



DRAFT HEADS OF BILL

PART 4A OF THE ELECTORAL REFORM BILL 2022

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

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Chapter 1: Preliminary

Head 1: Additional definitions for Part 4A

This Head provides that:

In this Part:

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

“disinformation”, for the purposes of this Part and this Act, means any false or misleading online electoral information that—

- (a) may cause public harm, and
- (b) by reason of the nature and character of its content, context or any other relevant circumstance gives rise to the inference that it was created or disseminated in order to deceive;

“election campaign period” means:

- (a) such period (including an electoral period) as may be prescribed from time to time and in relation to any election or referendum by the Commission, 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 seven days before the earlier date;
- (b) the period commencing three months prior to the latest date when an election is required by law to be held and ending when the electoral period ends; or
- (c) where paragraphs (a) and (b) do not apply, the electoral period;

“electoral period” means, in this Part, the period of time commencing on the day of the making of a polling day order and ending on polling day at the time at which the polls close;

“look-alike targeting” means the use of data from an existing online audience to identify other persons who have similar characteristics or are engaged in similar activities on an online platform;

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

- (a) constitute the deceptive use of services or features provided by online platforms, including user conduct having the object of artificially amplifying the reach or perceived public support of particular content,
- (b) are likely to influence the information visible to other users of that platform,
- (c) 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, publication or increased circulation of false or misleading online electoral information, and
- (d) may cause public harm.

“micro-targeting” means a targeting method involving the use of data analysis techniques, tools or other methods to address, transmit or communicate a tailored online political advertisement either to a specific person or group of persons or to increase the circulation, reach or visibility of an online political advertisement;

“misinformation”, for the purposes of this Part and this Act, means any false or misleading online electoral process information that may cause public harm, whether or not the information was created or disseminated with knowledge of its falsity or misleading nature or with any intention to cause such harm;

“online electoral information” means:

- (a) any online electoral process information; or
- (b) any online content relating to—
 - (i) a candidate in an election;
 - (ii) a political party that has candidates standing in an election,
 - (iii) issues that are of relevance to an election, or
 - (iv) issues that are of relevance to a referendum.

“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;

“online platform” means any public-facing website, web application or digital application accessible to the general public or a section of the public that—

- (a) has at least 100,000 unique monthly users in the State for a period of not less than seven months during the 12 months immediately preceding the date of the making of a polling day order, and
- (b) displays any content with political purposes, including but not limited to online political advertisements;

“online political advertisement” has the meaning given to it in Part 4;

“political purposes” has the meaning assigned to it by section 22(2)(aa) of the Electoral Act 1997;

“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 of the Electoral Act 1992,
- (b) in the case of a European election, is made under section 10 of the Act of 1997,
- (c) in the case of a local election, is made under section 26 of the Local Government Act 2001,
- (d) in the case of a presidential election, is made under section 6(1)(c) of the Presidential Elections Act 1993,
- (e) in the case of a referendum, is made under section 10 or section 12 of the Act of 1994, or
- (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;

“public harm” means any serious threat to the fairness or integrity of an election or referendum;

“recommender system” means a fully or partially automated system used by an online platform to suggest in its online interface specific information to recipients of the service, including as a result of a search initiated by the recipient or otherwise determining the relative order or prominence of information displayed.

Head 2: Functions of the Commission in respect of online electoral information and manipulative or inauthentic behaviour

This Head provides that:

- (1) It shall be a function of the Commission to protect the fairness and integrity of elections and referendums in accordance with this Part.
- (2) It shall be a function of the Commission to monitor, investigate and combat the dissemination of—
 - (a) disinformation, and
 - (b) misinformation.
- (3) It shall be a function of the Commission to monitor, investigate and identify manipulative or inauthentic behaviour.
- (4) It shall be a function of the Commission to monitor, investigate and identify trends in respect of—
 - (a) disinformation,
 - (b) misinformation, and
 - (c) manipulative or inauthentic behaviour.
- (5) It shall be a function of the Commission to promote public awareness of misinformation, disinformation and manipulative or inauthentic behaviour and it may establish, facilitate or promote educational or information programmes in pursuit of this function.
- (6) The Commission shall have the power to enter into contracts and other arrangements with persons or institutions in the State or elsewhere.

Head 3: Establishment and role of the Advisory Board

This Head provides that:

- (1) The Commission shall establish an online electoral information advisory board (to be known in this Part as “the Advisory Board”) to provide advice to the Commission.
- (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 disinformation and misinformation, and
 - (b) Where practicable, on the use by the Commission of its powers under this Part.

- (3) The Advisory Board shall be composed of no more than six persons appointed by the Commission with expertise in:
 - (a) the election and referendum process in the State,
 - (b) promoting fairness and integrity in elections and referendums, and
 - (c) the use of information technology and online dissemination of information in the context of elections and referendums.

Head 4: Establishment and role of the stakeholder council

This Head provides that:

- (1) The Commission shall establish a stakeholder council to provide advice to the Commission on the preparation and use of codes of conduct.
- (2) The stakeholder council shall be made up of no more than 15 persons appointed by the Commission to reflect the views of members of the Oireachtas as well as those of print, broadcast and online media interests and individual political parties.

Chapter 2: Obligations placed on users of online platforms and on online platforms

[Head 5 has been deleted]

Head 6: Obligation on online platforms to provide information to the Commission

This Head provides that:

- (1) Where, during an election campaign period, an online platform is satisfied from information of which it is aware, including by way of a notification received by way of a complaints mechanism set up under Head 7, that its services may be being used for the purposes of:
 - (a) disinformation;
 - (b) misinformation; or
 - (c) manipulative or inauthentic behaviour,the online platform shall notify the Commission of such disinformation, misinformation or manipulative or inauthentic behaviour without undue delay.
- (2) Without prejudice to (1), as soon as possible at the beginning of an election campaign period, an online platform with over 1 million unique monthly users in the State shall prepare and transmit a report to the Commission outlining any significant risks to the fairness or integrity of an election or referendum posed by disinformation, misinformation, or manipulative or inauthentic behaviour on its services.
- (3) The report referred to at (2) shall, at minimum, include:
 - (a) Information concerning the prevalence of relevant misinformation and disinformation on the online platform's service, including notifications received under Head 7,
 - (b) Information concerning the prevalence of manipulative or inauthentic behaviour on the online platform's service, including notifications received under Head 7,
 - (c) Information concerning the prevalence of micro-targeting or look-alike targeting on the services provided by the online platform, and

- (d) Information concerning any risks posed by the operation of any recommender system employed by the online platform to distribute and promote content.
- (4) The information provided in the report referred to at (2) shall include non-technical summaries of the matters set out at (3)(a) to (d).
- (5) The Commission shall monitor the compliance of online platforms with the requirements of this Head.

Head 7: Obligation on online platform to put in place notification mechanism

This Head provides that:

- (1) Online platforms shall put mechanisms in place to allow any individual or entity to notify them of the presence on the platforms of information that the individual or entity considers to be—
 - (a) disinformation, or
 - (b) misinformation.
- (2) Online platforms shall put mechanisms in place to allow any individual or entity to notify them of the presence on their service of specific activities or behaviours in respect of online electoral information that the individual or entity considers to amount to manipulative or inauthentic behaviour.
- (3) Those mechanisms provided for under (1) and (2) shall be easy to access, user-friendly and allow for the submission of notifications exclusively by electronic means.
- (4) Online platforms shall assess, process and determine the validity of the concerns raised by notices received under (1) or (2) without undue delay.
- (5) Online platforms shall maintain a record of all notifications received under (1) or (2) and the outcome of the decision-making process referred to at (4) for a period of two years following the end of the relevant electoral period.
- (6) Online platforms shall make the record referred to at (5) available to the Commission for inspection on reasonable notice.

Chapter 3: Powers of the Commission

Head 8: Monitoring of online electoral information by the Commission and investigations relating to same

This Head provides that:

- (1) The Commission may, for the purpose of fulfilling its functions under this Part, monitor online electoral information.
- (2) Where the Commission has reason to believe that particular online electoral information may—
 - (a) constitute disinformation,
 - (b) constitute misinformation, or
 - (c) involve manipulative or inauthentic behaviour, including the use of undisclosed bots,

the Commission may examine or investigate or appoint an authorised officer to examine or investigate, any such matter.

- (3) The Commission may make such inquiries as it considers appropriate or direct an authorised officer to make such inquiries, and the Commission, or an 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 or the authorised officer may require for the purposes of an investigation.
- (4) All investigatory powers of authorised officers exercisable under Part 4 in respect of online political advertisements or otherwise shall be exercisable *mutatis mutandis* in respect of the Commission's functions under this Part in a like manner in respect of false [or misleading] online electoral information and manipulative or inauthentic behaviour.
- (5) Where an authorised officer furnishes a report to the Commission in respect of false [or misleading] online electoral information or manipulative or inauthentic behaviour under subsection (5), the Commission shall consider that report, any submissions made and any recommendations by the authorised officer or member of staff of the Commission presented to it.
- (6) The Commission may, as it considers appropriate, invite any person who, in the opinion of the authorised officer or member of staff of the Commission, there are reasonable grounds for believing may be contravening, may have contravened or has contravened his or her obligations under this Part to make further submissions in writing to the Commission within the period specified by it in relation to the opinion of, and the report presented to the Commission by the authorised officer or member of staff.

- (7) Following consideration of the report and any recommendations made by the authorised officer under subsection (5) or member of staff of the Commission, and any further submissions under subsection (6), the Commission may—
- (a) take no further action,
 - (b) if it is satisfied that a contravention is taking or has taken place, exercise any of the powers available to it under Head 10 with respect to any person whom the Commission considers is contravening or has contravened the requirements of this Part,
 - (c) publish the report of the investigation, or
 - (d) if it is satisfied that a contravention is taking or has taken place, bring a prosecution in respect of any offence that may have been committed in accordance with Heads 24, 25 and 26.

Head 8A: Delegation of the powers of the Commission to the chief executive [or other member of the Commission]¹

This Head provides that:

- (1) The Commission may by order delegate the exercise of such of its powers under Head 10 as the Commission considers proper to the chief executive of the Commission [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 (2) —
 - (a) the chief executive of the Commission [or other member of the Commission] shall exercise the delegated power under the general direction and control of the Commission,
 - (b) the chief executive of the Commission [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,

¹ Note: the provisions of this Head are adapted from s. 154 of the Local Government Act 2001 (as amended).

- (c) a provision of or under this or any other enactment which vests powers in the Commission or regulates the manner in which any 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 the Commission], with the substitution of the chief executive of the Commission [or other member of the Commission] for the Commission and every such provision shall be read accordingly.
- (3) Where a power is delegated under this Head the power shall continue to be vested in the Commission but shall be so vested concurrently with the chief executive of the Commission [or other member of the Commission] to whom it is delegated and so as to be capable of being exercised by either the Commission or the chief executive of the Commission [or other member of the Commission].
- (4) The Commission may by order amend or revoke a delegation made under this Head.
- (5) The Commission may at any time furnish any materials or information arising from an investigation under Head 8, including any report prepared by an authorised officer, to the chief executive of the Commission [or other member of the Commission] and shall do so where of the view that the information may be necessary in order to allow the proper exercise of any power under Head 10 which has delegated to the chief executive of the Commission [or other member of the Commission] under this Head.
- (6) Any defect in a delegation under this Head or the absence of a delegation in respect of a power exercised by the chief executive of the Commission [or other member of the Commission] acting in good faith on behalf of the Commission does not of itself operate to invalidate any exercise of powers under Head 10 by the chief executive of the Commission [or other member of the Commission].

Head 9: Requirements for the exercise of the powers of the Commission under this

Part

- (1) The Commission shall only exercise its powers under Head 10 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 knows may be affected by the exercise of such powers.
- (2) Without prejudice to (1), the Commission shall, in considering the use of the powers under Head 10, give due weight to the following matters:
 - (a) the constitutional right to freedom of expression,

- (b) the constitutional right to freedom of association,
 - (c) the constitutional right to participate in public affairs, and
 - (d) the constitutional obligation on the State to defend and secure the fairness and integrity of elections and referendums.
- (3) In addition, in considering the exercise of the powers provided for under Head 10, the Commission shall have regard to the following matters:
 - (a) the need to ensure the economic and efficient use of the Commission's resources;
 - (b) the materiality of the threat at issue as it relates to the overall integrity and fairness of the election or referendum;
 - (c) any guidelines published under subsection (3) of this Head.
- (4) The Commission shall put in place guidelines to inform the proper exercise of the Commission's powers under this Part by the Commission or, where a delegation order under Head 8A has been made, by the chief executive of the Commission [or other member of the Commission]. These guidelines may include:
 - (a) measures to ensure that the exercise of the Commission's powers is transparent to the public and in accordance with international best practice;
 - (b) measures to guide the Commission's assessment of materiality for the purposes of the exercise of his powers under this Head or any one of them.
- (5) Any notice or order issued under Head 10 shall:
 - (a) include a statement of reasons for the Commission's opinion that it is appropriate that such notice or order ought to be issued,
 - (b) specify the time and date by which the person to whom the notice or order is addressed is to comply with the notice or order,
 - (c) specify the date and time by which the person to whom a notice or order is addressed shall confirm to the Commission that the notice or order has been complied with,
 - (d) state that the person to whom the notice or order is addressed may appeal the notice or order pursuant to Head 15 and that such appeal must be made through the portal on the Commission's website within a period of seven days from the issuing of the notice or order;

- (e) state that if no such appeal is made in accordance with Head 15 the making of the notice or order shall be taken as not disputed;
 - (f) state that failure to comply with a notice or order may result in the imposition of an administrative fine; and
 - (g) state that it is an offence not to comply with a notice or order issued under Head 10.
- (6) 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 in connection to the same online content or behaviour.

Head 10: Powers of the Commission

(i) Head 10(i): Power to issue a take-down notice

This Head provides that:

- (1) Where—
- (a) during the election campaign period, the Commission is satisfied from the information available, whether obtained through its monitoring of online electoral information or provided by any other person or otherwise, that any online electoral information constitutes disinformation; or
 - (b) at any time, the Commission is satisfied from the information available, whether obtained through monitoring of online electoral information or provided by any other person or otherwise, that any online electoral process information constitutes misinformation,
- and the Commission is satisfied that the issuing of such a notice is necessary to protect the fairness or integrity of the election or referendum, the Commission may issue a take-down notice requiring any natural or legal person, including any operator or host of any online platform, to remove, within a specified period, the content to which the take-down notice relates.
- (2) A notice under this Head shall:
- (a) include a statement of reasons for the Commission’s opinion that the conditions in (1) are met;
 - (b) include the precise online location for the online electoral information referred to in (1)(a) or (b) and, where necessary, any additional data enabling the identification of the information;

- (c) contain a statement prescribed by the Commission in respect of the online electoral information referred to in (1)(a) or (b);
 - (d) inform the recipient that he or she must cause the statement in paragraph (c) to be put up at the online location referred to in paragraph (b);
 - (e) inform the recipient of the right to appeal the notice under Head 15 within five days.
- (3) The statement referred to in (3)(c) shall state clearly:
- (a) that it is a prescribed statement required to be published pursuant to a take-down notice issued by the Commission, under which the removal of certain content visible at that online location has been required by the Commission pursuant to this Head;
 - (b) that this action has been taken because the content previously published at the location constituted disinformation or misinformation;
 - (c) a summary of the reasons 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 applicable; and
 - (d) that any natural or legal person directly affected by the notice can appeal the notice under Head 15 within five days.

(ii) Head 10(ii): Power to issue a correction notice

This Head provides that:

- (1) Where—
- (a) during the election campaign period, the Commission is satisfied from the information available, whether obtained through its monitoring of online electoral information or provided by any other person or otherwise, that any online electoral information constitutes disinformation; or
 - (b) at any time, the Commission is satisfied from the information available, whether obtained through its monitoring of online electoral information or provided by any other person or otherwise, that any online electoral process information constitutes misinformation,

and the Commission is satisfied that the issuing of such a notice is necessary to protect the fairness or integrity of the election or referendum, he or she may issue a correction notice requiring any natural or legal person to whom it is directed, including any operator or host of an online platform, to communicate to all end-users a statement prescribed by the Commission under this Head.

(2) A notice under this Head shall:

- (a) include a statement of reasons for the Commission's opinion that the conditions in (1) are met;
- (b) include the precise online location for the online electoral information referred to in (1)(a) or (b) and, where necessary, any additional data enabling the identification of the information;
- (c) contain a statement prescribed by the Commission in respect of the online electoral information referred to in (1)(a) or (b);
- (d) inform the recipient that he or she must cause the statement in paragraph (c) to be put up at the online location referred to in paragraph (b);
- (e) inform the recipient of the right to appeal the notice under Head 15 within five days.

(3) The statement referred to in (3)(c) shall state clearly:

- (a) that it is a prescribed statement required to be published pursuant to a correction notice issued by the Commission under which the correction of certain content visible at that online location has been required by the Commission pursuant to this Head;
- (b) that this action has been taken because the content at the online location constituted disinformation or misinformation;
- (c) a summary of the reasons for the Commission's opinion that the issuing of a correction notice was appropriate in all the circumstances; and
- (d) that any natural or legal person directly affected by the notice can appeal the notice under Head 15 within five days.

(4) The statement referred to in (3)(c) 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.

(iii) Head 10(iii): Power to issue a labelling order

This Head provides that:

(1) Where—

- (a) during the election campaign period, the Commission is satisfied from the information available, whether obtained through its monitoring of online electoral information or provided by any other person or otherwise, that any online electoral information constitutes disinformation; or
- (b) at any time, the Commission is satisfied from the information available, whether obtained through its monitoring of online electoral information or provided by any other person or otherwise, that any online electoral process information constitutes misinformation,

and the Commission is satisfied that the issuing of such an order is appropriate in all the circumstances, he or she may, pending further investigation by the Commission, issue a labelling order requiring the online platform to state that the subject content is currently being investigated by the Commission pursuant to this Part to determine whether or not it constitutes either disinformation or misinformation.

(2) An order under this Head shall:

- (a) include a statement of reasons for the Commission's opinion that the conditions in (1) are met;
- (b) include the precise online location for the online electoral information referred to in (1)(a) or (b) and, where necessary, any additional data enabling the identification of the information;
- (c) contain a statement prescribed by the Commission in respect of the online electoral information referred to in (1)(a) or (b);
- (d) inform the recipient that he or she must cause the statement in paragraph (c) to be put up at the online location referred to in paragraph (b);
- (e) inform the recipient of the right to appeal the order under Head 15 within five days.

- (3) The statement referred to in (3)(c) shall state clearly:
- (a) that it is a statement required to be published pursuant to a labelling order issued by the Commission under this Head, where he or she is of the opinion that the subject statement may contain disinformation or misinformation;
 - (b) that the issuing of the order is not a determination that the content is either disinformation or misinformation;
 - (c) a summary of the reasons for the Commission's opinion that the requirements of paragraph (1) are met;
 - (d) that a determination as to whether the content is disinformation or misinformation will be made pending further investigation; and
 - (e) that any natural or legal person directly affected by the order can appeal the order under Head 15 within five 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 section (3)(d) as soon as reasonably practicable and shall thereafter either:
- (a) 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) may exercise such other power as he or she deems necessary.
- (6) Should the Commission give the direction referred to in (6)(a), the prescribed statement referred to in subsection (3) shall be taken down.

(iv) Head 10(iv): Power to issue an access-blocking order

This Head provides that:

- (1) Where:
- (a) during the election campaign period, the Commission is satisfied from information available, whether obtained through its monitoring of online electoral information or provided by any other person or otherwise, in relation to a previously identified online location, that any online electoral information constitutes disinformation, or
 - (b) at any time whether during the electoral period [or election campaign period] or otherwise, the Commission is satisfied from information

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

and the Commission is satisfied that the issuing of such an order is necessary to protect the fairness or integrity of the election or referendum, he or she may issue an access-blocking order requiring any operator or host of an online platform to take reasonable steps to disable access by end-users to the online location.

- (2) A “previously identified online location” for the purposes of this Head is an online location where two or more previous different pieces of online content have been the subject of notices under this Head within the same election period, which election period is the same as the election period in respect of which it is proposed to make the access-blocking order.
- (3) An order under this Head shall:
 - (a) include a statement of reasons for the Commission’s opinion that the conditions in (1) are met;
 - (b) include the precise previously identified online location for the online electoral information referred to in (1)(a) or (b);
 - (c) contain a statement prescribed by the Commission in respect of the previously identified online location;
 - (d) inform the recipient that he or she must cause the statement in paragraph (c) to be put up at the previously identified online location referred to in paragraph (b);
 - (e) inform the recipient of the right to appeal the order under Head 15 within five days.
- (4) The statement referred to in (3)(c) shall state clearly:
 - (a) that an access-blocking order has been issued pursuant to this Head;
 - (b) a summary of the reasons that the Commission made the order; and
 - (c) such further information as may be prescribed by guidelines or deemed necessary or appropriate by the Commission in all the circumstances.
- (5) The order may also contain such further information or statement as the Commission shall deem appropriate having regard to all the circumstances.

(v) ***Head 10(v): Powers to regulate manipulative or inauthentic behaviour, including undisclosed bot activity***

This Head provides that:

- (1) Where, during the election campaign period, the Commission is satisfied that –
 - (a) bot activity that constitutes manipulative or inauthentic behaviour or the use of an undisclosed bot contrary to Head 24 is taking or has taken place, and
 - (b) the issuing of a notice under this subhead is necessary to protect the fairness or integrity of an election or referendum,

the Commission may issue a notice requiring any operator or host of any online platform to publish a statement informing all affected end-users of the manipulative or inauthentic behaviour or the use of an undisclosed bot that is contrary to Head 24;

- (2) The statement required to be published under subsection (1) shall state clearly—
 - (a) that the Commission pursuant to this Head has issued a notice identifying bot activity that constitutes manipulative or inauthentic behaviour;
 - (b) that this action has been taken because the bot activity threatened the fairness or integrity of an upcoming election or referendum;
 - (c) a statement of reasons for the Commission’s opinion that it was appropriate to require the labelling of the activity in all the circumstances; and
 - (d) that any natural or legal person directly affected by the notice can appeal the notice under Head 15 within five days.

- (3) Where, during the election 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 subhead is necessary to protect the fairness or integrity of an election or referendum,

the Commission may issue a notice requiring any operator or host of an online platform to take reasonable steps to remove or prevent such behaviour.

- (4) A notice under subsection (3) shall state clearly that—

- (a) the Commission, pursuant to this Head, has issued a notice requiring the cessation of the behaviour in question because it has been identified as manipulative or inauthentic behaviour;
- (b) this action has been taken by the Commission because the identified activity threatened the fairness or integrity of an upcoming election or referendum; and
- (c) a statement of reasons for the Commission's opinion that it was appropriate to require the removal of the information; and
- (d) that any natural or legal person directly affected by the notice can appeal the notice under Head 15 within five days.

[Head 11 has been deleted]

Head 12: Application to court for an order directing compliance with a notice or order

This Head provides that:

- (1) The Commission may apply to the High Court for an order directing compliance with a notice or order issued under Head 10.
- (2) Such an application shall be made on notice to the person on whom the notice or order has been served by the Commission.

Head 13: Power to issue warnings to the public about activities that may interfere with the fairness or integrity of an election or referendum

This Head provides that:

- (1) The Commission may communicate with the public or any section of the public in relation to false [or misleading] online electoral information, false [or misleading] electoral process information or the use of manipulative or inauthentic behaviour whenever it deems such communication appropriate in furtherance of its educational or other functions.
- (2) The Commission may also issue warnings to the public, whenever it forms the view 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 perceived threat. Any such communication may, inter alia, specify the nature, source and severity of the perceived threat, and any actions the Commission proposes to take or consider in relation to it as well as any recommendations for action by the public or others in relation to it.

Head 14: Mechanism for the public to report suspected instances of disinformation, misinformation and manipulative or inauthentic behaviour

This Head provides that:

The Commission may provide a direct reporting facility on its own website allowing members of the public to report—

- (a) suspected instances of disinformation during the electoral period [or election campaign period];
- (b) suspected instances of misinformation at any time; or
- (c) suspected manipulative or inauthentic behaviour, including the undisclosed use of bots, during the electoral period [or election campaign period].

Chapter 4: Procedural rights

Head 15: Right to appeal a notice or order

This Head provides that:

- (1)
 - (a) An appeal may be made to an appeal panel of the Commission in respect of any notice or order served pursuant to Head 10, not later than 3 days from the date on which the notice or order was served, but the making of an appeal shall not, pending the outcome of the appeal, affect the operation of the notice or order, unless, having regard to existence of exceptional circumstances, the appeal panel otherwise directs.
 - (b) An appeal under paragraph (a) may be made by any natural or legal person directly affected by the notice or order, including an online platform.
 - (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 his or her PPS number, contact telephone number and comply with such other requirements as may be prescribed to ensure the bona fides of the appellant as may be specified by the Commission.
- (2) An appeal under subsection (1)—
 - (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 (1).
- (3) An appeal panel will be comprised of one or more members of the Commission and shall be independent of the original decision-maker.
- (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) The chairperson of 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. (
- (7) The appeal panel, in determining an appeal under this section—
- (a) shall consider the grounds for the appeal stated pursuant to subsection (2)(b),
- (b) shall consider the notice or order, and any such other information in connection with the notice of 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.
- (8) 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.
- (9) 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.

- (10) 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.
- (11) 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.
- (12) 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).
- (13) An appeal shall be heard and determined as soon as is practicable.

Head 15A: Judicial review

This Head provides that:

- (1) Nothing in this Part is to 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

Head 16: Promulgation of codes of conduct

This Head provides that:

- (1) The Commission may publish one or more codes of conduct in respect of online electoral information or online electoral process information.
- (2) A code referred to at subsection (1) may be addressed to some or all of: online platforms, candidates, parties and/or third parties.
- (3) In advance of publishing a code of conduct referred to at (1), the Commission may consult with the Advisory Board, the stakeholder council, and/or any other group convened by the Commission for that purpose.
- (4) A code of conduct published under (1) which relates to online electoral information other than online electoral process information shall have effect during an electoral 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) In publishing a code of conduct under subsection (1), the Commission shall have regard to the following principles and policies:
 - (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 assembly;
 - (f) **[insert other principles and policies as appropriate]**

Chapter 6: Cooperation with other public bodies

Head 17: Commission to consult with other relevant authorities

This Head provides that:

- (1) For the duration of the electoral period, the Commission shall, where appropriate, consult with, and have regard to information received from:
 - (a) the Data Protection Commission,
 - (b) An Garda Síochána,
 - (c) the Online Safety Commission, and
 - (d) the Minister for Communications, acting in his capacity as competent authority under the European Union (Measures for a High Common Level of Security of Network and Information Systems) Regulations 2018 (SI 360/2018).
- (2) Where, during an electoral period [or election campaign period] or within six months of an anticipated electoral period—
 - (a) the Data Protection Commission;
 - (b) An Garda Síochána,
 - (c) the Online Safety Commission, or

- (d) the Minister for Communication, acting in his capacity as competent authority under the European Union (Measures for a High Common Level of Security of Network and Information Systems) Regulations 2018 (SI 360/2018),

receives or becomes aware of information regarding activities or trends within the scope of its statutory remit with potential consequences for an election, that authority shall notify the Commission of the said information, activities or trends immediately.

- (3) The Commission shall enter into data-sharing agreements with the bodies specified at Head 22(1)(a) to (d) within the meaning of the Data Sharing and Governance Act 2019.

Chapter 7: [DELETED]

[Heads 18 to 20 deleted]

Chapter 8: Offences and penalties

Head 21: Offence of failing to comply with a notice or order issued under Head 10

This Head provides that:

- (1) It shall be an offence to fail to comply with any notice or order issued under Head 10.
- (2) A person found guilty of an offence under this Head 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.

Head 22: Offence of breaching a mandatory code of conduct

This Head provides that:

- (1) It shall be an offence for a person to whom a mandatory code of conduct applies to fail to comply with that code of conduct during the relevant period of application of the code of conduct.
- (2) A person found guilty of an offence under this Head 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.

Head 23: Offences related to disinformation and misinformation

This Head provides that:

- (1) A person who, or any director of a body or association which, during the election period [or election campaign period] with the intention of influencing the results of an election or referendum, or of attacking the fairness or integrity of that election or referendum, makes or publishes:
 - (a) a false statement of a candidate's withdrawal from an election; or
 - (b) a false statement of fact with the intention of causing one or more voter to abstain from voting, including but not limited to a statement is misinformation within the meaning of Head 1; or
 - (c) a statement online that purports to be from another person;
 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 Head 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.

Head 24: Offence of using an undisclosed bot to mislead persons for the purpose of influencing an election

This Head provides that:

- (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,
 - (b) are designed or intended to mislead persons as to the bots' artificial identity, and

- (c) may cause public harm

shall be guilty of an offence.

- (2) It shall be a defence to show that the use of the bot 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 Head 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.

[Head 25 has been deleted]

Head 26: Offence of failure to comply with obligations placed on online platforms

This Head provides that:

- (1) A failure by an online platform to comply with its obligations under Heads 6 and 7 shall be an offence.
- (2) A person found guilty of an offence under this Head 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.

[Head 27 has been deleted]

Chapter 9: Miscellaneous provisions

Head 28: Immunity from suit

This Head provides that:

- (1) The Commission shall perform its duties bona fide and in the interests of the public and electorate in general, having regard to the resources available. No

action shall lie against it by reason merely of an alleged failure to secure its aims.

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

Head 29: Service of notices or orders issued under Head 10

This Head provides that:

Service of a notice or order issued under Head 10 shall be in accordance with Head 128C.