and responded to and to ensure consistency across the difference MSAs and FRAs. This will provide flexibility to adapt procedures as needed over time.

## Head 45 - Mutual assistance and general-purpose AI Systems

### To provide that:

- (1) A relevant Market Surveillance Authority may cooperate with the EU AI Office for the purposes of Article 75(2) of the AI Act, including in relation to the supervision and investigation of general-purpose AI models.
- (2) Where a relevant Market Surveillance Authority or an authorised officer is unable to access documentation, information, or technical details necessary to assess compliance of an AI System that is based on a general-purpose AI model, it may submit a request to the EU AI Office for such information or assistance.

### **Explanatory Note**

The EU AI Office is the lead enforcer of the AI Act for General Purpose AI models (GPAI), monitoring compliance with the provisions of Chapter V of the AI Act across all 27 EU Member States.

This head sets out that the relevant MSAs will have obligations to cooperate with the EU AI Office in relation to monitoring compliance in certain instances where the provider of a GPAI model also develops the AI system. This Head provides for mutual assistance mechanisms between relevant MSAs and the EU AI Office, particularly in relation to general-purpose AI models, which are subject to specific obligations under Chapter V of the AI Act ('General-Purpose AI Models')

#### **Subhead (1): Cooperation under Article 75(2)**

This subhead enables MSAs to formally cooperate with the EU AI Office in the supervision, investigation, and enforcement of obligations related to general-purpose AI models. Article 75(2) of the AI Act allows the EU AI Office to support national authorities in monitoring compliance and coordinating enforcement actions. This provision ensures that Irish MSAs can participate in such cooperation, including sharing information, conducting joint investigations, and receiving technical support.

#### **Subhead (2): Requesting Information from the EU AI Office**

This subhead addresses situations where an MSA or authorised officer cannot access necessary information—for example, due to the complexity of the model, cross-border data issues, or lack of cooperation from the provider. In such cases, the MSA may submit a formal request to the EU AI Office, which has powers under Article 75(3) and Article 52 to access documentation and technical details from providers of general-purpose AI models. This mechanism ensures that Irish authorities are not hindered in their supervisory role.

## Head 46 - Confidentiality and Cybersecurity Measures

### To provide that:

1. Relevant Market Surveillance Authorities will carry out their functions in accordance with the confidentiality obligations set out in Article 78 of the Act.
2. The relevant Market Surveillance Authorities shall take appropriate measures to ensure an adequate level of cybersecurity.<sup>6</sup>

### Explanatory Note

**Subhead (1)** transposes the obligations of Article 78, Confidentiality, in respect of obligations imposed on market surveillance authorities, and it transposes the provisions of article 70 (5), which states that “When performing their tasks, the national competent authorities shall act in accordance with the confidentiality obligations set out in Article 78.” Providers of high-risk AI systems will be engaging with relevant competent authorities within parameters set out in Article 21 of the EU AI Act. Article 74 (12) also specifies that: Any information or documentation obtained by market surveillance authorities shall be treated in accordance with the confidentiality obligations set out in Article 78.

Confidentiality is emphasised in the AI Act (Recital 154, 167), and this provision will place an obligation on market surveillance authorities and notifying authorities (collectively known in the AI Act as competent authorities to respect the confidentiality of information and data obtained during their tasks, in line with EU or national law, in order to protect in particular, intellectual property rights, trade secrets, and confidential business information including source code, except in cases covered by Article 5 of Directive (EU) 2016/943; to protect the effective implementation of the AI Act; to protect public and national security interests, criminal or administrative proceedings and classified information under Union or national law.

**Subhead (2)** sets an obligation that the relevant market surveillance/competent authorities will take appropriate measures to ensure an adequate level of cybersecurity. This ensures that the MSAs are fulfilling the requirement of Article 70 (4) of the AI Act.

There is no definitive definition of an adequate level of cybersecurity in other Irish legislation. However, as part of the National Cyber Security Strategy 2019-2024, Measure 8, the National Cyber Security Centre (NCSC) in conjunction with the OGCIO developed a baseline security standard to be applied by all Government Departments and Key Agencies. The National Cyber Security Strategy Baseline Measures provides the mandatory protective security outcomes that all Public Service Bodies are required to achieve.

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<sup>6</sup> [L\\_202401689EN.000101.fmx.xml \(europa.eu\)](L_202401689EN.000101.fmx.xml (europa.eu))

## Head 47 – Provision for co-operation between Competent Authorities

### To provide that:

(1) The relevant Competent Authorities may enter into an arrangement or arrangements with each other for the purposes of facilitating co-operation between them in the performance of their respective functions in so far as they relate to the supervision and enforcement of the AI Act.

(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.

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

(4) The Minister and any other appropriate Minister shall each be furnished by the relevant 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.

(5) 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.

(6) 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.

(7) 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.

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

(9) (a) In this section—

“relevant Competent Authorities” means the national Market Surveillance Authorities and Notifying Authorities designated for the supervision of the AI Act

“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;

### Explanatory Note

This Head is modelled on Section 19 of the Competition and Consumer Protection Act 2014, which provides for co-operation agreements between regulatory bodies. It is considered appropriate to

codify the power to cooperate in legislation to support the AI Act's objectives of promoting trustworthy AI and ensuring effective, harmonised enforcement across Member States.

This Head provides for relevant Competent Authorities (which for this Act is both the Market Surveillance Authorities and Notifying Authorities) designated under the EU Artificial Intelligence Act to enter into co-operation agreements to facilitate the performance of their respective functions under the Regulation. The AI Act establishes a governance framework that relies on effective coordination between national authorities, including Market Surveillance Authorities and Notifying Authorities, to ensure consistent supervision and enforcement.

Article 74 (11) of the AI Act requires Member States to ensure that their designated authorities cooperate with each other and with the European AI Office. This obligation reflects the cross-sectoral nature of AI regulation and the need for harmonised oversight across different domains, including conformity assessment, market surveillance, and protection of fundamental rights.

The purpose of this Head is to provide legal certainty and operational clarity for Competent Authorities by enabling them to enter into formal co-operation agreements. These agreements may include provisions for information sharing, consultation, avoidance of duplication, and joint studies or analyses. They also allow authorities to forbear from exercising certain functions where another authority is already acting in relation to a matter, thereby streamlining enforcement and reducing administrative burden.

## Head 48 – Complaints to relevant Market Surveillance Authorities

**To provide that:**

1. A person may make a complaint to the relevant market surveillance authority if they consider there has been an infringement of the provisions of the AI Act;
2. The relevant Market Surveillance Authorities will develop or align with existing dedicated procedures in accordance with their union harmonisation legislation, or in accordance with article 11(7) of the Market Surveillance Regulation and taking account of Article 11 (3);
3. The AI Office of Ireland may develop guidelines in consultation with MSAs and enable cooperation across MSAs to achieve where possible a consistent approach to the submission of complaints.

### **Explanatory Note**

This Head implements the provisions of Article 85, which allows natural or legal persons to submit a complaint to the relevant market surveillance authorities if they have grounds to consider that there has been an infringement of the provisions of the AI Act. Article 85 states that those complaints shall be taken into account for the purpose of conducting market surveillance activities and shall be handled in line with the dedicated procedures established thereof by the market surveillance authorities.

**Subhead (1)** establishes the right for a natural or legal person to submit a complaint to a MSA if they consider there has been an infringement of any provision or provisions of the AI Act.

**Subhead (2)** provides that the MSAs will develop, or align with if already existing, procedures to take the complaints into account, and that these should be in accordance with their union harmonisation legislation or the MSR 2019/1020.

Article 11 (7) of the Market Surveillance Regulation (2019/1020) states: “*Market surveillance authorities shall establish the following procedures in connection with products subject to the Union harmonisation legislation:*

*(a) procedures for following up on complaints or reports on issues relating to risks or non-compliance and*

*(b) procedures for verifying that the corrective action that was to be taken by economic operators has been taken.*

**Subhead (3)** Some of the MSAs will already have clear complaints processes and systems, while others may not, or the system is not suitable to use for the AI Act complaints. The Department considers that the AI Office of Ireland, in its role as the coordinator of MSAs should enable MSAs to develop, as far as possible, a consistent complaints procedure.

Note for this Head: Article 87 in the AI Act applies and states that the protections provided by the EU Whistleblower Directive (Directive (EU) 2019/1937) apply to these reports. This means that anyone who reports a violation of the AI Act is legally protected from retaliation, such as dismissal, demotion, or other negative consequences. If someone (e.g. employee, contractor or other person) reports a breach of the AI Act, they are protected as a whistleblower.

## Head 49 – Disclosure of personal data – Competent Authorities

### To provide that:

1. The competent authorities may, in the circumstances referred to in subsection (2), disclose personal data to any of the following:
  - a) The AI Office of Ireland;
  - b) Relevant competent authorities;
  - c) National Fundamental rights bodies identified according to Article 77 (1) of the AI Act;
  - d) An Garda Síochána;
  - e) European Union bodies;
  - f) A body prescribed in regulations by the Minister;
  - g) An economic operator.
2. The circumstances referred to in subsection (1) are:
  - (a) in the case of subsection (1) (a)-(c) and (g) where the competent authority considers that the disclosure is necessary and proportionate—
    - (i) for the effective implementation of the AI Act; or
    - (ii) for the purposes of transferring a complaint or part of a complaint to the relevant Competent Authority where the complaint, or part of the complaint, made to MSA relates an infringement of the AI Act.
  - (b) in the case of subsection (1)(d), where the Competent Authority or MSA considers that the disclosure may be necessary and proportionate for the prevention or investigation of a criminal offence;
  - (c) in the case of any paragraph of subsection (1), where the Competent Authority or MSA considers that the disclosure is necessary and proportionate in such other circumstances as may be prescribed in regulations made by the Minister.
3. Where the competent authority discloses a person's personal data under this section the competent authority shall notify the person of the disclosure in so far as it is practicable to do so.
4. Where the competent authority processes or discloses special categories of personal data in accordance with this section, it shall only do so where the competent authority considers that the disclosure is necessary and proportionate in accordance with the Data Protection Regulation and the Data Protection Act of 2018.
5. The Minister of the Government in whom functions in relation to the competent authority are vested may make regulations prescribing suitable and specific measures for the processing of special categories of personal data under this section.
6. Where personal data processed by the competent authority is required for the purposes of the prevention, investigation, detection or prosecution of a criminal offence, the data—

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

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

(7) The matters that section 19(1) of the Data Sharing and Governance Act 2019 requires to be specified or included in a data-sharing agreement shall be specified or included in any agreement entered into by the competent authority for the disclosure to another body of personal data in accordance with *subsection (1)*, subject to the following modifications to the description of those matters in section 19 (1) of that Act:

(a) references to the data-sharing shall be construed as references to any disclosure under the agreement;

(b) the reference in *paragraph (d)* to the public body concerned shall be construed as a reference to the body with whom the agreement is entered into;

(c) the reference in *paragraph (f)* to a public body shall be construed as a reference to a party to the agreement;

(d) the following paragraph shall be substituted for *paragraph (r)*:

“(r) include in a schedule to the agreement a statement summarising the grounds on which the Office considers the disclosure of the information to be necessary and proportionate as described in any paragraph of this Section (insert section number, Regulation of Artificial Intelligence Act 2026).”

(8) The Minister shall make regulations under *subsection (1)(f)* only where he or she is satisfied that disclosure by the competent authority of personal data to a body prescribed under the regulations, in the circumstances referred to in *subsection (2)*, is necessary for the performance by competent authority or the body prescribed of functions in the public interest.

(9) The Minister shall consider whether it is necessary to carry out an assessment of the impact of regulations made under *subsection (1)(f)* on the processing of personal data before making the regulations and, where he or she considers it necessary to do so, shall carry out the assessment.

(10) Regulations made under this section shall be laid by the Minister before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling the regulations is passed by either such House within the next 21 days on which the House sits after the regulations are laid before it, the regulations shall be annulled accordingly, but without prejudice to the validity of anything previously done under them.

(11) The competent authority shall give a copy of any agreement referred to in *subsection (4)* to the Minister of the Government in whom functions in relation to the competent authority are vested.

#### **Explanatory Note**

This text is modelled on Article 33 of the Broadcasting Act – as amended. The Data Protection Commission will be formally consulted on this provision as required under Article 36(4) of the GDPR.

The AI Act requires that authorities can work together, including exchanging information, to ensure the smooth and coherent application of the Regulation in their Member State. This head is to enable the competent authorities to disclose personal data for certain purposes including the transferring a complaint or part of a complaint to the relevant market surveillance authorities, where a complaint, or part of a complaint made under Head 48 relates to an alleged infringement of the AI Act.

The competent authorities are likely to receive complaints that may not be appropriate for their area of responsibility. They will also be required to report to the AI Office of Ireland. In some cases that information may include personal data. All parties to this information sharing are also bound by professional secrecy requirements pursuant to Article 78 of the Regulation as set out in Head 46.

This Head provides the competent authorities with the necessary legal basis to disclose personal data on a strictly needs-only basis. It also enables the competent authorities to share such data with An Garda Síochána where it considers that the disclosure may be necessary and proportionate for the prevention or investigation of a criminal offence.

The Head provides the respective Ministers with the power to prescribe additional bodies to whom personal data may be disclosed, subject to a public interest test and, where appropriate, a data protection impact assessment. It also includes safeguards for the processing of special categories of personal data, in line with the Data Protection Regulation and the Data Protection Act 2018.

To note re Subhead (c) re Fundamental Rights. Fundamental rights bodies (e.g. equality bodies, data protection authorities) may request access to documentation created or maintained under the AI Act, where necessary to fulfil their mandate. MSAs must be informed of such requests and facilitate access to documentation in an accessible language and format

Subhead (g) 'Economic Operators'. Regulation 2024/1689 defines 'operator' as a provider, product manufacturer, deployer, authorised representative, importer or distributor, while economic operator is used in Regulation 2019/1020. The terms are equivalent, as per Article 74(1)(a) of Regulation 2024/1680, any reference to an economic operator under Regulation (EU) 2019/1020 shall be understood as including all operators identified in Article 2(1). In the course of an investigation or in the discharge of its other supervisory functions, it may also be necessary for the competent authorities to disclose personal data to an economic operator.

To ensure transparency and accountability, the Head requires that any data-sharing agreement entered into by the competent authorities must comply with the requirements of Section 19(1) of the Data Sharing and Governance Act 2019, with modifications to reflect the specific context of AI regulation. The competent authority must also notify individuals of disclosures where practicable and ensure that personal data processed for law enforcement purposes is deleted once no longer required.

The competent authorities may consult the Data Sharing Support Suite, prepared by OGCIO for data sharing in accordance with the Data Sharing and Governance Act 2019, for further guidance on governance and transparency.

## Part 4 - Supervision and Enforcement

### Head 50 - Appointment of Authorised Officers

**To provide that:**

- (1) A relevant Market Surveillance Authority may appoint such and so many persons as it thinks fit to be authorised officers for the purposes of ensuring compliance with the AI Act and such appointment may be specified to be for a fixed period.
- (2) An authorised officer shall be furnished with a warrant of his or her appointment and when exercising any power conferred on him or her under this Act, an authorised officer shall, if requested by any person thereby affected, produce the warrant or a copy of it to that person for inspection, together with a form of personal identification.
- (3) An appointment under this Act shall cease –
  - (a) if a relevant Market Surveillance Authority revokes the appointment,
  - (c) if the appointment is for a fixed period, on the expiry of that period, or
  - (d) in the case of a person who at the time of his or her appointment was a member of staff of the relevant Market Surveillance Authority, upon the person ceasing to be such a member of staff.

#### **Explanatory Note**

This head provides that the relevant designated Market Surveillance Authority may appoint an authorised officer, shall provide a warrant of such an appointment and circumstances where the appointment will cease. This Head defines what an authorised officer is and how they will be appointed by a Market Surveillance Authority.

This head, and the heads relating to Authorised Officer appointment and powers, are modelled on the [SI 726 of 2024](#) which transposes the [General product Safety Regulation](#) and it ensures that enforcement powers are exercised by properly designated individuals, with accountability and transparency ensured through the warrant system. Aligning this appointment process with the SI transposing the GPSR is designed to ensure regulatory coherence in the application of this Regulation; it reduces the need to create new processes from scratch, and it may make it easier to integrate AI-specific enforcement into existing product compliance and safety regimes.

This provision and the subsequent provisions will give MSAs the powers to appoint authorised officers with robust investigatory powers.

## Head 51 - Indemnification of Authorised Officers

### **To provide that:**

- (1) Where the relevant Market Surveillance Authority is satisfied that an Authorised Officer has discharged his or her duties in pursuance of the functions of the Market Surveillance Authority in good faith, the MSA may, in the manner and to the extent and subject to the terms and conditions that the MSA may determine from time to time in consultation with the Minister, indemnify that person against all actions or claims however they arise in respect of the discharge by him or her of his or her duties.

### **Explanatory Note**

Section 13 of the 2014 Consumer and Competition Protection Act provides legal indemnity to authorised officers for actions taken in good faith while performing their duties. This means that if an authorised officer carries out their enforcement duties properly and in accordance with the law, they are protected from personal liability. The indemnity covers actions such as inspections, issuing notices, or seizing unsafe products, provided these are done honestly and without negligence or malice. The above text is modelled on that section.

## Head 52 - Powers of Authorised Officers

### To provide that:

(1) Subject to paragraph (6), an authorised officer may for the purpose of ensuring the AI Act is being complied with –

- (a) at all reasonable times enter any premises or a place, at which there are reasonable grounds to believe that a product to which this Act or the EU AI Act apply, are or are likely to be found, or placed on the market or that books, documents or records in any format whether digital or paper relating to such a system or model are kept, and search and inspect the premises or place and any product or books, documents or records found therein,
- (b) secure for later inspection any premises or place or part of it in which such product or books, documents or records are kept or there are reasonable grounds for believing that such product or books, documents or records in any format are kept,
- (c) require any person in charge of or employed in such premises or place or relevant person to produce to the officer such books, documents or records (and in the case of such information in a non-legible form to reproduce it in a permanent legible form) that are in the person's power or control or to give to the officer such information as the officer may reasonably require in relation to any entries in such records,
- (d) inspect, and take copies of or extracts from, any such books, documents or records (including in the case of information in non-legible form a copy of or extract from such information in a permanent legible form),
- (e) take any measurements or photographs or make any tape, electrical or other recordings that the authorised officer considers necessary for the purposes of any inquiry, search, examination, investigation or inspection under the EU AI Act or this Act,
- (f) remove and detain, where the officer has reasonable cause to suspect that there has been a contravention of the EU AI Act or this Act, the product, device, part or component or books, documents or records in any format for such period as may be reasonable for further examination or until the conclusion of any legal proceedings,
- (g) as regards any product or any article or device, part or component used in the manufacture of a product the officer finds at or in a premises, require any person in charge of the premises, or any person who appears to the officer to be in possession of the product or the article or device, part or component, to supply without payment, for test, examination or analysis sufficient samples thereof,
- (h) require any person to give the officer such information as the officer may reasonably require for the purposes of any search, examination, investigation, inspection or inquiry under the EU AI Act or this Act, in relation to –
  - (i) a product or part thereof or any article or substance or process used in the manufacture of a product, or on other product models that have the same technical characteristics as the product in question, or
  - (ii) ascertaining the ownership of websites, where the information in question is related to the subject matter of the investigation,
- (i) require by notice, at a time and place specified in the notice, any person (including the person in charge) to give the officer any information that the officer may reasonably require in relation to such place, any product or part of the place, activity, installation or procedure at such place, and to produce to the officer any records that are in that person's power, possession or control,

(j) require any person to afford the officer such facilities and assistance within the person's control or responsibilities as are reasonably necessary to enable the officer to exercise any of the powers conferred on an authorised officer under the EU AI Act or this Act, and

(k) examine any procedure connected with the manufacture, import or distribution of a product.

(2) An authorised officer may at all reasonable times for the purpose of enforcing the EU AI Act or this Act enter any place at which there are reasonable grounds to believe that any trade or business or any activity in connection with a trade or business is, or has been, carried on and inspect any products at the place and may –

(a) on paying or making tender of payment therefor, take any of the products,

(b) confirm by such other method as appropriate, any other information relating to the products for the purpose of an investigation, or

(c) acquire product samples, including under a cover identity, to inspect those samples and to reverse-engineer them in order to identify non-compliance with the AI Act and to obtain evidence.

(3) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under paragraph (6) authorising such entry.

(4) Where an authorised officer in the exercise of the officer's powers under this Act is prevented from entering any premises, an application may be made to the District Court under paragraph (6) for a warrant authorising such entry.

(5) An authorised officer, where he or she considers it necessary, may be accompanied by a member of An Garda Síochána when performing any powers conferred on an authorised officer under this Act.

(6) If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that there is information required by an authorised officer under this Act or the AI Act held on any premises or any part of any premises or there is a product or article, device, part or component of a product which an authorised officer requires to inspect for the purposes of this Act or the AI Act or that such inspection is likely to disclose evidence of a contravention of this Act or the AI Act, the judge may issue a warrant authorising an authorised officer, accompanied by either or both authorised officers and members of An Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter, if need be by reasonable force, the premises and exercise all or any of the powers conferred on an authorised officer under this Act.

(7) An application under paragraph (6) shall be made to the judge of the District Court in whose District Court district the premises is situated.

(8) A person shall not –

- (a) obstruct or interfere with an authorised officer in the exercise of the officer's powers under this Act,
- (b) without reasonable excuse, fail to comply with a request or a requirement of an authorised officer under this Act, or
- (c) make a statement to such officer which the person knows is false or misleading.

(9) In this Act –

- (a) premises or a place includes a vehicle or vessel, and
- (b) reference to a product shall be deemed to include the components and constituent materials of a product.

#### **Explanatory Note**

This Head sets out the powers of authorised officers appointed by designated MSAs for the purpose of enforcing the AI Act. It is modelled primarily on the powers provided under the General Product Safety Regulation, as transposed in S.I. No. 726 of 2024, with additional provisions tailored to the specific enforcement needs of the AI Act

The rationale for adopting this model to provide consistency with existing enforcement frameworks. The powers conferred on authorised officers under this Head are consistent with those already exercised by officers in other regulatory domains, the CCPC, the HPRA. This alignment ensures legal and operational coherence across regulatory bodies and facilitates inter-agency cooperation in enforcement. It is suitable for AI-specific enforcement needs, the AI Act introduces novel regulatory obligations, including requirements for transparency, risk management, and post-market monitoring.

These powers are essential to ensure that authorised officers can carry out thorough and proportionate investigations, particularly in cases involving high-risk AI systems or systemic non-compliance.

Head 52 provides a robust and proportionate enforcement toolkit for authorised officers, grounded in established regulatory practice and adapted to the unique challenges posed by AI technologies. It supports effective supervision while safeguarding procedural fairness and legal certainty.

Across the designated Market Surveillance Authorities in this Bill, the appointment of authorised officers is a process familiar to CCPC, the Marine Safety Office of the Department of Transport, and the HPRA. The HSA uses authorised officers in [S.I. 136/2018 - European Union \(Personal Protective Equipment\) Regulations 2018](#), but otherwise appoints inspectors, and the CRR appoint inspectors with broadly similar powers to authorised officers.

## Head 53 - Procedure for dealing with AI Systems presenting a risk

### To provide that:

(1) Where a relevant Market Surveillance Authority has sufficient reason to suspect that an AI System presents a risk, it shall carry out an evaluation in relation to the AI System covering all relevant requirements laid down in the AI Act. (Article 79 (2)

(2) Special attention must be given to risks affecting vulnerable groups.

(3) If risks to fundamental rights are identified, the MSA must cooperate with relevant national authorities identified in accordance with Article 77 of the AI Act.

(4) If non-compliance is found, the MSA must require the operator to take one of the following actions and it must be taken within 15 working days or a shorter period if required by other EU legislation.

- Correct the issue
- Withdraw the system from the market
- Recall the system

(5) Where the market surveillance authority considers that the non-compliance is not restricted to its national territory, it shall inform the Commission and the other Member States without undue delay of the results of the evaluation and of the actions which it has required the operator to take.

(6) The operator must ensure corrective action is taken across all affected AI systems in the Union market. If the operator fails to act, the MSA must prohibit or restrict the system's availability, or withdraw/recall it without undue delay.

(7) These measures must be notified to the Commission and other Member States without delay and notifications must include:

- Identification details of the AI system
- Origin and supply chain
- Nature of non-compliance and risk
- Duration and type of national measures
- Operator's arguments
- Specific cause of non-compliance

If no objections are raised within 3 months (or 30 days for prohibited practices under Article 5), the original MSA's measures are deemed justified.

### Explanatory Note

Note: Article 74 (4) of the AI Act provides that 'The procedures referred to in Articles 79 to 83 of this Regulation shall not apply to AI systems related to products covered by the Union harmonisation legislation listed in section A of Annex I, where such legal acts already provide for procedures ensuring an equivalent level of protection and having the same objective. In such cases, the relevant sectoral procedures shall apply instead'.

Article 79 of Regulation 2024/1689 sets out the procedures that Market Surveillance Authorities (MSAs) must follow when an AI system presents a risk to health, safety, or fundamental rights. These procedures are closely aligned with the framework established under the MSR 2019/1020 on market surveillance and compliance of products, ensuring consistency across EU product safety regimes.

While the AI Act, as an EU Regulation has direct effect it should be clearly set out in the legislation to ensure MSAs are taking a consistent approach. The action to be taken can be carried out by the MSA by means of a contravention notice (Head 54).

When an MSA has reason to believe that an AI system may pose a risk, it is required to carry out a compliance evaluation. This includes assessing whether the system meets the requirements of the AI Act, particularly those applicable to high-risk AI systems. If the system affects vulnerable groups or raises concerns about fundamental rights, the MSA must coordinate with other national authorities identified under Article 77. These national authorities, which may be amended or updated from time to time, are: An Coimisiún Toghcháin, Coimisiún na Meán, Data Protection Commission, Environmental Protection Agency, Financial Services and Pensions Ombudsman, Irish Human Rights and Equality Commission, Ombudsman, Ombudsman for Children's Office, Ombudsman for the Defence Forces.

If non-compliance is confirmed, the MSA must require the operator to take corrective action—either by rectifying the issue, withdrawing the system from the market, or recalling it. The operator is expected to act within 15 working days or a shorter period if required by other applicable legislation.

Where the risk is not confined to the national territory, the MSA must notify the European Commission and other Member States. The operator must then ensure that corrective measures are applied across all affected systems placed on the Union market.

If the operator fails to act, the MSA must take provisional measures itself, including restricting, prohibiting, or recalling the system. These actions must be communicated to the Commission and other Member States without delay.

Notifications must be detailed and include the nature of the risk, the identity and origin of the AI system, the scope and duration of national measures, and the legal basis for non-compliance. Other MSAs may object to the measures within a defined timeframe (three months, or 30 days for prohibited practices under Article 5). If no objections are raised, the measures are deemed justified.

## Head 54 - Procedure for dealing with AI systems classified by the provider as non-high-risk in application of Annex III

**To provide that:**

- (1) When a relevant Market Surveillance Authority has sufficient reason to believe that a system classified as non-high-risk is actually high-risk, it will conduct an evaluation and assess the system against the criteria in Article 6(3).
- (2) If the system is found to be high-risk, the relevant Market Surveillance Authority shall require the provider to bring it into compliance with all applicable obligations under the AI Act and the provider must act within a prescribed period.
- (3) If corrective action is not taken, the relevant Market Surveillance Authority may apply the enforcement procedures under Article 79, including withdrawal or prohibition.

### **Explanatory Note**

This Head gives effect to Article 80 of the AI Act which addresses the scenario where an AI system has been classified by its provider as non-high-risk, but a Market Surveillance Authority has sufficient reason to believe that the system should be classified as high-risk under Annex III of the AI Act. This provision ensures that misclassification—whether accidental or deliberate—is identified and corrected, and that high-risk systems are subject to the full compliance regime of the AI Act.

**Subhead (1) Trigger for Evaluation:** Where a relevant MSA suspects that a system not designated as high-risk may in fact fall within the scope of Annex III, it must conduct an evaluation. This includes an assessment against the criteria in Article 6(3) and any guidelines issued by the European Commission.

**Subhead (2)** If the system is found to be high-risk, the MSA shall require the provider to bring the system into full compliance with the obligations applicable to high-risk AI systems under the AI Act. This includes conformity assessment, documentation, transparency, and post-market monitoring obligations.

**Subhead (3)** If corrective action not taken the relevant Market Surveillance Authority require withdrawal or prohibition of the system from the market.

This Head is essential to ensuring the integrity of the risk-based classification system established by the AI Act. It provides a legal basis for reclassification and enforcement and ensures that high-risk systems are not deployed without appropriate safeguards, even if initially mislabelled.

## Head 55 - Contravention notice

### To provide that:

- (1) An authorised officer who is of the opinion that a person or entity is contravening or has contravened any provision of this Act or the AI Act may service a notice (in this Act referred to as a 'contravention notice') on the person or entity.
- (2) A contravention notice shall-
  - a. State that the authorised officer is of the opinion referred to in paragraph (1)
  - b. Specify the exact grounds for the opinion.
  - c. Specify every provision (including the particular paragraph and subparagraph of such provision as appropriate) of this Act or the AI Act upon which the opinion is based.
  - d. Direct that the person, where required, do one or more of the following in respect of the product to which the notice relates
    - (i) Remedy the contravention
    - (ii) Refrain from placing the system on the market
    - (iii) Refrain from making the product/system available on the market
    - (iv) Withdraw the AI system from the market
    - (v) Recall the AI system
- by a date specified in the contravention notice that shall not be earlier than the expiration of the period within which an appeal may be made under paragraph (9)
  - e. include information regarding the making of an appeal under paragraph (6)
  - f. include any other information that the authorised officer considers appropriate and be signed and dated by the authorised officer.
- (3) A contravention notice may include-
  - a. Directions as to the measures to be taken to remedy any contraventions or matter to which the contravention notice relates, or to otherwise comply with the notice, and
  - b. Directions to bring the contravention notice to the attention of any person who may be affected by it or to the attention of the public generally.
- (4) A person or entity on whom a contravention notice has been served who is of the opinion that the contravention notice has been complied with shall confirm in writing to the authorised officer concerned that the matters referred to in the notice have been so remedied.
- (5) Where a person or entity on whom a contravention notice has been served so confirms in writing in accordance with paragraph (4) that the matters referred to in the contravention notice have been remedied, the authorised officer concerned shall, on being satisfied that the matters have been so remedied, within one month of receipt of such confirmation, give notice to the person concerned of compliance with the contravention notice.
- (6) Where a contravention notice is served, any person aggrieved by the notice may, within 14 days of the service of the notice upon him or her, appeal to the judge of the District Court in whose district the notice was served.

(7) A person who appeals under paragraph (6) shall at the same time notify the Market Surveillance Authority of the appeal and the grounds for the appeal and the Market Surveillance Authority shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(8) Where an appeal under paragraph (6) is made, and the contravention notice is not cancelled, the notice as confirmed or varied shall take effect on the later of –

- (a) the day next following the day on which the notice is confirmed or varied on appeal or the appeal is withdrawn, or
- (b) the day specified in the notice.

(9) Where there is no appeal under paragraph (6), the contravention notice shall take effect on the later of –

- (a) the end of the period for making an appeal, or
- (b) the day specified in the notice.

(10) An authorised officer may –

- (a) withdraw a contravention notice at any time, or
- (b) where no appeal is made or pending under paragraph (6), extend the period specified under paragraph (2)(d).

(11) A person who, without reasonable excuse, fails or refuses to comply with a requirement specified in a contravention notice shall be guilty of an offence and liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months or to both.

#### **Explanatory Note**

This Head empowers Market Surveillance Authorities to issue a Contravention Notice where an authorised officer forms the opinion that a person is contravening, or has contravened, any provision of this Act or the AI Act. The Head is modelled on Regulation 12 of S.I. No. 726 of 2024 (General Product Safety Regulation), ensuring consistency with Ireland's established product safety enforcement framework under the New Legislative Framework (NLF).

#### **Purpose and Context:**

The AI Act establishes a comprehensive regulatory regime for AI systems, with obligations on providers, importers, distributors, and users. These include requirements for conformity assessment, technical documentation, CE marking, post-market monitoring, transparency, human oversight, and protection of fundamental rights. The Act also provides for specific obligations regarding high-risk AI systems, prohibited practices, and transparency for certain AI systems.

This Head provides the legal basis for MSAs to require corrective action where any of these obligations are breached, ensuring that non-compliant or unsafe AI systems can be addressed promptly and effectively.

#### **Scope of Contraventions:**

A Contravention Notice could be issued in respect of any breach of the AI Act, including but not limited to:

- Prohibited AI Practices (Article 5):  
Use or placing on the market of AI systems that are expressly prohibited, such as those involving social scoring or manipulative techniques.

- **High-Risk AI System Requirements (Articles 8–51):**  
Failure to comply with requirements for high-risk AI systems, including risk management, data governance, technical documentation, record-keeping, transparency, human oversight, accuracy, robustness, and cybersecurity.
- **Conformity Assessment and CE Marking (Articles 43–48):**  
Placing a high-risk AI system on the market without proper conformity assessment, affixing CE marking in violation of Article 48, or failing to draw up or correctly maintain the EU declaration of conformity (Article 47).
- **Registration and Post-Market Obligations (Articles 71–75):**  
Failure to register high-risk AI systems in the EU database, or to comply with post-market monitoring, incident reporting, or corrective action obligations.
- **Transparency Obligations (Articles 50–52):**  
Failure to provide required information to users, or to label AI systems that interact with humans, generate deepfakes, or use biometric categorisation.
- **Formal Non-Compliance (Article 83):**  
Administrative failures such as missing or incorrect documentation, lack of an authorised representative, or failure to provide technical documentation on request.
- **Misclassification of AI Systems (Article 6(3) and Article 80):**  
Incorrectly classifying a high-risk AI system as non-high-risk or failing to cooperate with an MSA's request for information or re-assessment.

#### Operation of the Contravention Notice:

- The notice must specify the grounds for the opinion, the exact legal provisions breached, and the corrective actions required.
- Actions may include remedying the contravention, ceasing to place or make the system available on the market, withdrawal, or recall of the AI system.
- The notice must inform the recipient of their right to appeal and the process for doing so.

#### Appeal and Compliance:

1. The recipient may appeal the notice to the District Court within 14 days. The District Court is the designated court for such matters in other sectoral legislation such as the HSA enforcement notices. This court allows for a more accessible and less expensive initial forum for appeals against such notices.
2. If the recipient remedies the contravention, they must confirm this in writing to the authorised officer, who must then verify compliance and notify the recipient within one month.

#### Practical Examples:

- **Example 1: Prohibited Practice**  
An operator deploys an AI system for real-time biometric identification in public spaces, in breach of Article 5. The MSA issues a Contravention Notice requiring immediate cessation of use and withdrawal from the market.
- **Example 2: Missing Technical Documentation**  
A provider places a high-risk AI system on the market but fails to maintain the required technical documentation (Article 11). The MSA issues a Contravention Notice directing the

provider to supply the documentation and suspend further sales until compliance is achieved.

- **Example 3: Failure to Register**

A provider fails to register a high-risk AI system in the EU database (Article 71). The MSA issues a Contravention Notice requiring registration within a specified period.

- **Example 4: Transparency Breach**

An AI chatbot that interacts with consumers does not disclose that it is an AI system (Article 52). The MSA issues a Contravention Notice requiring the provider to update the system to include the required disclosure.

**Subhead (11)** sets out that it is an offence not to comply with a contravention notice.

This Head ensures that MSAs have clear, proportionate, and enforceable powers to address any breach of the AI Act, supporting Ireland's obligations under EU law and maintaining consistency with established product safety enforcement mechanisms.

## Head 56 - Prohibition Notice

### To provide that:

(1) Where an authorised officer is of the opinion that a person has contravened a provision to which this Act or the AI Act applies, he or she may serve a notice (in this Act referred to as a “prohibition notice”) on the person concerned in accordance with paragraph (2).

(2) A prohibition notice shall –

- (a) be signed by the authorised officer issuing it,
- (b) state that the authorised officer is of the opinion that an AI System presents a serious risk or that there has been a contravention referred to in paragraph (1),
- (c) specify the provision or provisions of this Act or the AI Act in relation to which the suspected contravention referred to in paragraph (1) relates, and
- (d) direct the person on whom the prohibition notice is served to ensure that the relevant product –
  - (i) is not to be placed or made available on the market until such time as all appropriate measures, including corrective measures, have been taken to bring the product into compliance with this Act or the AI Act,
  - (ii) is prohibited from being placed or made available on the market,
  - (iii) is to be withdrawn or recalled from the market within a specified time-limit.

(3) A prohibition notice may include directions –

- (a) as to the measures to be taken to remedy any contravention or matter to which the notice relates, or to otherwise comply with the notice, and
- (b) to bring the notice to the attention of any person who may be affected by it, or to the public generally.

(4) A prohibition notice shall take effect –

- (a) where the prohibition notice so declares, immediately the notice is received by the person on whom it is served, or
- (b) in any other case –
  - (i) where no appeal is taken against the prohibition notice, on the expiration of the period during which such an appeal may be taken or the day specified in the prohibition notice as the day on which it is to come into effect, whichever is the later, or
  - (ii) where an appeal is taken, on the day next following the day on which the prohibition notice is confirmed on appeal or the appeal is withdrawn or the day specified in the prohibition notice as the day on which it is to come into effect, whichever is the later.

(5) The bringing of an appeal against a prohibition notice which is to take effect in accordance with paragraph (4)(a) shall not have the effect of suspending the operation of the prohibition notice, but the appellant may apply to the District Court to have the operation of the prohibition notice suspended until the appeal is disposed of and, on such application, the District Court may, if it thinks it proper to do so, direct that the operation of the prohibition notice be suspended until the appeal is disposed of.

(6) In the event of non-compliance or delay by the person on whom the prohibition notice has been served, an authorised officer shall take whatever steps are considered necessary to ensure compliance with the direction given under this Act and this may include the withdrawal, recall, seizure and destruction of the products in question or the making of any arrangements for such withdrawal, recall, seizure or destruction.

(7) (a) A person who is aggrieved by a prohibition notice may, within the period of 7 days beginning on the day on which the prohibition notice is served on him or her, appeal against the order to a judge of the District Court in the District Court district in which the prohibition notice was served and in determining the appeal the judge may –

- (i) if he or she is satisfied that in the circumstances of the case it is reasonable to do so, confirm the prohibition notice, with or without modification, or
- (ii) cancel the prohibition notice.

(b) Where on the hearing of an appeal under this paragraph a prohibition notice is confirmed, notwithstanding paragraph (6), the judge of the District Court by whom the appeal is heard may, on the application of the appellant, suspend the operation of the prohibition notice for such period as in the circumstances of the case the judge considers appropriate.

(8) A person who appeals against a prohibition notice or who applies for a direction suspending the application of the prohibition notice under paragraph (5) shall at the same time notify the Commission of the appeal or the application and the grounds for the appeal or the application and the Commission shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal or the application.

(9) An authorised officer may for stated reasons, revoke or vary a prohibition notice made in accordance with this Act.

(10) (a) Where a prohibition notice has been served and activities are carried on in contravention of the prohibition notice, the High Court may, on the application of the Market Surveillance Authority, by order prohibit the continuance of the activities.

(b) An application to the High Court for an order under this paragraph shall be by motion on notice to the person and the Court, when considering the matter, may make such interim or interlocutory order (if any) as it considers appropriate and the order by which an application under this paragraph is determined may contain such terms and conditions (if any) as to the payment of costs as the Court considers appropriate.

(11) A person who, without reasonable excuse, fails or refuses to comply with a requirement specified in a contravention notice shall be guilty of an offence and liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months or to both.

**Explanatory Note:**

This Head empowers relevant MSAs to issue a Prohibition Notice where an authorised officer forms the opinion that an AI system is non-compliant with the AI Act or presents a serious risk to health or

safety, including risks with delayed effects. The Head is modelled on Regulation 12 of S.I. No. 726 of 2024 (General Product Safety Regulation), ensuring consistency with the New Legislative Framework for product safety in Ireland.

The AI requires Member States to ensure that AI systems placed on the market comply with strict requirements to protect health, safety, and fundamental rights. Article 65 of the AI Act obliges MSAs to take appropriate corrective action—including withdrawal, recall, or prohibition—where an AI system is found to be non-compliant or poses a serious risk. This Head provides the legal basis for such enforcement action in Ireland. The Head sets out:

**Grounds for Issuing a Prohibition Notice:**

An authorised officer may issue a Prohibition Notice if they believe that a person has contravened a provision of this Act or the AI Act (e.g., placing a high-risk AI system on the market without conformity assessment or CE marking).

**Contents and Effect of the Notice:**

The notice must specify the grounds, the relevant legal provisions, and the required corrective actions. It may direct the recipient to:

- Cease placing the AI system on the market until compliance is achieved.
- Withdraw or recall the system from the market.

**Appeal and Due Process:**

The Head provides for a right of appeal to the District Court, with procedures for urgent cases where immediate action is required to protect the public. The notice remains in effect during appeal unless the Court orders otherwise. The District Court is the designated court for such matters in other sectoral legislation such as the HSA enforcement notices. This court allows for a more accessible and less expensive initial forum for appeals against such notices.

**Enforcement:**

If the notice is not complied with, the MSA may take further steps, including seizure or destruction of the AI system, and may seek an order from the High Court to prohibit continued non-compliant activities.

**Offence: Subhead (11)** sets out that it is an offence not to comply with a prohibition notice. This Head mirrors the approach taken in Irish product safety law, providing clear, proportionate, and enforceable powers for MSAs to protect the public and ensure compliance with both national and EU law. It supports Ireland's obligations under the AI Act and facilitates effective, transparent enforcement.

**A practical example for a use of a Prohibition Notice Non-compliant High-Risk AI System:**

An Irish company places a high-risk AI system for biometric identification on the market without completing the required conformity assessment. An authorised officer, upon inspection, issues a Prohibition Notice directing the company to immediately withdraw the system from sale and to take corrective measures to achieve compliance with the AI Act.

## Head 57 - Penalties for non-compliance with a contravention or prohibition notice

(1) Where an economic operator has not complied with a relevant provision of contravention notice or a prohibition notice, the relevant Market Surveillance Authority may apply ex parte to the High Court for an order directing immediate compliance with the notice.

(2) The High Court shall make a declaration under subsection (1)(a) unless it is satisfied that—

- (a) the economic operator concerned has acted honestly and responsibly in relation to the contravention or prohibition notice,
- (b) the economic operator concerned has, when requested to do so by the relevant MSA, co-operated as far as could reasonably be expected in relation to the relevant provision, and
- (c) there is no other reason why it would be just and equitable that the economic operator concerned should be subject to the restrictions imposed by a declaration under that subsection.

(3) When taking any of the enforcement measures referred to in this section, relevant MSA shall take account of the circumstances of each individual case and take due account of—

- (a) the nature and gravity of the alleged contravention;
- (b) the duration of the alleged contravention;
- (c) whether the objective of the exercise of the power is primarily to deter others;
- (d) whether the objective of the exercise of the power is primarily to achieve compliance;
- (e) the damage which may be caused by the alleged contravention;
- (f) how easily such damage may be repaired;
- (g) any previous contravention notice issued to the economic operator, any previous condition or sanction imposed on operator previously.

(4) The relevant MSA shall set out a detailed reasoning for its enforcement measures, and, before adopting such measures, the competent authority shall—

- (a) notify the economic operator of its preliminary findings, and
- (b) allow 14 days for the economic operator to submit observations, except in duly substantiated cases where immediate action to prevent or respond to incidents would otherwise be impeded.

(5) An application to the High Court under subsection (1)(a) shall be on notice to the economic operator except in duly substantiated cases where immediate action to prevent or respond to incidents would otherwise be impeded.

(6) In this section—

“contravention notice” shall be construed in accordance with (Head 55)

“prohibition notice” shall be construed in accordance with (Head 56)

“relevant provision”, in relation to a contravention or prohibition notice, means a direction referred to in Head 55 (i), (ii), (iii), (iv) contained in the notice or in Head 56 (i), or (ii).

## **Explanatory Note**

This Head provides for enforcement mechanisms available to a Market Surveillance Authority where an economic operator fails to comply with a contravention notice or a prohibition notice issued under this legislation.

**Subsection (1)** empowers the MSA to apply to the High Court, on an *ex parte* basis, for an order compelling immediate compliance with such notices. This ensures that urgent enforcement action can be taken without delay where necessary.

**Subsection (2)** sets out the criteria under which the High Court may decline to make such an order. The Court must be satisfied that the economic operator has acted honestly and responsibly, has cooperated reasonably with the MSA, and that it would not be just and equitable to impose the restrictions sought. This introduces a safeguard to ensure proportionality and fairness in judicial enforcement.

**Subsection (3)** outlines the factors that an MSA must consider when taking enforcement measures. These include the seriousness and duration of the alleged contravention, the intended purpose of enforcement (e.g. deterrence or compliance), the potential damage caused, and the history of prior enforcement actions. This ensures that enforcement is context-sensitive and proportionate.

**Subsection (4)** requires the MSA to provide detailed reasoning for its enforcement decisions and to notify the economic operator of preliminary findings. A 14-day period for observations is provided, except in cases requiring immediate action. This reflects principles of due process and procedural fairness.

**Subsection (5)** provides that applications to the High Court under subsection (1) shall generally be made on notice to the economic operator, unless immediate action is required to prevent or respond to incidents. This balances the need for urgency with the right to be heard.

**Subsection (6)** defines key terms used in the section, linking “contravention notice” and “prohibition notice” to their respective Heads, and clarifying the meaning of “relevant provision” by reference to specific subsections of Heads 55 and 56.

## Part 5- Administrative Sanctions

### Head 58 - Interpretation

**To provide that:**

In this Part—

“a Class A fine” is a fine within the meaning of the Fines Act 2010;

“adjudication” means—

- a) a decision by an adjudicator under Head 87, and
- b) any decision of the adjudicator under Head 88 on foot of that decision, or either such decision;

“adjudicator” has the meaning given to it by Head 73;

“administrative sanction” means—

- a) a requirement to cease a regulatory breach or to take specified measures to remedy the breach
- b) a requirement to pay a financial penalty, or
- c) a sanction imposed under Head 89 and “administrative sanction proceedings” shall be interpreted accordingly;

“appeal” means an appeal under Chapter 7;

“authorised officer” shall be construed in accordance with Head 50;

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

- (a) substantially and materially prejudice the commercial or industrial interests of—
  - (i) the person required to provide the information,
  - (ii) another person, or
  - (iii) a class of persons in which a person referred to in subparagraph (i) or (ii) falls,
- (b) substantially prejudice the competitive position of a person in the conduct of the person’s business, profession or occupation, or
- (c) substantial prejudice the financial position of—
  - (i) the State,
  - (ii) a Department of State,

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

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

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

“notified person” means a person, or an economic operator, on whom a notice of suspected non-compliance has been served;

“the Office” means Oifig IS na hÉireann/the AI Office of Ireland;

“referral report” has the meaning given to it by Head 67;

“regulatory breach” means infringement of any or specific provision of the AI Act;

“other relevant Minister” means a Minister of the Government on whom functions stand conferred in relation to the market surveillance authorities-

- Minister for Culture, Communications and Sport
- Minister for Climate, Energy and the Environment
- Minister for Finance
- Minister for Health
- Minister for Housing, Local Government and Heritage
- Minister for Justice, Home Affairs and Migration
- Minister for Transport

#### **Explanatory Note**

This head provides for the relevant definitions of terms used in this part of the Act.

## Head 59 - Application of this part

### **To provide that:**

Part 5 is not applicable to the Central Bank of Ireland.

### **Explanatory Note**

It is agreed with the Central Bank that it will use its existing administrative sanctions procedures for the AI Act. Central Bank Act 1942 is amended as per Head 40A.

Ireland has adopted a distributed model for AI Act enforcement, with supervisory responsibilities allocated across multiple market surveillance authorities. This diverse landscape—ranging from large established bodies to smaller niche sectoral regulators—presents both opportunities and challenges for implementing a consistent, effective administrative sanction enforcement regime.

Accordingly, this General Scheme sets out a general administrative sanctions regime for the AI Act.

The European Commission is expected to issue implementing acts and delegated acts providing detailed guidance on the practical application of the AI Act's enforcement provisions, including clarification on the roles and responsibilities for market surveillance authorities. The Department and a number of market surveillance authorities are actively engaging with other Member states through AI Board sub-groups, which are expected to, *inter alia*, provide greater clarity on harmonised procedural requirements for administrative sanctions across Member States. Discussions in these subgroups as well as forth coming guidance from the Commission will further inform the optimal administrative sanction regime across market surveillance authorities in the EU.

Apart from the Central Bank - amendments to the "Central Bank 1942" Act (Head 40), a number of other relevant designated Market Surveillance Authorities including Data Protection Commission, ComReg, Coimisiún na Meán and Workplace Relations Commission (WRC) have preliminarily indicated that they consider it may be more efficient and effective to utilise existing regime and procedures. The Department is liaising with these authorities and their line departments on the matter.

## Chapter 1- Preliminary Procedure

### Head 60 - Notice of suspected non-compliance

#### To provide that:

1. In this Act, “notice of suspected non-compliance” means a notice in writing informing the person, or an economic operator, on whom it is served of the details of a regulatory breach of which the person, is suspected.
2. Where an authorised officer suspects on reasonable grounds that a person, or an economic operator has committed or is committing a regulatory breach that does not constitute a criminal offence the authorised officer may serve a notice of suspected non-compliance on the person or an economic operator,
3. A notice of suspected non-compliance shall be in such form as the market surveillance authority may specify, and shall-
  - a) inform the notified person that the authorised officer suspects that the person has committed or is committing a regulatory breach,
  - b) set out the grounds for the authorised officer’s suspicion in sufficient detail to allow the notified person to fully respond to the notice of suspected non-compliance in accordance with subsection (5), and
  - c) inform the notified person of its right to make submissions under subsection (5), and the period within which that right may be exercised.
4. The authorised officer shall, as soon as is practical after issuing the notice of suspected noncompliance, serve on the notified person a copy of, or access to, any material relied upon by the authorised officer for the purpose of issuing the notice of suspected non-compliance, subject to such redactions as the authorised officer may consider necessary and appropriate in order to protect the rights of the person or any other person, to protect commercially sensitive information, or for any other good and sufficient reason.
5. Subject to subsection (6), a notified person may, within such period as is specified in the notice, make written submissions to the authorised officer on the notice of suspected non-compliance.
6. Notwithstanding the period specified in the notice of suspected non-compliance in accordance with subsection (3)(c), the authorised officer may, where it is appropriate to do so in the circumstances of the case, extend the period within which written submissions may be made and shall notify the notified person in writing of the extended period.

#### Explanatory Note

This Head sets out that an authorised officer, who suspects that a person has committed or is committing a regulatory breach, which does not constitute a criminal offence, may serve on the person, or an economic operator a notice in writing of the details of the suspected breach. This is based on Section 63 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

## Head 61 - Supplementary notice of suspected noncompliance

### To provide that:

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

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

### Explanatory Note

This Head provides that where an authorised officer who has already issued a notice of suspected non-compliance identifies new evidence which impacts said notice, or any error or inaccuracy in the notice, they shall serve a supplementary notice of suspected noncompliance notice on each person on which the initial notice was served. This is based on Section 64 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

## Head 62 - Market surveillance Authority may revoke notice of suspected non-compliance, etc

### **To provide that:**

- (1) The Market Surveillance Authority may revoke a notice of suspected non-compliance or a supplementary notice of suspected non-compliance.

### **Explanatory Note**

This Head provides that the market surveillance authority may revoke a notice of suspected non-compliance or a supplementary notice of suspected non-compliance. This is based on Section 65 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

## Head 63 – Publication of Notice of Non-Compliance

### **To provide that:**

The Market Surveillance Authority may (save where such publication would, in the opinion of the market surveillance Authority, prejudice the achievement of the objectives of this Act) publish a notice of suspected non-compliance or a supplementary notice of suspected non-compliance on the website of the Market Surveillance Authority, with due regard for the protection of commercially sensitive information.

### **Explanatory Note**

This Head is modelled on Section 66 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides for the Market Surveillance Authority to publish a notice of non-compliance on its website.

## Head 64 – Commitments

### **To provide that:**

(1) A notified person may at any time prior to the date on which an adjudicator makes a decision under Head 87 in relation to the regulatory breach specified in a notice of suspected non-compliance (referred to in this section as the “relevant breach”), propose to the relevant Market Surveillance Authority in writing measures to appropriately address the breach.

(2) Where the relevant Market Surveillance Authority 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 the relevant Market Surveillance Authority 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 the Market Surveillance Authority in accordance with this section (referred to in this Act as a “commitment”), the Market Surveillance Authority shall publish the commitment (save where such publication would, in the opinion of the Market Surveillance Authority, prejudice the achievement of the objectives of this Act) on the website of the Market Surveillance Authority, with due regard for the protection of commercially sensitive information, as soon as practicable after the notified person has entered into the commitment.

(5) The Market Surveillance Authority shall not take any further step in administrative sanctions proceedings in relation to the relevant breach as long as it is satisfied that—

(a) the notified person is in compliance with the commitment, and

(b) that the information submitted by the notified person at the time it entered into the commitment was not incomplete, incorrect, false, or misleading in a material respect.

(6) A commitment may be amended or terminated where both the notified person and the relevant Market Surveillance Authority agree to the amendment or termination.

(7) Where the relevant Market Surveillance Authority is no longer satisfied that a notified person is in compliance with a commitment it shall notify the person that it intends to take further steps in the administrative sanctions proceedings and afford the person an opportunity to make submissions in relation to its compliance with the commitment.

**Explanatory Note**

This Head is modelled on Section 67 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides for a suspected person/economic operator who has received a notice of suspected non-compliance to voluntarily propose, in writing, a corrective action/measure that they can take to resolve the breach. This should be proposed to market surveillance authority, and it must be proposed before an adjudicator has made a decision in relation to the breach specified in the notice of suspected non-compliance. If the market surveillance authority decides to accept the proposal it shall become a binding commitment. The market surveillance authority must not continue any enforcement proceedings against the suspected person/economic operator if that person/economic operator complies with the commitment and continues to comply with it. The commitments can be renegotiated by the parties. Should the commitments not be complied with, the original investigation can be continued by the market surveillance authority.

## Head 65 - Settlements

### **To provide that:**

1. An authorised officer may, with the approval of the market surveillance authority, at any time prior to the date on which an adjudicator makes a decision under Head 88 in relation to the regulatory breach specified in a notice of suspected noncompliance agree a settlement with a notified person.
2. An authorised officer may at any time refer a proposed settlement to the market surveillance authority for its approval.
3. Where the market surveillance authority approves a settlement with a notified person, the authorised officer 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 the market surveillance authority and the notified person consent to the imposition of the administrative sanction referred to in subparagraph (iii); and
    - v. details of any other measures agreed to be taken either by the market surveillance authority 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.
4. Where at the meeting 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 67 (b)—
  - a. the authorised officer shall notify the adjudicator concerned of the withdrawal of the referral under Section Head 66 (b), and
  - b. the matter shall be deemed to have been referred to an adjudicator under subsection (3)(c) for an adjudication on consent.
5. Where, following the confirmation of an adjudication on consent under Head 101 (1) the notified person fails to comply with any of the terms of the settlement, the market surveillance authority may apply to the High Court for an order under subsection (6).
6. If satisfied on application to it under subsection (5) that a notified person has failed to comply with an adjudication on consent confirmed under Head 101(1), the High Court may make an order requiring that person to comply with the adjudication.

7. The market surveillance authority may, by summary proceedings brought in a court of competent jurisdiction, recover as a debt due to the market surveillance authority any amount agreed to be paid by the notified person as part of a settlement confirmed by an order of the Court under Section 102(1).

**Explanatory Note**

This Head is modelled on Section 68 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides for a settlement procedure which allows the market surveillance authority to enter into a settlement agreement with any person under investigation for a regulatory breach prior to the date on which an adjudicator makes a decision under Head 88. The settlement agreement may be on such terms as may be agreed between the parties and would constitute a final resolution of the matter under investigation.

## Head 66 - Actions by Authorised Officer following investigation

### **To provide that:**

An authorised officer, having investigated a suspected regulatory breach, may, subject to Head 68 and with the consent of the relevant Market Surveillance Authority;

- (a) close the investigation and not take further action, 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 Head 68 for adjudication.

### **Explanatory Note**

This Head is modelled on Section 69 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides that following an investigation, an authorised officer may close the investigation and not take any further action in respect of the matter, or where the authorised officer suspects on reasonable grounds that the notified person has committed or is committing a regulatory breach, refer the matter for adjudication.

## Head 67 - Referral report

### **To provide that:**

Prior to referring a matter for adjudication an authorised officer shall prepare a report (referred to in this Act as a “referral report”) containing—

- a) a detailed description of the relevant facts of the case;
- b) details of the regulatory breach concerned;
- c) an outline of the facts and evidence on which the authorised officer is relying for the purpose of referring the matter to the Market Surveillance Authority for adjudication;
- d) a summary of any submissions made by the notified person to the authorised officer during the investigation, including in response to the notice of suspected non-compliance or any supplementary notice of suspected non-compliance;
- e) the authorised officer’s assessment of the extent to which the notified person cooperated with the investigation; and
- f) any other information that the authorised officer considers to be relevant to an adjudication.

### **Explanatory Note**

This Head is modelled on Section 70 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides that, prior to referring a matter for adjudication, an authorised officer shall prepare a referral report containing a detailed description of the relevant facts of the case, as well as details of the regulatory breach concerned.

The referral report serves as the prosecution case document for adjudication. It ensures the adjudicator has comprehensive information about the alleged breach, the investigation process, and the notified person's cooperation.

## Head 68 - Referral of matter by authorised officer to adjudicator for adjudication

### To provide that:

(1) Where an authorised officer refers a matter for adjudication, they shall provide the adjudicator with:

- (a) the notice of suspected non-compliance under Head 60, and any supplementary notice of suspected non-compliance served by the authorised officer under Head 61
- (b) the referral report,
- (c) a copy of all material relied upon by the authorised officer, and
- (d) any submissions made by the notified person during investigation.

(2) An authorised officer shall, as soon as 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 already provided) relied upon for referring the matter for adjudication, subject to such redactions as necessary to protect rights, commercially sensitive information, or for other good and sufficient reason.

### Explanatory Note

This head is modelled on Section 71 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides that when an authorised officer refers a matter for adjudication, they shall furnish the adjudicator with the notice of suspected non-compliance served, as well as the referral report, a copy of all material relied upon in forming their opinion, and any submissions made by the notified person during the investigation. It establishes the formal referral mechanism to adjudicators and ensures both the adjudicator and notified person receive all relevant materials.

## Head 69 - Withdrawal by the market surveillance authority of matter referred to adjudicator

### **To provide that:**

- (1) A referral under Head 66 may be withdrawn by the relevant Market Surveillance Authority 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 Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it allows for the market surveillance authority to withdraw a matter referred to an adjudicator, at any time before the adjudicator makes an adjudication.

## Head 70 - Power of the Market Surveillance Authority to share certain documents

### **To provide that:**

- (1) The relevant Market Surveillance Authority may provide a copy of any notice or document referred to in Heads 60, 61, 68 or 80 to such other persons as the market surveillance authority considers appropriate, subject to such redactions as the Authority 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 the Market Surveillance Authority 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 68.
- (3) A person who receives—
  - (a) a copy of a document referred to in subsection (1), or
  - (b) copies of materials under Section Head 60 (5) or Head 68 (2),shall not, without the prior authorisation of the Market Surveillance Authority, 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 Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 and it sets out that the Market Surveillance Authority may provide a copy of any notice or document referred to in Heads 60, 61, 68 or 80 to such other persons as the authority considers appropriate, subject to such redactions as the authority considers appropriate.

## Head 71 - Regulations and rules relating to referrals to adjudicator Before Adjudicator

### **To provide that:**

- 1) The Minister may prescribe the procedure for-
  - a) Making a referral under Head 66
  - b) Withdrawing a referral under Head 69, and
  - c) Making an application for an adjudication on consent under Head 101 (1).
- (2) The Minister must consult with other relevant Ministers for the application of subsection (1).

### **Explanatory Note**

This Head is modelled on Section 74 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides that the Minister for Enterprise may make rules for making and withdrawing a referral, and for making an application for an adjudication. It is proposed to leave this power to the Minister as opposed to individual market surveillance authorities as it is key to ensuring the consistency of rules across the system. The head also provides that the Minister must consult with other relevant Minister when making these rules.

## Chapter 2 - Adjudicators

### Head 72 - Nomination of adjudicators

#### **To provide that:**

- (1) The AI Office of Ireland shall nominate persons who may be appointed by the Minister under Head 73.
- (2) The AI Office may nominate persons under subsection (1), who, in the opinion of the Office, have sufficient relevant expertise to merit such appointment.
- (3) The Minister shall, in a manner ensuring the independence of adjudicators in the performance of their functions, prescribe categories of persons who may be nominated and criteria, including requirements and qualifications, by which to determine whether or not a person is eligible to be nominated by the AI Office for appointment by the Minister as adjudicators (including a Chief Adjudicator).
- (4) Adjudicator(s) nominated pursuant to section [1] and appointed by the Minister pursuant to Head 73 must enter into a contract for services with a market surveillance authority for the provision of adjudication services.

#### **Explanatory Note**

This Head is modelled on Section 75 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 and, it outlines requirements for a person to be eligible for nomination as an adjudicator by the AI Office of Ireland and allows for the Minister to prescribe categories, criteria, requirements, and qualifications necessary for a person to be eligible for nomination.

Subsection (4) provides that the adjudicators must enter into contractual arrangements with market surveillance authorities for the supply of adjudication services.

The Office will put in place a pre-established, structured arrangement that allows MSAs to procure adjudication services required for referred investigations from a group of pre-qualified adjudicators under pre-agreed terms (the Adjudication panel).

The Office will provide the necessary administrative support to maintain the Adjudication panel. It would then be the responsibility of individual market surveillance authorities, where they have a requirement to refer an investigation for decision making on the imposition of an administrative sanction, to draw down from that panel. The cost relating to adjudicators would be borne by the market surveillance authorities as per agreed terms and conditions between two parties.

The fees of the adjudicator will be paid by the market surveillance authority. The Office and the Minister for Enterprise will have no liability in relation to any decision made by the adjudication officer.

## Head 73 - 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 the AI Office under Head 72 unless the Minister—
  - (a) is not satisfied that the nominated person meets the prescribed requirements and qualifications, or
  - (b) considers that the nominated person does not have the independence necessary to be appointed as an adjudicator.
- (3) The AI Office shall appoint one of the adjudicators appointed under this section to be the Chief Adjudicator.
- (4) The Minister may make regulations providing for the creation of a panel of adjudicators to perform the functions of adjudicators under this Act.
- (5) If no Chief Adjudicator stands appointed by the AI Office under this head 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 Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 and it provides that the Minister shall appoint a person nominated by the AI office as an adjudicator unless the Minister is not satisfied that the nominated person meets the prescribed requirements and qualifications; or considers that the nominated person does not have the independence necessary to be appointed as an adjudicator. This Section also states that the AI office shall appoint one of the appointed adjudicators as the Chief Adjudicator.

## Head 74 - Independence of adjudicators

### **To provide that**

- 1) Adjudicators shall be independent in the performance of their functions.
- 2) The Minister 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 92.
- 3) Where an adjudicator believes that performing any of his or her functions as an adjudicator in particular administrative sanctions proceedings would potentially create a conflict of interest, then the adjudicator shall recuse himself or herself from the proceedings in question and shall notify the Market Surveillance Authority 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 the Market Surveillance Authority and to the person concerned in the matter with which the adjudicator is dealing, and shall, having regard to any submissions received from the person concerned or from the Market Surveillance Authority, consider whether it is necessary to recuse himself or herself from the proceedings in question.

### **Explanatory Note**

This Head is modelled on Section 77 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides that adjudicators shall be independent in the performance of their functions. It also provides that an adjudicator shall recuse themselves from proceedings where a conflict of interest may arise.

## Head 75 - Regulations to ensure independence of adjudicators

### To provide that

- (1) The Minister must consult with other relevant Ministers when making these regulations.
- (2) The Minister shall make regulations prescribing requirements to be imposed upon the Market Surveillance Authority and adjudicators to implement Head 74.
- (3) Adjudicators shall not be involved in investigations of regulatory breaches and shall not act as authorised officers under Head 50 of this Act, subject to such exceptions as the Minister may prescribe.
- (4) Regulations under this section may make further provision for the independence of adjudicators (including an effective separation between the functions of the Market Surveillance Authority and the functions of adjudicators) and any such regulations shall (where appropriate) include provision for—
  - (a) a requirement that adjudicators, and employees of the Market Surveillance Authority tasked with assisting adjudicators, shall not communicate with authorised officers, employees and members of the Market Surveillance Authority in respect of any proceeding relating to a regulatory breach before the Market Surveillance Authority arising under this Act save on notice to the persons concerned in those proceedings the subject of a referral under Head 66 or 68, or as otherwise permitted by regulations, which may include communications relating to investigation s in which the adjudicators, and employees of the Market Surveillance Authority tasked with assisting the adjudicators, have not been nor will be involved in any decision under Head 68 [referral of matter by AO to adjudicator for adjudication],
  - (b) a requirement that documentation and other information concerning an investigation conducted under part 6 which have been obtained by the Market Surveillance Authority in the performance of its functions under this Act, shall not be disclosed to adjudicators that have been directed to make an adjudication in relation to that same investigation or to employees of the Market Surveillance Authority 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 66 or Head 68,
  - (c) arrangements for oversight by specified members or employees of the Market Surveillance Authority for compliance by the Market Surveillance Authority with the provisions of Head 74,
  - (d) reporting to the Minister or the Minister Market Surveillance Authority by specified members or employees of the Market Surveillance Authority or by adjudicators of any breach of Head 74 and for remedying any such breach,
  - (e) a requirement that the Chief Adjudicator and the Market Surveillance Authority report annually to the Minister on the Market Surveillance Authority's compliance with the principle of independence under Head 74 and any regulations made hereunder.

### **Explanatory Note**

This Head is modelled on Section 78 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 and it provides that the Minister shall make regulations prescribing requirements upon the Market Surveillance Authority and adjudicators to implement Head 74, and that these regulations may make further provision for the independence of adjudicators including, for example, an effective separation between the functions of the Market Surveillance Authority and the functions of adjudicators.

It is proposed that the Minister for Enterprise must consult with other relevant Ministers when making these regulations.

## Head 76 - 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 Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides 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 in such a case, the functions of the adjudicator for that purpose shall be exercised by those adjudicators sitting together.

## Head 77 - Regulations in relation to adjudicators

### **To provide that:**

- (1) The Minister must consult with other relevant Ministers when making these regulations.
- 2) 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 72 (3).
  - (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 72 (3) into which the adjudicator falls;
  - (c) such prohibitions on remuneration of adjudicators during their term of office, by persons or bodies other than the Market Surveillance Authority, 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 the Market Surveillance Authority 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) the Market Surveillance Authority 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,

- (g) the functions of the Chief Adjudicator;
- (h) the rules concerning adjudications by adjudicators sitting together;
- (i) 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 Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 Act and it provides that the Minister shall, in a manner ensuring the independence of adjudicators in the performance of their functions, make regulations to provide for, among other things, the term of appointment of adjudicators, the remuneration of adjudicators, and the resignation from office of adjudicators. It also provides that the Minister must consult with other relevant Ministers while making these regulations.

## Head 78 - Assistants to adjudicators

### **To provide that:**

- (1) The Market Surveillance Authority may from time to time -
  - (a) require any employee of the Market Surveillance Authority, 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 the Market Surveillance Authority required to assist the adjudicators, or an individual adjudicator, under subsection(1)(a) in the performance of powers and functions under this Act, be reassigned by the Market Surveillance Authority.
- (4) Persons required to, or appointed to as the case may be, assist adjudicators under subsection(1) may perform other tasks on behalf of the Market Surveillance Authority, 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 the Market Surveillance Authority who have been required to assist adjudicators under subsection(1)(a) and persons appointed by the Market Surveillance Authority to assist adjudicators under subsection(1)(b) shall not be subject to the direction of any member or employee of the Market Surveillance Authority, (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 the Market Surveillance Authority or other person appointed by the Market Surveillance Authority being subject to the direction of a member or employee of the Market Surveillance Authority in relation to the performance of functions not referred to in subsection (1)(a).
- (7) Without prejudice to the responsibility of the Market Surveillance Authority 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 Head 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 the Market Surveillance Authority, 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.
- (10) The Minister must consult with other relevant Ministers for the purpose of subsection (8) and (9).

**Explanatory Note**

This Head is modelled on Section 81 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 Act and it provides that the Market Surveillance Authority may from time to time require any employee of the Market Surveillance Authority, or appoint such persons as it considers necessary, to assist adjudicators in the performance of their functions, and sets out rules regarding same.

The Minister for Enterprise must consult with other relevant Ministers while making such regulations as he/she will have no oversight or knowledges regarding the ongoing of the market surveillance authority.

## Head 79 - Effect of appointment as adjudicator on terms of employment or contract with AI Office

### **To Provide that**

1. The appointment of a person as an adjudicator shall not in itself—
  - a. Constitute employment by or within the AI Office,
  - b. constitute the holding of a position in the civil service, or
  - c. otherwise create a contract between an adjudicator on the one part and the Minister or the AI Office on the other part.
2. The Minister may make regulations to give further effect to this section.

### **Explanatory Note**

This Head is modelled on Section 82 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 Act, and it provides that appointment of a person as an adjudicator shall not constitute employment by or within the AI Office, nor should it constitute the holding of a position in the civil service.

## Chapter 3 - Procedure following referral to adjudicator

### Head 80 - Notification by adjudicator following referral

#### To provide that:

(1) As soon as practicable after a referral is made to an adjudicator under Head 66 or Head 68, the adjudicator shall serve on the notified person—

- a) a copy of this section,
- b) in the case of a referral under Head 66, a notice in writing stating that the matter has been referred for an adjudication on consent under Head 101, and asking the person to confirm the matters set out in the report prepared in accordance with Head 66 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 68, 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 Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 Act and it provides that, as soon as is practicable after a referral is made to an adjudicator, the adjudicator shall serve on the notified person a copy of this section, as well as a notice in writing stating that the matter has been referred for an adjudication and inviting the person to make submissions in writing to the adjudicator on the referral report.

## Head 81 - Actions following referral under Head 66

### **To provide that:**

Where a notified person served with a notice in accordance with Head 80 (b) confirms the matters set out in the report prepared in accordance with Head 66, 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 91;

### **Explanatory Note**

This Head is modelled on Section 84 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 Act, and it provides that at any time after a referral under Head 66, an adjudicator may impose on the person a requirement to cease the regulatory breach or to take specified measures to remedy the breach or a financial penalty in accordance with Head 91.

## Head 82 - Actions following referral under Head 68

### To provide that:

- (1) In the case of a referral under Head 68 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 86;
  - (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 the Market Surveillance Authority, and shall, with due regard for the protection of commercially sensitive information, give to the notified person, a copy of the request.
- (5) As soon as practicable after receiving any information pursuant to a request under subsection(1)(c), the adjudicator shall, with due regard for the protection of commercially sensitive information, give the Market Surveillance Authority 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 the Market Surveillance Authority 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 the Market Surveillance Authority who has been required under Head 78 (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 86 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 Act and it sets out that in the case of a referral under Head 68, the adjudicator may do any of the following that they consider necessary to resolve an issue of fact or otherwise enable the adjudicator to make an adjudication: exercise any of the powers under Head 86; request further information from the person concerned; request further information from any other person; or conduct an oral hearing.

## Head 83 - 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, the relevant Market Surveillance Authority if the adjudicator finds that the person or the Market Surveillance Authority 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, the Market Surveillance Authority 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 Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 Act and it provides that no order as to costs shall be made in proceedings before an adjudicator, save that an adjudicator in their discretion awards the costs of proceedings against a respondent where they are found to have committed a regulatory breach, or engaged in the investigation in an improper way; or against the Market Surveillance Authority in the event that no regulatory breach is found or the Market Surveillance Authority engaged in an improper way.

## Head 84 - 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 Heads 87 and 88, 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 68 (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 the Market Surveillance Authority 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 the Market Surveillance Authority, or by an adjudicator, to a party to proceedings, or a person other than a party to proceedings, of information received by the adjudicator or the Market Surveillance Authority;
  - (f) procedures for the consolidation and hearing of two or more proceedings together;
  - (g) procedures for the separation of proceedings;
  - (h) the publication on the website of the Market Surveillance Authority 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) The Minister must consult with all other relevant Ministers when making regulations under subsection (1).
- (3) The Market Surveillance Authority 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 Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 act and provides that the Minister may make regulations setting out detailed requirements in relation to decisions of an adjudicator under Heads 88 and 89 , including, for example: the form and manner of provision of information and evidence to be provided to the Market Surveillance Authority or to the adjudicator; time limits to apply to the making and conduct of proceedings; and the attendance of witnesses at an oral hearing. The Minister for Enterprise must consult with all other relevant Ministers before making these regulations as he will have no oversight of the proceeding.

## Head 85 - 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 the Market Surveillance Authority 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 the Market Surveillance Authority.

(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, in consultation with other relevant Ministers, may make regulations setting out further details or conditions for the receipt of evidence or the conduct of oral hearings under this section.

(17) Rules made under subsection (16) shall not have effect unless they are published.

#### **Explanatory Note**

This Head is modelled on Section 86 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 act and it provides that an adjudicator may, by notice, in writing, 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 require the witness to attend an oral hearing from day to day unless excused, or released from further attendance, by the adjudicator.

## Head 86 - Powers of adjudicators and offences

### **To provide that:**

- (1) At any time after a referral under Head 68, an adjudicator may, on an application by the Market Surveillance Authority 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 the Market Surveillance Authority, 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 86 may be substituted for, and is the equivalent of, any formal process capable of being issued in an action for enforcing the attendance of witnesses and compelling the production of records.
- (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 86 (2) 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 86 (2) 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 86 refuses to—
    - (i) give evidence in the manner lawfully required by the adjudicator to be taken,

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

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

or

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

(6) Where a person fails to comply with a requirement of an adjudicator under this head, 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 86 (2), he or she intentionally or recklessly destroys or otherwise disposes of, falsifies or conceals such book, document or record or causes or permits its destruction, disposal, falsification or concealment.

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

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

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

(10) 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).

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

(12) In this section, "Court" means the High Court.

### **Explanatory Note**

This Head is modelled on section 87 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 Act and it provides that at any time after a referral under Head 67, an adjudicator may direct authorised officers of the Market Surveillance Authority or the notified person to answer an identified question or questions in whatever manner or form the adjudicator may specify; or direct a party to adduce evidence or produce books, documents and records in its power or control; or direct a party to clarify any issue of fact that an adjudicator may deem necessary.

## Head 87 - 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 69:
  - (a) the notice of suspected non-compliance served under Head 61 (and any supplementary notice of suspected non-compliance served under Head 62);
  - (b) the referral report;
  - (c) any written submissions made by the notified person on the notice of suspected noncompliance, any supplementary notice of suspected non-compliance 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 102.
- (2) In any matter referred to an adjudicator under Head 69 the adjudicator may make a decision as to whether, on the balance of probabilities, a person, or economic operator, has committed or is committing a regulatory breach.
- (3) Where—
  - (a) an adjudicator makes a decision under this section that a person has committed or is committing a regulatory breach, and
  - (b) the regulatory breach concerned constitutes a criminal offence,the person found to have committed, or be committing, the regulatory breach shall not be prosecuted for the criminal offence constituted by the regulatory breach.
- (4) A decision under subsection (2) shall be dated and include—
  - (a) the reasons for the decision,
  - (b) the notice of suspected non-compliance and any supplementary notice of suspected noncompliance,
  - (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 99 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 or material as the adjudicator considers appropriate.
- (5) For the avoidance of doubt, a decision may be made under subsection (2) or Head 89(1) 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 Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 act and it provides that an adjudicator shall consider the following

when making a decision in relation to a matter referred to them under Head 69: the notice of suspected non-compliance; the referral report; any written submissions made by the notified person on the notice of suspected non-compliance and the referral report; any information provided to the adjudicator in the course of the proceedings; and any prior relevant adjudication.

## Head 88 - Decision of adjudicator in relation to administrative sanction

### To provide that:

- (1) Where an adjudicator makes a decision under Head 88 (2) that a person has committed a regulatory breach he or she may, subject to this section, do one or more of the following:
  - (a) require the person to cease the regulatory breach or to take specified measures to remedy the breach;
  - (b) impose a financial penalty on the person in accordance with Head 92;
- (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.
- (3) In determining the amount of any financial penalty to be imposed the adjudicator shall have regard to the matters outlined in Head 92.
- (4) After reaching a decision under Head 88 (2) and prior to making a decision under subsection(1), the adjudicator shall provide the Market Surveillance Authority and the person to whom the decision relates with a copy of the decision under Head 88 (2) and shall inform the Market Surveillance Authority 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 the Market Surveillance Authority, and the person concerned to make written submissions in accordance with subsections (6) and (8).
- (6) The Market Surveillance Authority 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 92 , the amount of any financial penalty that may be imposed and in regard to guidelines made by the Market Surveillance Authority under Head 93.
- (7) Where the Market Surveillance Authority makes submissions in accordance with subsection (6) the adjudicator shall provide the person concerned with a copy of those submissions.
- (8) The person concerned may—
  - (a) where the Market Surveillance Authority does not make submissions in accordance with subsection (6), within the period of 15 working days from the date by which the Market Surveillance Authority was invited to make submissions in accordance with that subsection,
  - (b) where the Market Surveillance Authority 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 Head 94, the amount of any financial penalty and in regard to guidelines made by the Market Surveillance Authority under Head 95.

(9) When making submissions in accordance with subsection (6), the Market Surveillance Authority may, where it considers that there are, or have been, serious or repeated breaches of conditions by a person found to have committed a regulatory breach, recommend to the adjudicator in writing, to direct the person to

- (a) take all appropriate corrective actions to bring the relevant AI product or system into compliance, or
- (b) withdraw or recall the relevant AI product or system from the market, within a specified time limit and in a manner prescribed by the authorised officer.

(10) The adjudicator may by notice in writing request the person or economic operator 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 Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 act and it outlines the Actions an adjudicator may take where they have made a decision that a person has committed a regulatory breach, which include requiring the person to cease the breach or take steps to remedy the breach and imposing a financial penalty.

## Head 89 - 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 102 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 the Market Surveillance Authority as a judgment debt.
- (4) Where a person fails to comply with an administrative sanction imposed by an adjudication that has taken effect in accordance with subsection(1) the High Court may, on an application to it by the Market Surveillance Authority 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 the Market Surveillance Authority 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 Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 act, and it provides that an adjudication shall take effect at the time it is confirmed by the High Court under Head 102 subject to any order made by a court on an appeal of the adjudication or on an application for leave to appeal the adjudication.

## Head 90 - Notice of adjudication

### **To provide that:**

- (1) As soon as practicable after the adjudicator has made a decision under Head 89 the adjudicator shall provide the Market Surveillance Authority with the decision.
- (2) The Market Surveillance Authority shall within 7 days of receipt of the decision of the adjudicator under Head 89 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 88 (2).
  - (b) state that, in so far as it imposes any administrative sanction, the adjudication shall not take effect unless it is confirmed by the Court in accordance with Head 102, and
  - (c) state that, if the person does not appeal any administrative sanction imposed by the decision under Head 99, the Market Surveillance Authority 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 102.
- (4) The Market Surveillance Authority 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 by the Market Surveillance Authority.
- (6) A decision referred to in subsection(1) and a copy of the adjudication referred to in subsection(3) may contain such redactions as the adjudicator considers necessary and appropriate, in respect of subsection(1) on his or her own motion, or in respect of subsection(2) or (3) upon application of the Market Surveillance Authority 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 Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides that as soon as is practicable after the adjudicator has made a decision under Head 89, they shall provide the Market Surveillance Authority with the decision. Within 7 days of the receipt of the decision, the Market Surveillance Authority shall give notice in writing of the decision to the person concerned.

## Chapter 4 – Imposition of administrative sanctions

### Head 91 - 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 as specified in the parameters outlined in Article 99 (7) of the EU AI Act:
    - i. the nature, gravity and duration of the infringement and of its consequences, taking into account the purpose of the AI system, as well as, where appropriate, the number of affected persons and the level of damage suffered by them;
    - ii. whether administrative fines have already been applied by other market surveillance authorities to the same operator for the same infringement;
    - iii. whether administrative fines have already been applied by other authorities to the same operator for infringements of other Union or national law, when such infringements result from the same activity or omission constituting a relevant infringement of this Act or the AI Act;
    - iv. the size, the annual turnover and market share of the operator committing the infringement;
    - v. any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits gained, or losses avoided, directly or indirectly, from the infringement;
    - vi. the degree of cooperation with the national competent authorities, in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
    - vii. the degree of responsibility of the operator taking into account the technical and organisational measures implemented by it;
    - viii. the manner in which the infringement became known to the national competent authorities, in particular whether, and if so to what extent, the operator notified the infringement;
    - ix. the intentional or negligent character of the infringement;
    - x. any action taken by the operator to mitigate the harm suffered by the affected persons.
  - (c) any excuse or explanation offered by the person for the regulatory breach or failure to cooperate with the investigation concerned,

- (d) 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,
- (e) the amount of any loss suffered, or costs incurred, by any person as a result of the regulatory breach,
- (f) the effect of the regulatory breach on other operators, consumers and other end-users,
- (g) whether or not the regulatory breach continued after the person was served with a notice of suspected non-compliance,
- (h) 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,
- (i) any precedents set by a court or a competent authority, including the Market Surveillance Authority, in respect of a similar regulatory breach,
- (j) any specific factors, criteria or methodology relevant to paragraphs (a) to () prescribed by the Minister for the purposes of this subsection, and
- (k) any regulations made by the Minister under Head 92.

- (2) The Market Surveillance Authority 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—

- i. Non-compliance with the prohibition of the AI practices referred to in Article 5 shall be subject to administrative fines of up to EUR 35 000 000 or, if the offender is an undertaking, up to 7 % of its total worldwide annual turnover for the preceding financial year, whichever is higher.
- ii. Non-compliance with any of the following provisions related to operators or notified bodies, other than those laid down in Articles 5, shall be subject to administrative fines of up to EUR 15 000 000 or, if the offender is an undertaking, up to 3 % of its total worldwide annual turnover for the preceding financial year, whichever is higher:
  - (a) obligations of providers pursuant to Article 16;
  - (b) obligations of authorised representatives pursuant to Article 22;
  - (c) obligations of importers pursuant to Article 23;
  - (d) obligations of distributors pursuant to Article 24;
  - (e) obligations of deployers pursuant to Article 26;
  - (f) requirements and obligations of notified bodies pursuant to Article 31, Article 33(1), (3) and (4) or Article 34;
  - (g) transparency obligations for providers and deployers pursuant to Article 50.
- iii. Non-compliance with the obligations in relation to the supply of incorrect, incomplete or misleading information to notified bodies or national competent authorities in reply to a request shall be subject to administrative fines of up to EUR 7 500 000 or, if the offender is an undertaking, up to 1 % of its total worldwide annual turnover for the preceding financial year, whichever is higher.

For SMEs, including start-ups, each fine referred to (in Article 99 (7)) shall be up to the percentages or amount referred to in paragraphs i, ii, and iii above, whichever thereof is lower.

- iv. In the case of public sector bodies, the maximum financial penalty shall not exceed €1,000,000.

#### **Explanatory Note**

This Head is modelled on Section 94 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 Act, and it sets out the criteria an adjudicator shall have regard to when determining the amount of a financial penalty, including, amongst other things, the need to ensure that the financial penalty is appropriate, effective, and proportionate to the regulatory breach.

The scale of the EU AI Act fines for various regulatory breaches, which range overall from €7.5m to €35m, is provided. The overall upper limit is €35m, and the main non-compliance articles are referenced.

The level of financial fines on public sector bodies to be capped at €1,000,000. The Act [Article 99(8)] provides each Member State discretion in terms of scale of administrative fines they may imposed on national public authorities and bodies. Following an extensive analysis of the current practices on imposing administrative fines on public sector bodies under various act such as GDPR, DETE policy position is to impose financial penalties on public sector bodies capped at €1,000,000. The policy rationale:

Ireland's National AI Strategy aims to position the country as a global leader in ethical and innovative AI and one of its core strategies is building public trust and enabling AI adoption. The approach to administrative fines for public bodies must therefore help to enable these objectives. Guidelines from D/PEIPSRD for AI use in the public sector noted the positive impacts of AI adoption and it is clear that public bodies will be subject to the regulations laid down by the Act. Across member States, there is no clear trend either way in terms of whether to impose financial sanction on public bodies or not.

## Head 92 - Regulations in relation to certain matters

### **To provide that:**

- (1) The Minister, 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, may provide in regulations for 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 91 and the method of calculation of financial penalties).
- (2) The Minister must consult with other relevant Ministers when making these regulations.
- (3) The Minister shall publish any regulations made under subsection (1), and any amendment to or revocation of those regulations.
- (4) Any regulations made under this section, and any amendment to, or revocation of, those regulations, must be in writing and be published in a manner determined by the Minister.

### **Explanatory Note**

This Head is modelled on Section 99 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides that the Minister may provide in regulations in relation to the conduct of oral hearings and the imposition of administrative sanctions. The head also provides that the Minister must consult with other relevant Ministers when making these regulations.

## Chapter 5 - Admissibility of certain evidence

### Head 93 - Admissibility of evidence before Market Surveillance Authority

#### 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 Market Surveillance Authority 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) assuring 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 the Market Surveillance Authority, a member of An Garda Síochána, an officer of a European Market Surveillance Authority, 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 Act.

#### **Explanatory Note**

This Head is modelled on Section 100 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides that the type of proof that is admissible as evidence in proceedings under this Part 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.

## Chapter 6 - Restrictions on disclosure of certain information

### Head 94 – Restrictions on disclosure of certain information

#### To provide that:

- (1) Where an authorised officer requires a natural person to provide a statement or admission on the basis of measures referred to in applicable provisions, any such statement or admission may not be admissible in evidence against that person in criminal proceedings or for perjury where such statement or admission was provided under oath.
- (2) Subject to subsection (3), and save in accordance with law, an adjudicator, an authorised officer, the Market Surveillance Authority and its respective servants or agents shall not, without reasonable excuse, disclose to any person—
  - (a) any confidential information obtained by virtue of the exercise of powers conferred by or under this Act, or
  - (b) any information obtained by virtue of the exercise of powers conferred by or under this Part in relation to an investigation under this Part where that information was given under power of compulsion.
- (3) Notwithstanding subsection (2) an adjudicator, the Market Surveillance Authority 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 the Market Surveillance Authority or an adjudicator in the performance of his or her functions.
- (4) Information provided to any person pursuant to subsection (3) may contain such redactions as an adjudicator or the Market Surveillance Authority 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.
- (5) A person who contravenes subsection (2) commits an offence and is liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both.
- (6) The following categories of information obtained by a party during investigations by an authorised officer, or administrative sanctions proceedings before an adjudicator under this Act, shall not be used by that party in proceedings before a court prior to the authorised officer or the Market Surveillance Authority 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 87 or Head 88:

- (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 Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides that where an authorised officer requires a natural person to provide a statement or admission on the basis of measures referred to in applicable provisions, any such statement or admission may not be admissible in evidence against that person in criminal proceedings or for perjury where such statement or admission was provided under oath.

## Head 95 - Confidentiality

### **To provide that:**

- (1) Where the Market Surveillance Authority 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 the Market Surveillance Authority 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 the Market Surveillance Authority 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 six months or both.

### **Explanatory Note**

This Head is modelled on Section 102 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides that where the Market Surveillance Authority or an adjudicator provides 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, may not be viewed by, or shared with, any person other than as the market surveillance authority may specify.

## Chapter 7 - Appeals, confirmation and judicial review of certain decisions

### Head 96 – Interpretation

#### **To provide that:**

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

#### **Explanatory Note**

This Head states that in this Chapter, “Court” means the High Court.

## Head 97 - Decisions reviewable only by appeal under this Chapter

### **To provide that:**

- 1) An adjudication shall not be challenged, including as to its validity, other than by way of an appeal under Head 98.
- 2) For the avoidance of doubt, in respect of a decision under Head 87 or Head 88, no proceeding (including an application for judicial review whether in accordance with Head 104 or otherwise) may be brought before the courts other than an appeal under Head 98 in the case of a decision under Head 87 or Head 88 or an application to have the decision confirmed under Head 101.

### **Explanatory Note**

This Head is modelled on Section 104 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides that an adjudication shall not be challenged, including as to its validity, other than by way of an appeal under Head 98.

## Head 98 - Appeal against adjudication

### **To provide that:**

- (1) A person the subject of an adjudication may appeal to the Court against that adjudication not later than 28 days after the date of service of the notice under Head 90 (2) .
- (2) On application, the Court may extend the period within which an appeal may be brought under subsection (1), where it is satisfied—
  - (a) that there is exceptional, good and sufficient reason for doing so,
  - (b) that the circumstances that resulted in the failure to bring an appeal within the period provided for in subsection (1) were outside the control of the applicant for the extension, and
  - (c) where an application for confirmation has been brought under Head 101, that the Court has neither heard nor determined such application.
- (3) Where an application for confirmation has been brought pursuant to Head 101 in relation to an adjudication the subject of an appeal under this section, the Court may, upon application or of its own motion, stay the proceedings under Head 101.
- (4) Where the Court confirms an adjudication that imposes an administrative sanction or substitutes its own decision for the adjudication of an adjudicator and, as part of such adjudication, imposes an administrative sanction, the Court may set a limit for the payment of any financial penalty, required to be paid.

### **Explanatory Note**

This Head is modelled on Section 106 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides that a person the subject of an adjudication may appeal to the Court against that adjudication not later than 28 days after the date of service of the notice.

## Head 99 - Conduct of appeals

### **To provide that:**

- (1) The respondent to an appeal shall be the relevant Market Surveillance Authority.
- (2) A person that brings an appeal -
  - (a) may include in such appeal or application, as the case may be, any ground that could, but for Head 98, be relied upon by the appellant in an application seeking judicial review, and
  - (b) shall, on the same date as it makes such appeal or application, as the case may be, notify the respondent of the fact that it has made the appeal or application, and of the grounds on which it has made the appeal or application.
- (3) The Court may, for the purpose of ensuring the efficient, fair and timely determination of an appeal, give directions in respect of the conduct of the appeal.
- (4) An appellant shall, when making an appeal precisely state all of the grounds in law and fact upon which the appeal is made and shall provide to the Court all of the documents and evidence which it is alleged support the granting of the appeal or upon which the appellant intends to rely to support those grounds.
- (5) A party to an appeal other than the appellant shall, when responding to an appeal, state all of the grounds upon which he or she responds to the appeal and provide to the Court all of the documents and evidence upon which he or she intends to rely to support those grounds.
- (6) Subject to subsection (7), a party to an appeal shall not be entitled during the course of an appeal to make submissions to the Court other than submissions related to the grounds stated, or documents and evidence provided under subsections (4) and (5).
- (7) The Court may, upon application and where it considers it necessary for the fair and proper determination of an appeal, require or permit a party to an appeal to-
  - (a) make submissions to the Court other than submissions related to the grounds stated or documents and evidence provided under subsections (4) and (5), and
  - (b) provide documents or evidence to the Court other than documents or evidence provided under subsections (4) and (5).
- (8) Notwithstanding subsection (7), the Court shall refuse to consider submissions, documents or evidence where it considers that-
  - (a) the submissions, documents or evidence are not relevant to the appeal, or
  - (b) it is appropriate to do so in order to avoid undue repetition of submissions.

(9) Where the Court has granted leave to deliver additional submissions, documents or evidence on an application under subsection (7), the Court shall give directions as to the scope, form and me-frame for delivery of such additional submissions, documents or evidence.

(10) The Court may receive evidence by oral examination in court, by affidavit, or by deposition taken before a relevant Market Surveillance Authority.

(11) The Court, on hearing an appeal against a decision, may consider—

- (a) whether the jurisdiction existed to make the decision,
- (b) whether the law was correctly applied in reaching the decision,
- (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 and complied with Article 99(7).

(12) In considering an appeal, the Court shall have regard to—

- (a) the record of the decision the subject of the appeal,
- (b) the grounds stated by the parties to the appeal, and documents and evidence relied upon by the parties to support those grounds, under subsections (4) and (5), and
- (c) any submissions, documents or evidence admitted under subsection (7).

(13) The Court may, on the hearing of an appeal against a decision—

- (a) confirm the decision, or
- (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 subject to such directions as the Court considers appropriate, including, in the case of a decision by an adjudicator, whether the matter should be reconsidered by another adjudicator, or
  - (ii) vary the decision and substitute such other decision as the Court considers appropriate.

(14) The Court shall, in determining an appeal act as expeditiously as possible consistent with the administration of justice.

#### **Explanatory Note**

This Head is modelled on Section 107 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it sets out the procedure for appeals under this Part. It provides that on hearing an appeal, the Court may confirm the decision, or, 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.

It is proposed that the Minister for Enterprise or Office will bear no liability.

## Head 100 - Orders for costs by Court on appeal

### **To provide that:**

- (1) The Court may in its discretion award the costs of an appeal as if Head 83 applied to such an award.

### **Explanatory Note**

This Head is modelled on Section 108 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023. This Head gives the Court discretion to decide on who should pay the legal costs of an appeal brought under the relevant Market Surveillance Authority remit of the AI Act. The Court may award costs in an appeal and uses the framework of [Head 83: Orders for costs in proceedings before adjudicators.]

The cost cannot be awarded against the Minister for Enterprise or the Office.

## Head 101 - Court confirmation of adjudication

### **To provide that:**

- (1) Where a person does not appeal to the Court against an adjudication within the period provided for in Head 98 (1) the Market Surveillance Authority shall, subject to subsection(11), as soon as practicable after the expiration of the period allowed for such an appeal, make an application to the Court for the confirmation of that adjudication.
- (2) An application by the Market Surveillance Authority under subsection(1) shall include a copy of the adjudication together with the documents and evidence that were before the adjudicator which are referred to in that adjudication and may include any other documents and evidence which were before the adjudicator.
- (3) Notice of an application under subsection(1) shall be served by the Market Surveillance Authority on the person the subject of the adjudication within 7 days of the Market Surveillance Authority lodging the application in Court.
- (4) The notice referred to in subsection(3) shall, where possible, specify the time fixed by the Court for the hearing of the application, and shall enclose copies of all the papers lodged in Court in relation to the application under subsection(1).
- (5) The Court shall, on the hearing of an application under subsection (1), confirm the adjudication the subject of the application unless the Court, on the basis of the findings of fact in the adjudication (which are to be accepted as final by the Court), determines that—
  - (a) the adjudication contains an error of law which is—
    - (i) manifest from the record of the adjudication, and
    - (ii) fundamental so as to deprive the adjudication of its basis,

or
  - (b) the administrative sanction imposed was manifestly—
    - (i) disproportionate,
    - (ii) in excess of the sanction required to be dissuasive,
    - (iii) in excess of the sanction required to be effective, or
    - (iv) in excess of the sanction required to be appropriate.

(6) The Court—

- (a) where it makes a determination referred to in subsection(5)(a), or both a determination referred to in subsection(5)(a) and a determination referred to in subsection(5)(b), in relation to an application under subsection(1), shall remit the matter for reconsideration by an adjudicator, subject to such directions as the Court considers appropriate including, as the Court sees fit, directions as to whether or not—
  - (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 Court does not make an order referred to in subparagraph (i) and considers that the interests of justice so require, remit the matter for reconsideration by an adjudicator, subject to such directions as the Court considers appropriate including, as the Court sees fit, directions as to whether or not—
    - (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 Court shall hear the application under subsection (1) on the evidence before the adjudicator.
- (8) The Court shall, in determining an application under subsection (1), act as expeditiously as possible consistent with the administration of justice.
- (9) The Court may in its discretion award the costs of an application under this section as if Head 86 applied to such an award.
- (10) Where the Court confirms or substitutes its own decision for the decision of an adjudicator imposing a requirement to cease a regulatory breach, a requirement to take specified measures to remedy the breach, a financial penalty or a requirement to pay compensation or a refund, the Court may set a time limit for the requirement to be carried out or the payment of the financial penalty or compensation or refund concerned.

(11) The Market Surveillance Authority 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 Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 and it provides that where a person does not appeal to the Court against an adjudication within the period provided for the market surveillance authority shall, as soon as is practicable after the expiration of the period allowed for such an appeal, make an application to the Court for the confirmation of that adjudication. This section further sets out the procedure regarding the above.

## Head 102 - Publication of adjudication

### **To provide that:**

The Market Surveillance Authority shall publish an adjudication confirmed by the Court under Head 102 (save where such publication would, in the opinion of the Market Surveillance Authority, prejudice the achievement of the objectives of this Act) subject to such redactions as the Market Surveillance Authority may consider necessary and appropriate in order to protect the rights of the parties or any other person, to protect commercially sensitive information, or for any other good and sufficient reason, on the website of the Market Surveillance Authority as soon as practicable after the adjudication is confirmed.

### **Explanatory Note**

This Head is modelled on Section 110 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides that the Market Surveillance Authority shall publish an adjudication confirmed by the Court under Head 102.

## Head 103 - 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 the Market Surveillance Authority or a person the subject of a referral under Head 68, refer to the Court for decision by way of case-stated a question of law arising at a hearing on a referral under Head 68.
- (2) Where a question has been referred under subsection (1), the adjudicator shall not, in relation to a referral under Head 68 to which the hearing relates—
  - (a) make a decision under Head 87 or 88 to which the question is relevant while the reference to the Court is pending, or
  - (b) proceed in a manner, or make a decision under Head 87 or 88, that is inconsistent with the Court's decision on the question.
- (3) Where a question is referred to the Court under subsection(1)—
  - (a) the adjudicator shall send to the Court all documents before the adjudicator that are relevant to the matter in question, and
  - (b) at the end of the proceeding in the Court in relation to the reference, the Court shall cause the documents to be returned to the adjudicator.

### Explanatory Note

This Head is modelled on Section 111 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides that an adjudicator may, on their own initiative or at the request of the Market Surveillance Authority or a person the subject of a referral under Head 68, refer to the Court for decision by way of case stated a question of law arising at a hearing under Head 68. This section further sets out the procedure regarding same.

## Head 104 - Judicial review

### To provide that:

- (1) The validity of a decision made, or an act done by the Market Surveillance Authority (including by an authorised officer or adjudicator) in the performance of a function under this Act (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 98, a person affected by, but not the subject of, a decision under Head 87 or 88 may, not later than 14 days after the decision is published, apply to the Court by way of an application for judicial review under Order 84 and in accordance with this section.
- (3) At any time after the bringing of an application for leave to apply for judicial review of any decision or other act to which subsection(1) applies and which relates to a matter for the time being before the Market Surveillance Authority (including a matter before an adjudicator), the Market Surveillance Authority may apply to the Court to stay the proceedings pending the making of a decision by the Market Surveillance Authority (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 Court may, where it considers that the matter before the Market Surveillance Authority (including an adjudicator and an authorised officer) is within the jurisdiction of the Market Surveillance Authority (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 Chapters 1 to 6, not later than 28 days from the date on which the notice of the decision or act was first sent or published as the case may be or, if notice of the decision or act was not sent or published, from the date on which the person or persons became aware of the decision or act.
- (6) The Court may extend the period provided for in subsection (5) within which an application for leave referred to in that subsection may be made but shall only do so if it is satisfied that—
  - 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 Court hearing the ex parte application for leave may decide, having regard to the issues arising, the likely impact of the proceedings on the Market Surveillance Authority 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 Court directs that the leave hearing is to be conducted on an inter partes basis it shall be by motion on notice (grounded in the manner specified in Order 84 in respect of an ex parte motion for leave)—
  - (a) if the application relates to a decision made or other act done by the Market Surveillance Authority (including an adjudicator and an authorised officer) in the performance or purported performance of a function under this Act, to the Market Surveillance Authority (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 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 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 68 and 69.

- (12) If the court grants leave under this section, no grounds shall be relied upon in the application for judicial review under Order 84 other than those determined by the Court to be substantial under subsection(11)(a).
- (13) The Court may, as a condition for granting leave under this section, require the applicant for such leave to give an undertaking as to damages.
- (14) If an application is made for judicial review under Order 84 in respect of part only of a decision or other act to which subsection(1) applies, the Court may, if it thinks fit, declare to be invalid or quash the part concerned or any provision thereof without declaring invalid or quashing the remainder of the decision or other act or part of the decision or other act, and if the Court does so, it may make any consequential amendments to the remainder of the decision or other act or the part thereof that it considers appropriate.
- (15) The 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 Court under this section.

**Explanatory Note**

This Head is modelled on Section 112 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act, and it establishes that the validity of a decision made, or an act done by the market surveillance authority in the performance of a function under Chapters 1 to 7 of this Part shall not be challenged other than by way of an application for judicial review, or in accordance with a process provided for in this Act by which the validity of such decision or act may be challenged.

## Head 105 - 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 98 in respect of a decision by an adjudicator under Head 87 or 88.
- (2) The determination of the High Court on—
  - (a) an application for confirmation under Head 101,
  - (b) an application for judicial review of any other decision made or act done under this Act by the Market Surveillance Authority (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 103, 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 101, 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 105, 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 Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides that, amongst other things, that an appeal to the Court of Appeal shall lie in respect of a determination of the High Court on an

appeal under Head 100 in respect of a decision by an adjudicator under Head 88 or 89. Such appeals will only be granted with leave of the High Court and where the High Court certifies that the 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.

## Head 106 - Treatment of amounts paid to Market Surveillance Authority pursuant to Part 6

### **To provide that:**

A payment received by the Market Surveillance Authority 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 Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, and it provides that a payment received by the Market Surveillance Authority 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.

## Part 6 Notifying Authorities

### Head 107 – Functions of Relevant Notifying Authorities

#### To Provide that:

The Notifying Authorities shall—

- (a) establish and implement procedures for the notification, and monitoring of conformity assessment bodies (CABs) in accordance with the AI Act,
- (b) ensure that CABs meet and continue to meet the requirements set out in the AI Act,
- (c) cooperate with Notifying Authorities of other Member States and with the European Commission as required,
- (d) maintain records and provide information to the AI Office of Ireland, the European Commission, and other relevant authorities as required by the AI Act.

#### Explanatory Note

This Head sets out the statutory functions of the Notifying Authority, mirroring the core obligations in the AI Act.

#### Background

In accordance with Article 28, each Member State shall designate or establish at least one notifying authority responsible for establishing and implementing the necessary procedures for the assessment, designation and notification of conformity assessment bodies and their monitoring.

S.I. No. 366 of 2025 designated the following bodies as notifying authorities, for the EU AI Act. Commission for Communications, Regulation, Health Products Regulatory Authority, Minister for Enterprise, Tourism and Employment, and Minister for Transport.

A similar, distributed approach has been taken to the selection of notifying authorities as for the market surveillance authorities, and to designate the established notified authorities for the product safety legislation within the scope of the Act (Section A, Annex I, AI Act), as notifying authorities for the AI Act.

Member States may also decide that the assessment and monitoring referred to in Article 28 (1) shall be carried out by a national accreditation body referred to in the Accreditation Regulation in accordance with that Regulation.

The application and notification procedure for CABs is set out in Articles 29, 30 and 36 of the AI Act, the requirements for notified bodies, their compliance with them and the obligations relating to their operation in Articles 31, 32 and 34 and the challenge to the competence of notified bodies in Article 37. The conditions for notified bodies to use subsidiaries or subcontractors for conformity assessment are in Article 33 of the AI Act.

A list of EU legislation for which the Department is the Notifying Authority is [available](#) here. Under these Regulations, the Minister for Enterprise, Tourism and Employment is the Notifying Authority in Ireland.

## Head 108 – Powers of Notifying Authorities

### **To provide that:**

(1) The relevant Notifying Authorities shall have all such powers as are necessary or expedient for the performance of its functions, including—

- (a) the power to require information and documentation from conformity assessment bodies,
- (b) the power to carry out assessments, audits, and inspections of conformity assessment bodies,
- (c) the power to suspend or withdraw the designation of a conformity assessment body where it no longer meets the requirements,
- (d) the power to enforce confidentiality and independence requirements as set out in the AI Act,
- (e) the power to issue guidelines or codes of practice for conformity assessment bodies.

### **Explanatory Note**

This Head provides the Notifying Authority with the necessary legal powers to fulfil its functions effectively. These powers are essential to ensure that the Notifying Authority can act decisively and transparently in the public interest.

## Head 109 – Independence and Impartiality of Notifying Authorities

### **To provide that:**

(1) The relevant Notifying Authority shall be organised and operated so as to safeguard the objectivity and impartiality of its activities and to avoid any conflict of interest with conformity assessment bodies.

### **Explanatory Note**

This Head enshrines the principle that the Notifying Authority must operate independently and impartially, free from undue influence by the Conformance Assessment Bodies it oversees or other external interests. This is a direct transposition of the AI Act's requirements for organisational and operational independence, which are critical for maintaining trust in the conformity assessment system and ensuring that decisions are made solely based on objective criteria.

## Head 110 – Confidentiality obligations of Notifying Authorities

**To provide that:**

- (1) The Notifying Authority and its staff shall be subject to confidentiality obligations in respect of information obtained in the course of performing their functions, in accordance with Article 78 of the AI Act.
- (2) The relevant Notifying Authorities shall take appropriate measures to ensure an adequate level of cybersecurity.<sup>7</sup>

### **Explanatory Note**

This Head imposes a statutory duty of confidentiality on the Notifying Authority and its staff in relation to information obtained during their functions. This reflects Article 78 of the AI Act, which requires Member States to ensure that authorities protect confidential information, particularly information relating to trade secrets and personal data, except where disclosure is required by law or for the purposes of enforcement.

**Subhead (2)** sets an obligation that the relevant notifying authorities will take appropriate measures to ensure an adequate level of cybersecurity. This ensures that the MSAs are fulfilling the requirement of Article 70 (4) of the AI Act.

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<sup>7</sup> [L 202401689EN.000101.fmx.xml \(europa.eu\)](https://l202401689EN.000101.fmx.xml)

## Part 7 Funding

### Head 111 – Funding mechanism for Competent Authorities for their functions under this Act by way of levy

**To provide that:**

(1) For the purpose of funding — A relevant competent Authority which has an existing provision in statute to make an order imposing a levy on the entities it is designated to regulate, may make an order imposing a levy on the entities it is designated as competent authority for this Act for the purpose of meeting expenses properly incurred by the competent Authority in the discharge of its functions of under this Act.

**Explanatory Note:**

Ensuring adequate resources to meet the objectives of this Regulation and to enable the competent authorities to carry out the tasks laid down herein is essential. It is intended that they are allowed to extend their current levy model to their activities under this Act. This [Act] will act as the legislative vehicle for the relevant Departments and agencies to amend their own Primary legislation, subject to standard approval procedures, to extend their levy funding to their activities under the Regulation.

## Part 8 Amendments to other Acts and Consequential amendments to other Acts.

### Chapter 1 Amendments to other Acts

**To provide that:**

For the Office:

The Freedom of Information Act 2014 is amended in Schedule 1 by the insertion of the following:  
Oifig IS na hÉireann/AI Office of Ireland.

### Chapter 2 Consequential Amendments to other Acts

This will be worked through in the drafting process.

## Annex: Digital Omnibus Simplification Package and Anticipated Guidance on the AI Act

This General Scheme of the Regulation of Artificial Intelligence Bill gives effect to the Government's decision to establish the AI Office of Ireland and to empower relevant competent authorities for the supervision and enforcement of the AI Act within their respective sectors. The distributed regulatory model adopted leverages existing sectoral expertise and was agreed by Government in March 2025 as the most efficient and proportionate approach to national implementation.

A number of guidelines and implementing acts are expected from the European Commission to provide further detail on key operational aspects of the AI Act. These include guidance on the classification and obligations of high-risk AI systems, the framework for administrative sanctions, and the functioning of the regulatory sandbox. Such guidance will provide further clarity on certain aspects of the regulation and supervisory responsibilities, such as for notifying authorities and the establishment of a national regulatory sandbox.

The Department of Enterprise, Tourism and Employment, as the lead Department for implementation of the AI Act, notes the publication of the EU Digital Omnibus Package on 19 November 2025. The Digital Omnibus will continue to inform the progression of the implementation of the AI Act nationally. The establishment of the AI Office of Ireland and powers of national Competent Authorities must still be enacted in time for 2 August 2026 to fulfil the deadlines set out in the AI Act.

Should any amendments to the Bill be required once the simplification proposal is agreed at an EU level, and following a full assessment of the final text, further proposals will be brought to the Government for consideration and decision.