PART 5

REGULATION OF ELECTORAL PROCESS INFORMATION, ONLINE ELECTORAL INFORMATION AND MANIPULATIVE OR INAUTHENTIC BEHAVIOUR

CHAPTER 1

Preliminary

Definitions (*Part 5*)

144. In this Part—

"authorised officer" shall be construed in accordance with *section 128*;

"bot" means an automated online account, software programme or process where all or substantially all of the actions or posts of the account, programme or process are not the result of a person;

"deepfake" means manipulated or synthetic audio, image or video content that would falsely appear to be authentic or truthful, and which features depictions of persons appearing to say or do things they did not say or do, produced using artificial intelligence techniques, including machine learning and deep learning;

"Digital Services Regulation" means Regulation (EU) 2022/2065[1] of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC;

"electoral process disinformation" means false or misleading online electoral process information that is spread with an intention to deceive or secure economic or political gain and which may cause public harm;

"election campaign period" means—

(a) such period (including an electoral period) as may be prescribed by the Commission, by order, from time to time and in relation to any election or referendum, commencing on a date before an impending election or referendum and ending on polling day at the time at which the polls close, which dates shall be set out in a notice published by the Commission, in such manner as it thinks fit, not less than 7 days before the earlier date,

(b) the period commencing 3 months prior to the latest date when an election is required by law to be held and ending when the electoral period ends, or

[1] OJ L277, 27.10.2022, p.1

(c) where paragraphs (a) and (b) do not apply, the electoral period;

“electoral period” means the period of time commencing on the day of the making of a polling day order and ending on polling day;

“manipulative or inauthentic behaviour” means tactics, techniques and procedures that –

(i) constitute the deceptive use of services or features on the service of the provider of intermediary services, including user conduct having the object of artificially amplifying the reach or perceived public support of false or misleading online electoral process information, or

(ii) are likely to promote the dissemination or publication of deepfakes to users of the service of the provider of intermediary services, or

(iii) by reason of their nature and character, context or any other relevant circumstance, give rise to the inference that they are intended to result in the dissemination or publication of false or misleading online electoral process information on the service of the provider of intermediary services, or

(iv) may cause public harm;

“electoral process misinformation” means false or misleading online electoral process information shared without harmful intent though the effects can be still harmful;

“online electoral process information” means online content of a factual nature relating to the holding of an election or referendum including but not limited to the registration of voters or candidates, voting times and locations, arrangements for postal voting, the secrecy of the ballot, the counting of votes and any other factual content relating to the holding of a particular election or referendum or to elections or referendums more generally;

“political party” has the meaning assigned to it by Part 2;

“polling day order” means an order made by the Minister appointing a day for the holding of a poll which -

(a) in the case of a Dáil election, is made under section 96(1) of the Act of 1992,

(b) in the case of a European election, is made under section 10(1) of the Act of 1997,

(c) in the case of a local election, is made under section 26(2) of the Act of 2001,

(d) in the case of a presidential election, is made under section 6(1)(c) of the Act of 1993,

(e) in the case of a referendum, is made under section 10, 11 or 12 of the Act of 1994,

(f) in the case of a Seanad election, is made under section 12 of the Seanad Electoral (University Members) Act 1937 and under section 24 of the Seanad Electoral (Panel Members) Act 1947, or

(g) in the case of a Limerick mayoral election, is made under paragraph 6 of Part 1 to Schedule 2 to the Local Government (Mayor of Limerick) and Miscellaneous Provisions Act 2024;

"public harm" means any serious threat to the fairness or integrity of an election or referendum.

Co-operation between Commission and Coimisiún na Meán

144A. (1) The Commission may enter into an agreement (in this section referred to as a "co-operation agreement") with Coimisiún na Meán for the purposes of facilitating the Commission in the performance of its functions under this Part.

(2) A co-operation agreement may be varied by the Commission and Coimisiún na Meán.

(3) The Commission shall, within one month after the agreement (or the variation of it) has been made, furnish the Minister [and the Minister for Enterprise, Trade and Employment] with a copy of a co-operation agreement (including any variation of such an agreement) that has been made.

(4) A co-operation agreement, or any variation made to it, shall be in writing and, as soon as is practicable after the agreement or variation has been made and furnished to the Minister [and to the Minister for Enterprise, Trade and Employment], the Commission may publish the agreement on a website maintained by it.

(5) Without prejudice to subsection (6), nothing in any enactment shall be read as preventing the provisions of a co-operation agreement from having effect in accordance with the terms agreed between the Commission and Coimisiún na Meán.

(6) If information is furnished by one party to the other party pursuant to a co-operation agreement under subsection (1), 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.

(7) A failure by the Commission or Coimisiún na Meán to comply with a provision of a co-operation agreement shall not invalidate the exercise by the Commission or Coimisiún na Meán of any power.

Online electoral information, electoral process disinformation, electoral process misinformation and manipulative or inauthentic behaviour functions

145. (1) The Commission shall—

(a) protect the fairness and integrity of elections and referendums in accordance with this Part.

(b) monitor, investigate and combat the dissemination of electoral process disinformation,

(c) monitor, investigate, identify and combat manipulative or inauthentic behaviour,

(d) monitor, investigate and identify trends in respect of—

(i) electoral process disinformation,

(ii) electoral process misinformation, and

(iii) manipulative or inauthentic behaviour,

(e) promote public awareness of electoral process misinformation, electoral process disinformation and manipulative or inauthentic behaviour and it may establish, facilitate or promote educational or information programmes for the purpose of the performance of its functions under this Part.

(2) Without prejudice to section 16, the Commission may engage any person to assist it in the performance of its functions under subsection (1) and, for that purpose, it may do any or all of the following:

(a) enter into a contract with any person on such terms and conditions and for such period as the Commission considers appropriate;

(b) pay out of the funds at its disposal, to any person referred to in paragraph (a), such fees (if any) or allowances for expenses (if any) incurred by the person as the Commission may determine.

Establishment and role of Advisory Board

146. (1) The Commission shall establish an online electoral process information advisory board (to be known as "the Advisory Board").

(2) The Advisory Board shall, on request and, if appropriate, by its own motion, provide advice to the Commission on—

(a) the nature and effect of electoral process disinformation and electoral process misinformation, and

(b) where practicable, on the use by the Commission of its powers under this Part.

(3) The Advisory Board shall comprise not more than 6 persons, to be appointed by the Commission, and each of whom shall have expertise in all or any of the following—

(a) electoral processes (including referendums) in the State,

(b) promoting fairness and integrity in elections and referendums, or

(c) the use of information technology and online dissemination of information in the context of elections and referendums.

(4) The Minister may, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, determine the remuneration and expenses, if any, payable to a member of the Advisory Board under this section.

(5) The remuneration and allowances for expenses, if any, determined in accordance with subsection (4) shall be payable by the Commission out of funds at its disposal to a member of the Advisory Board.

Establishment and role of stakeholder council

147. (1) The Commission shall, from time to time, establish a stakeholder council to provide advice and opinions to the Commission generally and in relation to the preparation and use of codes of conduct under Chapter 5.

(2) The stakeholder council shall comprise not more than 15 persons, to be appointed by the Commission, the composition of which shall reflect the views of members of the Oireachtas as well as those of print, broadcast and online media.

CHAPTER 2

Obligations on online platform

Obligation on online platform to provide information to Commission

148. (1) Where, during an election campaign period, a provider of intermediary services, is satisfied upon obtaining actual knowledge or awareness, including by way of a notification received by way of the mechanism referred to in section 149, that —

(a) its services may be being used for the purposes of electoral process disinformation,

(b) there may be electoral process misinformation on its services, or

(c) there may be manipulative or inauthentic behaviour on its services,

the provider of intermediary services shall, without undue delay but subject to section 148A, notify the Commission of such electoral process disinformation, electoral process misinformation or manipulative or inauthentic behaviour.

(2) Without prejudice to subsection (1), as soon as may be following receipt of a risk assessment carried out by a very large online platform or a very large online search engine pursuant to Article 34(1) of the Digital Services Regulation, Coimisiún na Meán shall forward a copy of the risk assessment to the Commission.

(3) The Commission shall monitor the compliance of the providers of intermediary services with the requirements of subsection (1).

Exemption from liability for intermediary services

148A. The exemptions from liability that apply under Articles 4, 5 and 6 of the Digital Services Regulation shall apply to the providers of intermediary services for the purposes of this Part.

Information to the Commission

149. Where the Commission suspects the presence of electoral process disinformation to be on the services of the provider of intermediary services, whether that suspicion arises from a report obtained under section 160(2)(a) or from any other source, the Commission may issue an order on that provider of intermediary services requiring specific information about one or more specific individual recipients of its services in accordance with the provisions of Article 10 of the Digital Services Regulation.

CHAPTER 3

Powers of Commission

Monitoring, and investigation, of online electoral information

150. (1) The Commission may, for the purpose of performing its functions under this Part, monitor online electoral process information.

(2) Where the Commission reasonably believes that any online electoral process information may -

(a) constitute electoral process disinformation, or

(b) involve manipulative or inauthentic behaviour, including the use of undisclosed bots,

the Commission, or a member of staff of the Commission, may examine or investigate or appoint an authorised officer to examine or investigate, any such matter and the authorised officer or member of staff shall, following its investigation, furnish a report to the Commission.

(3) The Commission, or member of staff of the Commission, may make such inquiries as it considers appropriate or direct an authorised officer to make such inquiries, and the Commission, member of staff of the Commission or authorised officer, may require any person to furnish without delay any information, document or thing in the possession or procurement of that person that the Commission, member of staff of the Commission or authorised officer may require for the purposes of an investigation.

(4) The powers of an authorised officer conferred on him or her by or under section 137(1) to (9) shall apply, in like manner and with all necessary modifications, to an authorised officer appointed under subsection (2) or to the Commission, or member of staff of the Commission.

(5) The procedures set out in section 130(3) to (6) shall, with all necessary modifications, apply to the performance of functions under this Part, by an authorised officer appointed under subsection (1) or by the Commission, or member of staff of the Commission.

(6) Where an authorised officer or a member of staff of the Commission furnishes a report to the Commission in respect of the matters referred to in subsection (1), the Commission shall consider that report and any submissions or recommendations made by the authorised officer or such member.

(7) Where the Commission considers it appropriate, the Commission may invite any person to make any submissions in writing to the Commission within the period specified by the Commission.

(8) Following the Commission's consideration of the report referred to in subsection (6) and any submissions referred to in subsections (6) and (7), the Commission may—

(a) take no further action,

(b) if it is satisfied that a contravention is taking place or has taken place, exercise any of the powers available to it under sections 153 to 157 with respect to any person whom the Commission considers is contravening or has contravened any provision of this Part,

(c) prepare and publish a report of its investigation into the matter, or

(d) if it is satisfied that a contravention is taking or has taken place, prosecute any offence that may have been committed in accordance with section 169.

Delegation of powers of Commission to chief executive

151. (1) Subject to this section, the Commission may, by order, delegate the exercise of such of its powers under section 153, 154, 155, 156 or 157 as the Commission considers appropriate to the chief executive or to another member of the Commission and the chief executive or other member of the Commission shall perform such duties as are appropriate to the powers so delegated and shall for that purpose act in place of the Commission.

(2) Where a delegation is made under subsection (1)—

(a) the chief executive or other member of the Commission shall exercise the delegated power under the general direction and control of the Commission,

(b) the chief executive or other member of the Commission shall exercise the delegated power in accordance with such (if any) limitations as may be specified in the delegation as to the period in which or the extent to which he or she is to exercise that power, and

(c) a provision referred to in subsection (1) under which powers are vested in the Commission or which regulates the manner in which any such power is to be exercised shall, if and in so far as it is applicable to the delegated power, have effect, for the purposes of the exercise of the power by the

chief executive or other member of staff of the Commission, with the substitution of the chief executive or other member of staff of the Commission for the Commission and every such provision shall be read accordingly.

(3) Where the exercise of a power is delegated under this section, the power shall continue to be vested in the Commission but shall be so vested concurrently with the chief executive or other member of the Commission to whom it is delegated so as to be capable of being exercised by either the Commission or the chief executive or other member of the Commission concerned.

(4) The Commission may, by order, amend or revoke a delegation made under this section.

(5) The Commission may, at any time, furnish any materials or information arising from an investigation under section 150, including any report, to the chief executive or other member of staff of the Commission to whom the exercise of a power has been delegated under subsection (1) where the Commission considers that the information may be necessary in order to allow the proper exercise of the powers concerned.

Exercise of powers of Commission

152. (1) The Commission shall only exercise its powers under sections 153, 154, 155, 156, 157 or 158 where the Commission is satisfied that it is in the public interest to do so, having regard to all the circumstances including the rights of any person whom the Commission considers may be affected by the exercise of such powers.

(2) Without prejudice to subsection (1), the Commission shall, in considering the exercise of its powers under sections 153, 154, 155, 156, 157 or 158 give due weight to the following matters:

(a) the right to freedom of expression;

(b) the right to freedom of association;

(c) the right to participate in public affairs;

(d) the obligation on the State to defend and secure the fairness and integrity of elections and referendums; and

(e) the principle of proportionality;

(f) the right to freedom of establishment under EU law; and

(g) the freedom to provide services under EU law.

(3) Without prejudice to subsections (1) and (2), the Commission shall, in considering the exercise of its powers under sections 153, 154, 155, 156, 157 or 158 have regard to the following matters:

(a) the need to ensure the economic and efficient use of the Commission's resources;

(b) the public harm concerned, as it relates to the overall integrity and fairness of the election or referendum;

(c) any guidelines published under subsection (4).

(4) The Commission shall prepare and publish guidelines to inform the proper exercise, by the Commission or a person to whom the exercise of a power has been delegated under section 151, of its powers under this Part.

(5) Guidelines under subsection (4) may include measures to ensure that the exercise of the Commission's powers is transparent to the public and in accordance with international best practice and in the public interest.

(6) Where the Commission issues a notice or an order under section 153, 154, 155, 156 or 157, the Commission shall ensure that the notice or order meets the conditions specified in Article 9(2) of the Digital Services Regulation.

(7) Any notice or order issued by the Commission under this Part shall be transmitted to Coimisiún na Meán, and such transmission shall include any information received by the Commission from the provider of intermediary services in accordance with the requirements of Article 9(1) of the Digital Services Regulation.

(8) For the avoidance of doubt, the Commission may determine that it is appropriate having regard to all the circumstances to issue more than one notice or order under section 153, 154, 155, 156 or 157 in relation to the same online content or behaviour.

Take-down notice

153. (1) Where the Commission is satisfied -

(a) from the information available, whether obtained through its monitoring, or otherwise, or provided by any other person or otherwise, that any

electoral process information constitutes electoral process disinformation, and

(b) that the issuing of such a notice is necessary to protect the fairness or integrity of an election or referendum,

the Commission may issue a take-down notice requiring any natural or legal person, including any provider of intermediary services, to remove, within a specified period, the content to which the take-down notice relates.

(2) Notwithstanding the requirements of section 152(6), a notice under this section shall:

(a) contain a statement of the Commission, in compliance with subsection (3), in respect of the electoral process disinformation referred to in subsection (1)(a);

(b) inform the person to whom the notice is addressed that he, she or it shall cause the statement in paragraph (a) to be published at the online location provided under Article 9(2)(a)(iv) of the Digital Services Regulation; and

(c) inform the person to whom the notice is addressed of the right to appeal the notice under section 161 within 5 days from the date on which the notice was issued.

(3) The statement referred to at subsection (2)(a) shall—

(a) state that it is a statement required to be published pursuant to a take-down notice issued by the Commission, under which the removal of certain content visible at a precise online location has been required by the Commission pursuant to this section,

(b) state that this action has been taken because the content previously published at the location constituted electoral process disinformation,

(c) contain a summary of the statement of reasons, provided under Article 9(2)(a)(ii) of the Digital Services Regulation, for the Commission's opinion that it was necessary to require the removal of the information in order to protect the fairness or integrity of the election or referendum, as the case may be, and

(d) state that any natural or legal person directly affected by the notice may appeal the notice under section 161 within 5 days from the date on which the notice was issued.

Correction notice

154. (1) Where the Commission is satisfied -

(a) from the information available, whether obtained through its monitoring, or otherwise, or provided by any other person or otherwise, that any electoral process information constitutes electoral process disinformation, and

(b) that the issuing of such a notice is necessary to protect the fairness or integrity of an election or referendum,

the Commission may issue a correction notice requiring any natural or legal person to whom it is directed, including any provider of intermediary services, to communicate to all persons who access the service or the online platform a statement by the Commission under this section..

(2) Notwithstanding the requirements of section 152(6), a notice under this section shall:

(a) contain a statement of the Commission, in compliance with subsection (3), in respect of the electoral process disinformation referred to in subsection (1)(a);

(b) inform the person to whom the notice is addressed that he, she or it shall cause the statement in paragraph (a) to be published at the online location provided under Article 9(2)(a)(iv) of the Digital Services Regulation; and

(c) inform the person to whom the notice is addressed of the right to appeal the notice under section 161 within 5 days from the date on which the notice was issued.

(3) The statement referred to in subsection (2)(a) shall—

(a) state that it is a statement required to be published pursuant to a correction notice issued by the Commission under which the correction of certain content visible at a precise online location has been required by the Commission pursuant to this section,

(b) state that this action has been taken because the content at the online location constituted electoral process disinformation,

(c) contain a summary of the statement of reasons, provided under Article 9(2)(a)(ii) of the Digital Services Regulation, for the Commission’s

opinion that the issuing of a correction notice was appropriate in all the circumstances to protect the fairness or integrity of the election or referendum, as the case may be,

(d) state that any natural or legal person directly affected by the notice may appeal the notice under section 161 within 5 days from the date on which the notice was issued.

(4) The statement referred to in subsection (2)(a) may also contain any or all of the following:

(a) a statement setting out in what respects the content was false or misleading;

(b) a correct statement of information; and

(c) such further information or statement as the Commission shall deem appropriate, having regard to all the circumstances.

Labelling order

155. (1) Where the Commission is satisfied -

(a) from the information available, whether obtained through its monitoring, or otherwise, or provided by any other person or otherwise, that any electoral process information constitutes electoral process disinformation, and

(b) that the issuing of such an order is necessary to protect the fairness or integrity of an election or referendum,

the Commission may, pending further investigation by the Commission, issue a labelling order requiring the provider of intermediary services to state that the subject content is currently being investigated by the Commission pursuant to this Part to determine whether or not it constitutes electoral process disinformation.

(2) Notwithstanding the requirements of section 152(6), an order under this section shall:

(a) contain a statement of the Commission, in compliance with subsection (3), in respect of the electoral process disinformation referred to in subsection (1)(a);

(b) inform the person to whom the order is addressed that he, she or it shall cause the statement in paragraph (a) to be published at the online location provided under Article 9(2)(a)(iv) of the Digital Services Regulation; and

(c) inform the person to whom the notice is addressed of the right to appeal the order under section 161 within 5 days from the date on which the order was issued..

(3) The statement referred to in subsection (2)(a) shall:

(a) confirm that it is a statement required to be published pursuant to a labelling order issued by the Commission under this section, where the Commission is of the opinion that the subject statement may contain electoral process disinformation;

(b) state that the issuing of the order is not a determination that the content is either electoral process disinformation;

(c) contain a summary of the statement of reasons, provided under Article 9(2)(a)(ii) of the Digital Services Regulation, for the Commission's opinion that the requirements of subsection (1) are met;

(d) state that a determination as to whether the content is electoral process disinformation shall be made pending further investigation; and

(e) state that any natural or legal person directly affected by the order can appeal the order under section 161 within 5 days.

(4) The order may also contain such further information or statement as the Commission shall deem appropriate having regard to all the circumstances.

(5) The Commission shall make the determination referred to in subsection (3)(d) and, as soon as reasonably practicable—

(a) shall give a direction to the person to whom the labelling order was directed informing that person that the labelling order has been revoked, or

(b) where the determination is that the content is electoral process disinformation, may, as it considers appropriate, exercise any of its powers under section 153, 154 or 156.

(6) Where the Commission gives a direction referred to in subsection (5)(a), the statement referred to in subsection (2)(a) shall be taken down.

Access-blocking order

156. (1) Where the Commission is satisfied from information available -

(a) whether obtained through its monitoring, or otherwise, of electoral process information or provided by any other person or otherwise, in relation to a previously identified online location, that any electoral process information constitutes electoral process disinformation,

(b) that bot activity that constitutes manipulative or inauthentic behaviour or the use of an undisclosed bot contrary to section 167 is taking or has taken place at a previously identified online location,

the Commission may issue an access-blocking order, for such period as the Commission considers appropriate, requiring any provider of intermediary services to take reasonable steps to disable access to the online location.

(2) Notwithstanding the requirements of section 152(6), an order under this section shall:

(a) contain a statement of the Commission, in compliance with subsection (3), in respect of the electoral process disinformation referred to in subsection (1)(a);

(b) inform the person to whom the order is addressed that he, she or it shall cause the statement in paragraph (a) to be published at the online location provided under Article 9(2)(a)(iv) of the Digital Services Regulation; and

(c) inform the person to whom the notice is addressed of the right to appeal the order under section 161 within 5 days from the date on which the order was issued..

(3) The statement referred to in subsection (2)(a) shall state clearly—

(a) that an access-blocking order has been issued pursuant to this section,

(b) a summary of the statement of reasons, provided under Article 9(2)(a)(ii) of the Digital Services Regulation, why the Commission made the order, and

(c) such further information as may be specified in guidelines issued under section 152 or deemed necessary or appropriate by the Commission in all the circumstances.

(4) The order may also contain such further information or statement as the Commission shall deem appropriate having regard to all the circumstances.

(5) In this section, “previously identified online location” means an online location where 2 or more separate pieces of online content have been the subject of a notice or order under section 153, 154, 156 or 157 within the same electoral period, which election period is the same as the election period in respect of which it is proposed to make the access-blocking order.

Manipulative or inauthentic behaviour (including undisclosed bot activity) notice

157. (1) Where the Commission is satisfied from the information available that -

(a) bot activity that constitutes manipulative or inauthentic behaviour or the use of an undisclosed bot contrary to section 167 is taking or has taken place, and

(b) the issuing of a notice under this subsection is necessary to protect the fairness or integrity of an election or referendum,

the Commission may issue a notice, giving reasons, requiring any provider of intermediary services to publish a statement informing all users of the manipulative or inauthentic behaviour or the use of an undisclosed bot that is contrary to section 167.

(2) The statement required to be published under subsection (1) shall—

(a) state that the Commission pursuant to this section has issued a notice identifying bot activity that constitutes manipulative or inauthentic behaviour,

(b) state that this action has been taken because the bot activity threatened the fairness or integrity of an upcoming election or referendum,

(c) contain the statement of reasons for the Commission’s opinion that it was appropriate to require the publication of the statement in relation to the activity in all the circumstances, and

(d) state that any natural or legal person directly affected by the notice may appeal the notice under section 161 within 5 days from the date on which the notice was issued.

(3) Where, during the electoral period, the Commission is satisfied that—

(a) manipulative or inauthentic behaviour has occurred (including where such behaviour involves the use of bots), and

(b) the issuing of a notice under this subsection is necessary to protect the fairness or integrity of an election or referendum,

the Commission may issue a notice to require any provider of intermediary services to take reasonable steps to prevent or prohibit such behaviour or use.

(4) Notwithstanding the requirements of section 152(6), a notice under subsection (3) shall—

(a) state that the Commission, pursuant to this section, has issued a notice requiring the cessation of the behaviour in question because it has been identified as manipulative or inauthentic behaviour,

(b) state that this action has been taken by the Commission because the identified activity threatened the fairness or integrity of an upcoming election or referendum,

(c) contain a statement of reasons for the Commission's opinion that it was appropriate to require any online platform to take reasonable steps to prevent or prohibit such behaviour or use, and

(d) state that any natural or legal person directly affected by the notice may appeal the notice under section 161 within 5 days.

Application to court for order directing compliance with notice or order

158. (1) The Commission may apply to the High Court for an order directing compliance with a notice or order issued under section 153, 154, 155, 156 or 157.

(2) An application under subsection (1) may be made in relation to a person outside the State where a notice or order referred to sections 153, 154, 155, 156 or 157 is addressed to that person and relates to anything done or omitted to be done under those sections.

Communication with public

159. (1) The Commission may, in such manner it considers appropriate and at any time, communicate with the public or any class of the public in relation to electoral process misinformation, electoral process disinformation or the use of manipulative or inauthentic behaviour.

(2) The Commission may where it is of the opinion that there is a threat to the fairness or integrity of an election or referendum such that it is in the public

interest to draw attention to such threat, communicate with the public in relation to that threat.

(3) The Commission may, when communicating with the public under subsection (2) specify—

(a) the nature, source and severity of the threat,

(b) any actions the Commission proposes to take or consider in relation to it, and

(c) any recommendations to the public or others in relation to it.

Mechanism for public to report electoral process disinformation, electoral process misinformation and manipulative or inauthentic behaviour

160. (1) Where a person considers the presence of suspected electoral process disinformation to be on the services of the provider of intermediary services, that person shall first notify the provider of intermediary services of the presence on its service of suspected electoral process disinformation in accordance with the requirements of Article 16 of the Digital Services Regulation.

(2) Without prejudice to subsection (1), the Commission may provide a direct reporting facility on its website to allow a person to report -

(a) suspected instances of electoral process disinformation, in particular, during an electoral period or election campaign period,

(b) suspected instances of electoral process misinformation at any time, or

(c) suspected manipulative or inauthentic behaviour, including the undisclosed use of bots, in particular, during an electoral period or election campaign period.

(3) Where a direct reporting facility is put in place under subsection (2), it shall be easy to access and user-friendly, and shall -

(a) allow for the submission of reports exclusively by electronic means, and

(b) be such as to facilitate the submission of sufficiently precise and adequately substantiated reports.

(4) Where a direct reporting facility is put in place under subsection (2), the Commission shall take the necessary measures to enable and to facilitate the submission of reports containing all of the following elements:

(a) a sufficiently substantiated explanation of the reasons why the individual or entity alleges the information in question to be electoral process disinformation, electoral process misinformation or, as the case may be, amounting to manipulative or inauthentic behaviour;

(b) a clear indication of the exact electronic location of that information, such as the exact URL or URLs on the online platform concerned, and, where necessary, additional information enabling the identification of the disinformation, misinformation or, as the case may be, manipulative or inauthentic behaviour;

(c) the name and email address of the person submitting the report;

(d) a statement confirming the bona fide belief of the person submitting the notice that the information and allegations contained therein are accurate and complete.

(5) Where a direct reporting facility is put in place under subsection (2) and where a report so submitted contains the electronic contact information of the person that submitted it, the Commission shall, without undue delay, send a confirmation of receipt of the report to that person.

(6) Where a direct reporting facility is put in place under subsection (2), the Commission shall process any reports that they receive and take their decisions in respect of the information to which the reports relate, in a timely, diligent, non- arbitrary and objective manner.

CHAPTER 4

Procedural rights

Appeal to appeal panel

161. (1) The Commission shall, from time to time, establish an appeal panel which shall be comprised of one or more members of the Commission and shall be independent of the original decision-maker.

(2) (a) An appeal may be made to an appeal panel in respect of any notice or order issued pursuant to sections 153, 154, 155, 156 or 157, not later than 5 days from the date on which the notice or order was issued, but the making of an appeal shall not, pending the outcome of the appeal, affect the operation of the notice or order, unless the appeal panel otherwise directs.

(b) An appeal under paragraph (a) may be made by—

(i) any natural or legal person directly affected by the notice or order, or

(ii) the provider of an intermediary service.

(c) No appeal shall be accepted unless it has been submitted by a natural person (whether on their own behalf or on behalf of a named legal person), and such natural person shall provide such information as may be specified by the Commission.

(3) An appeal under subsection (2)—

(a) shall be in writing, made through a portal provided on the Commission's website for that purpose,

(b) shall state all of the grounds on which the appeal is made and provide to the appeal panel all of the documents and evidence intended to be relied on to support those grounds, and

(c) shall be addressed to the chairperson of the appeal panel and be delivered or sent so as to reach the chairperson within the period specified in subsection (2).

(4) The appeal panel shall determine an appeal without an oral hearing unless, having regard to the particular circumstances of the appeal, it considers that it is necessary to conduct an oral hearing in order to properly and fairly determine the appeal.

(5) The Commission may make such rules and establish such procedures in relation to the conduct of appeals and oral hearings as it considers appropriate and shall publish those rules and procedures on a website maintained by or on behalf of the Commission.

(6) An appeal under this section shall be heard by the appeal panel or by such specified member or members of the appeal panel as may be assigned by the appeal panel to hear the appeal.

(7) The appeal panel shall have discretion as to the conduct of an oral hearing under this section and shall conduct the hearing or ensure that the hearing is conducted expeditiously and without undue formality.

(8) The appeal panel, in determining an appeal under this section—

(a) shall consider the grounds for the appeal stated pursuant to subsection (3)(b),

(b) shall consider the notice or order, and any such other information in connection with the notice or order as, in the opinion of the appeal panel, may be relevant to its determination, and

(c) may, where it considers it necessary or expedient for the fair and proper determination of the appeal, have regard to such submissions, documents or evidence not contained in the notice or order as the appeal panel considers appropriate.

(9) In determining an appeal under this section, the appeal panel may, if satisfied that it is reasonable to do so—

(a) confirm the notice or order,

(b) vary the notice or order on such terms as it considers appropriate, or

(c) cancel the notice or order.

(10) If, on appeal, the appeal panel varies the notice or order, the notice or order as so varied takes effect immediately on the determination of the appeal.

(11) The appeal panel may, for the purpose of ensuring the efficient, fair and timely determination of an appeal, specify procedures in respect of the conduct of the appeal.

(12) The appeal panel may request in writing information from any person within the period specified in the request as it may reasonably require for the purposes of the performance of its functions under this section.

(13) It shall be an offence to submit an appeal in the name of another person or in a false name, or on behalf of a company absent the consent of the directors of that company (or as may be provided for in the company's constitution).

(14) An appeal shall be heard and determined as soon as is practicable.

Judicial review

162. Nothing in this Part shall be construed as limiting the entitlement of a person affected by a decision of the Commission to apply to the High Court to seek relief by way of an application for judicial review.

CHAPTER 5

Codes of conduct

Codes of conduct

163. (1) (a) The Commission may publish codes of conduct in respect of online electoral process information.

(b) A code published under paragraph (a) shall, as soon as is practicable, be laid before both Houses of the Oireachtas.

(2) A code referred to in subsection (1) may be addressed to:

(a) the provider of an intermediary service;

(b) a candidate in an election;

(c) a political party;

(d) any other person.

(3) The Commission may, before publishing a code of conduct under subsection (1), consult with the Advisory Board, the stakeholder council or any other group convened by the Commission for that purpose.

(4) A code of conduct published under subsection (1) shall have effect during a specified electoral campaign period only.

(5) The Commission may determine whether a code of conduct is an optional code of conduct or a mandatory code of conduct.

(6) The Commission shall, before publishing a code of conduct under subsection (1), have regard to the following:

(a) the need to protect democratic values in society;

(b) the public interest in having a well-informed electorate;

(c) the threat posed to democratic values by misinformation and disinformation;

(d) the right to freedom of expression;

(e) the right to freedom of association;

(f) the principle of proportionality;

(g) the right to freedom of establishment under EU law; and

(h) the freedom to provide services under EU law.

(7) Where, in the opinion of the Commission, a person to whom a mandatory code of conduct is addressed is failing or has failed to comply with the code, the Commission may apply, by motion, to the High Court for an order directing the person to comply with the code, and the Court may, as it thinks fit, on the hearing of the application, make or refuse to make such an order.

CHAPTER 6

Consultation

Consultation by Commission

164. (1) The Commission may, where it considers appropriate for the purposes of its functions under this Part, consult with, and have regard to any information received from—

(a) the Data Protection Commission,

(b) An Garda Síochána,

(c) Coimisiún na Meán, or

(d) the Minister for the Environment, Climate and Communications, acting in his or her capacity as competent authority under the European Union (Measures for a High Common Level of Security of Network and Information Systems) Regulations 2018 (S.I. No. 360 of 2018).

(2) Where—

(a) the Data Protection Commission,

(b) An Garda Síochána,

(c) Coimisiún na Meán, or

(d) the Minister for the Environment, Climate and Communications, acting in his or her capacity as competent authority under the European Union (Measures for a High Common Level of Security of Network and Information Systems) Regulations 2018 (S.I. No. 360 of 2018),

receives or becomes aware of information regarding activities or trends which may affect the fairness or integrity of an election or referendum, the authority or the Minister referred to in paragraph (d), as the case may be, shall immediately notify the Commission of the said information, activities or trends.

CHAPTER 7

Offences and penalties

Offence of failing to comply with notice or order issued under sections 153 to 157

165. (1) It shall be an offence for any person to fail to comply with any notice or order issued under section 153, 154, 155, 156 or 157, whether that notice or order is addressed to a person within or outside the State.

(2) A person found guilty of an offence under this section shall be liable—

(a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months or to both, or

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

Offences of electoral process disinformation

166. (1) A person who, or any director of a body or association which, during the electoral period or election campaign period with the intention of influencing the results of an election or referendum, or of interfering with the fairness or integrity of that election or referendum, makes, publishes or promotes online —

(a) a false statement of the withdrawal of a candidate for election from that election,

(b) a false statement of fact with the intention of causing one or more voters to abstain from voting in the election or referendum,

(c) a false statement with the intention of causing one or more voters to inadvertently spoil their ballot papers in the election or referendum,

(d) a statement, online, that purports to be from another person,

(e) electoral process disinformation, or

(f) manipulative or inauthentic behaviour,

shall be guilty of an offence, unless that person can show that he or she had reasonable grounds for believing and did believe that the statement was true.

(2) A person found guilty of an offence under this section shall be liable—

(a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months or to both, or

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

Offence of using undisclosed bot to mislead or influence election or referendum

167. (1) Any person who knowingly uses a bot, or causes a bot to be used, in such a way as to generate multiple online presences that—

(a) are directed towards influencing the result of an election or referendum, or

(b) are designed or intended to mislead persons as to the bot's artificial identity, or

(c) may cause public harm,

shall be guilty of an offence.

(2) It shall be a defence in proceedings for an offence under this section for a person to show that the use of the bot concerned was disclosed in a manner that was clear, conspicuous and reasonably designed to inform persons with whom the bot interacted or communicated or was intended to interact or communicate that it was a bot.

(3) A person found guilty of an offence under this section shall be liable—

(a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months or to both, or

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

Offence of failure to comply with obligations placed on online platform

168. -

Prosecution of offences

169. (1) Subject to subsection (2), summary proceedings for an offence under this Part may be brought and prosecuted by the Commission.

(2) Proceedings for an offence under this Part shall not be instituted except by or with the consent of the Director of Public Prosecutions.

(3) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Part may be instituted within 2 years from the date on which the offence was committed or alleged to have been committed.

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

(5) Where the affairs of a body corporate are managed by its members, subsection (4) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

(6) (a) Where a person is convicted of an offence under this Part, the court may, where it is satisfied that there are good reasons for so doing, order the person to pay to the prosecution the costs and expenses, measured by the court, incurred by the prosecutor in relation to the investigation, detection and prosecution of the offence, including the costs and expenses of and incidental to an examination of any information provided to the Commission or an authorised officer.

(b) An order for costs and expenses referred to in paragraph (a) shall be in addition to and not instead of any fine or penalty the court may impose.

Extraterritoriality

170. (1) A person who, in a place outside the State—

(a) does an act or fails to do an act that, if done or was omitted to be done in the State, would constitute an offence under section 165, or

(b) does an act that, if done in the State, would constitute an offence under section 166 or 167,

shall be guilty of an offence.

(2) A person guilty of an offence under this section is liable on conviction to the penalty to which he or she would have been liable if he or she did the act or failed to do the act that constitutes the offence in the State.

(3) Proceedings for an offence under subsection (1) may be taken in any place in the State and the offence may, for all incidental purposes, be treated as having been committed in that place.

(4) Where a person is charged with an offence under this section, no further proceedings in the matter (other than a remand in custody or on bail) may be taken except by, or with the consent of, the Director of Public Prosecutions.

CHAPTER 8

Miscellaneous

Immunity from suit

171. (1) The Commission shall perform its duties under this Part bona fide and in the interests of the public and electorate in general, having regard to the resources available to it and no action shall lie against it by reason merely of an alleged failure to perform such duties.

(2) No action shall lie personally against any member of the Commission by reason of any act or omission in the performance of his or her duties under this Part.

Service of notices or orders

172. Service of a notice or order issued under section 153, 154, 155, 156 or 157 shall be made in accordance with section 142.

Review of Part 5 of the Principal Act

172A. (1) The Commission shall commence a review of the operation of this Part not later than 3 years after the coming into operation of this section.

(2) The Commission shall, not later than 12 months after the commencement of a review under subsection (1), submit a report to the Minister of the findings of a review under subsection (1).

(3) A report under subsection (2) may include such recommendations as the Commission considers appropriate to maintain or enhance the operation of this Part.