



Number 27 of 2023

Control of Exports Act 2023



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CONTROL OF EXPORTS ACT 2023

An Act to provide for control of the export of items that can be used for civil or military purposes and for control of the provision of brokering services or technical assistance in respect of, or control of transit of, those items; to give full effect to Council Regulation (EU) No. 2021/821 of 20 May 2021¹ setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast); to provide for control of the export of military items and for control of the provision of brokering services in respect of, or control of transit of, those items; to provide for the Minister to grant authorisations to undertake certain activities relating to dual-use items and military items; to provide for a process for appealing certain decisions of the Minister with due regard to the potentially sensitive nature of the subject matter of the appeal, and for those purposes to establish a panel of persons to deal with appeals; to provide for enforcement; to provide for information sharing; to provide for the repeal of the Control of Exports Act 2008; and to provide for related matters.

[25th October, 2023]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement

1. (1) This Act may be cited as the Control of Exports Act 2023.
- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Interpretation

2. (1) In this Act—
“Act of 2008” means the Control of Exports Act 2008;

¹ OJ No. L206, 11.6.2021, p. 1

“adjudicator” has the meaning given to it by *section 39*;

“appellant” has the meaning given to it by *section 43*;

“applicant” means a person who applies under *Part 4* for an authorisation;

“authorisation” means an authorisation to undertake a relevant activity;

“basic scientific research” has the same meaning as it has in the General Technology Note or the Nuclear Technology Note set out in Annex I;

“broker”—

(a) in so far as it relates to a dual-use item, has the meaning given to it by *section 9*, and

(b) in so far as it relates to a military item, has the meaning given to it by *section 22*;

“brokering services”—

(a) in so far as it relates to a dual-use item, has the meaning given to it by *section 9*, and

(b) in so far as it relates to a military item, has the meaning given to it by *section 22*;

“company” means a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act;

“compliance notice” means a compliance notice given under *section 61*;

“Council Common Position 2008/944/CFSP” means Council Common Position 2008/944/CFSP of 8 December 2008² defining common rules governing control of exports of military technology and equipment amended by Council Decision (CFSP) 2019/1560³;

“cyber-surveillance item” has the same meaning as it has in Article 2;

“Defence Forces” has the same meaning as it has in section 2 of the Defence Act 1954;

“dual-use item” has the same meaning as it has in Article 2;

“Dual-use Regulation” means Council Regulation (EU) No. 2021/821 of 20 May 2021⁴ setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast) amended by Regulation (EU) 2016/2339 of the European Parliament and of the Council of 14 December 2016⁵, Regulation (EU) 2019/474 of the European Parliament and of the Council of 19 March 2019⁶, Regulation (EU) 2019/632 of the European Parliament and of the Council of 17 April 2019⁷, Regulation (EU) 2022/2399 of the European Parliament and of the Council of 23 November 2022⁸, Commission Delegated Regulation (EU)

2 OJ No. L335, 13.12.2008, p. 99

3 OJ No. L239, 17.9.2019, p. 16

4 OJ No. L206, 11.6.2021, p. 1

5 OJ No. L354, 23.12.2016, p. 32

6 OJ No. L83, 25.3.2019, p. 38

7 OJ No. L111, 25.4.2019, p. 54

8 OJ No. L317, 9.12.2022, p. 1

2022/1 of 20 October 2021⁹ and Commission Delegated Regulation (EU) 2022/699 of 2 May 2022¹⁰;

“export”—

- (a) in so far as it relates to a dual-use item, has the meaning given to it by *section 9*, and
- (b) in so far as it relates to a military item, has the meaning given to it by *section 22*;

“exporter”—

- (a) in so far as it relates to a dual-use item, has the meaning given to it by *section 9*, and
- (b) in so far as it relates to a military item, has the meaning given to it by *section 22*;

“General Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016¹¹ on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

“in the public domain” has the same meaning as it has in the General Technology Note or the Nuclear Technology Note set out in Annex I;

“International United Nations Force” has the same meaning as it has in the Defence (Amendment) Act 2006;

“military end-use” means—

- (a) incorporation into a military item or an item on the national military list of another Member State,
- (b) use of production, test or analytical equipment and components therefor, for the development, production or maintenance of a military item or an item on the national military list of another Member State, or
- (c) use of any unfinished products in a plant for the production of a military item or an item on the national military list of another Member State;

“military item” has the meaning given to it by *section 23(2)*;

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

“multilateral non-proliferation regimes” means the Australia Group, Missile Technology Control Regime, Nuclear Suppliers Group, Wassenaar Arrangement, Zangger Committee and the Chemical Weapons Convention;

“national military export control list” means the list for the time being prescribed under *section 23(1)*;

9 OJ No. L3, 6.1.2022, p. 1

10 OJ No. L130I, 4.5.2022, p. 1

11 OJ No. L119, 4.5.2016, p. 1

“national military list of another Member State” means a military list established by a Member State other than the State which has the same force and effect in that Member State as the national military export control list;

“Order of 2009” means the Control of Exports (Dual Use Items) Order 2009 (S.I. No. 443 of 2009);

“personal data” has the same meaning as it has in the General Data Protection Regulation;

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

“provider of technical assistance” has the same meaning as it has in Article 2;

“record” means any memorandum, book, plan, map, drawing, diagram, pictorial or graphic work or other document, any photograph, film or recording (whether of sound or images or both), any form (including machine-readable form) or thing in which information is held or stored manually, mechanically or electronically and anything that is a part, copy, transcript or reproduction in any form, of any of the foregoing or is a combination of two or more of any of the foregoing;

“Regulations of 2018” means the Control of Exports (Appeals) Regulations 2018 (S.I. No. 457 of 2018);

“Regulations of 2021” means the Control of Exports (Brokering Activities, Goods and Technology) Regulations 2021 (S.I. No. 207 of 2021);

“relevant activity”, in so far as an authorisation is required for the activity under the Dual-use Regulation or *Part 2* or *Part 3*, means—

- (a) the export of a relevant item,
- (b) the provision of brokering services in respect of a relevant item,
- (c) the provision of technical assistance in respect of a dual-use item,
- (d) the transit of a relevant item, or
- (e) the transfer of a dual-use item from the State to a Member State other than the State;

“relevant decision” means a decision under—

- (a) *paragraph (b) or (c) of subsection (4) or subsection (8) of section 29,*
- (b) *subsection (5) or (7) of section 34, or*
- (c) *subsection (5) or (7) of section 35;*

“relevant item” means—

- (a) a dual-use item or cyber-surveillance item in respect of which an authorisation is required under the Dual-use Regulation or *Part 2*, or
- (b) a military item in respect of which an authorisation is required under *Part 3*;

“relevant material” means any decision, evidence, document, material or other matter that—

- (a) is relevant to an appeal under *section 43* or *50*, any further appeal following such an appeal or an application under *section 51*,
- (b) is not publicly available, and
- (c) relates to the security or public order of the State;

“relevant notice” means a notice under—

- (a) *subsection (3), (4), (6) or (7) of section 10*,
- (b) *subsection (2) or (4) of section 14*, or
- (c) *subsection (2) or (4) of section 16*;

“relevant person” means—

- (a) an exporter, broker or person who transits a relevant item,
- (b) a provider of technical assistance in respect of a dual-use item, or
- (c) a person who transfers a dual-use item from the State to a Member State other than the State;

“technical assistance” has the same meaning as it has in Article 2;

“technical data” includes blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instruction in writing or recorded on media or devices such as disk, tape or read only memories;

“technology” means specific information necessary for the development, production or operation, installation, maintenance, repair, overhaul or refurbishing of a dual-use or military item, which information takes the form of technical data or technical assistance;

“third country” means a country or territory other than the State or another Member State;

“transit”—

- (a) in so far as it relates to a dual-use item, has the meaning given to it by *section 9*, and
- (b) in so far as it relates to a military item, has the meaning given to it by *section 22*;

“Union Customs Code” means Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013¹² laying down the Union Customs Code (recast).

(2) In this Act—

- (a) a reference to a numbered Article is a reference to the Article so numbered of the Dual-use Regulation, and

¹² OJ No. L 269, 10.10.2013, p. 1

- (b) a reference to a numbered Annex is a reference to the Annex so numbered of the Dual-use Regulation.
- (3) A word or expression that is used in this Act and is also used in the Union Customs Code, the Dual-use Regulation or Council Common Position 2008/944/CFSP, has, unless the context otherwise requires, the same meaning in this Act as it has in the Union Customs Code, the Dual-use Regulation or Council Common Position 2008/944/CFSP.

Competent authority

- 3. The Minister shall be the competent authority in the State for the purposes of the Dual-use Regulation.

Reporting on operation of Act

- 4. (1) The Minister shall—
 - (a) cause a report to be prepared on the operation of this Act not more than 15 months after this section comes into operation and not less than once every 12 months thereafter, and
 - (b) cause a copy of the report to be laid before each House of the Oireachtas as soon as practicable after it has been prepared.
- (2) A report prepared under this section shall, subject to *subsection (3)*, include—
 - (a) aggregated details on the number of applications for and grants of authorisations,
 - (b) aggregated details on the number of relevant notices given,
 - (c) aggregated details on the number of directions given under *Part 2* or *Part 3*,
 - (d) aggregated details on enforcement, including the number of compliance notices given,
 - (e) information on sectoral trends in policy relating to dual-use or military items, and
 - (f) any other matters relating to the operation of this Act that the Minister considers to be relevant.
- (3) A report under this section shall not include—
 - (a) commercially sensitive information,
 - (b) personal data, or
 - (c) information the disclosure of which would create a risk to the security or public order of the State.

Regulations

- 5. (1) The Minister may, having consulted with such other Minister of the Government as he or she considers appropriate, by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.

- (2) Without prejudice to any provision of this Act, regulations under this section may—
 - (a) contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations, and
 - (b) apply either generally or to such class or classes of export, relevant item, or relevant activity as may be specified in the regulations.
- (3) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Expenses

6. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure, National Development Plan Delivery and Reform, be paid out of monies provided by the Oireachtas.

Service of notices or documents

7. (1) A notice or other document that is required to be served on or given to a person under this Act shall be in writing addressed to the person concerned by name, and may be so served on or given to the person in one of the following ways:
 - (a) by delivering it to the person;
 - (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;
 - (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address;
 - (d) by electronic means, in a case in which the person has given notice in writing to the person giving the notice concerned of his or her consent to the notice (or notices of a class to which the notice belongs) being given to him or her in that manner.
- (2) For the purpose of this section, a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

Repeals and revocations

8. (1) The Act of 2008 is repealed.

- (2) Each of the following instruments is revoked:
 - (a) the Order of 2009;
 - (b) the Regulations of 2018;
 - (c) the Regulations of 2021.

PART 2

CONTROL OF DUAL-USE ITEMS

Interpretation for Part 2

9. In this Part—

“broker” has the same meaning as it has in Article 2;

“brokering services” has the same meaning as it has in Article 2;

“export” has the same meaning as it has in Article 2;

“exporter” has the same meaning as it has in Article 2;

“transit” has the same meaning as it has in Article 2;

“use” in relation to use of a dual-use or cyber-surveillance item means the item may be used in its entirety or in part as a dual-use or cyber-surveillance item.

Obligations of exporter under Article 3, 4 or 5

- 10.** (1) An exporter who contravenes Article 3.1 shall be guilty of an offence.
- (2) An exporter who contravenes Article 4.1 shall be guilty of an offence.
- (3) (a) Where an exporter is aware that a dual-use item not specified in Annex I that he or she proposes to export is intended for use in a manner specified in paragraph (a), (b) or (c) of Article 4.1, he or she shall, at least 60 days before the export, as required by Article 4.2, give notice to the competent authority.
- (b) An exporter who contravenes *paragraph (a)* shall be guilty of an offence.
- (4) (a) Where an exporter has grounds to suspect that a dual-use item not specified in Annex I that he or she proposes to export is or may be intended for use in a manner specified in paragraph (a), (b) or (c) of Article 4.1, he or she shall, at least 60 days before the export, give notice to the competent authority of his or her grounds to so suspect.
- (b) An exporter who contravenes *paragraph (a)* shall be guilty of an offence.
- (5) An exporter who contravenes Article 5.1 shall be guilty of an offence.
- (6) (a) Where an exporter is aware, following the carrying out of due diligence, that a cyber-surveillance item not specified in Annex I that he or she proposes to export is intended for use in a manner specified in Article 5.1, he or she shall, at least 60

days before the export, as required by Article 5.2, give notice to the competent authority.

- (b) An exporter who contravenes *paragraph (a)* shall be guilty of an offence.
- (7) (a) Where an exporter has grounds to suspect that a cyber-surveillance item not specified in Annex I that he or she proposes to export is or may be intended for use in a manner specified in Article 5.1, he or she shall, at least 60 days before he or she exports the cyber-surveillance item, give notice to the competent authority of his or her grounds to so suspect.
- (b) An exporter who contravenes *paragraph (a)* shall be guilty of an offence.

Provision supplemental to section 10

11. (1) After receipt of a notice referred to in *subsection (3), (4), (6) or (7) of section 10*, the competent authority shall consider the matter and give notice to the exporter of the decision of the authority—
- (a) that an authorisation is not required for the export of the dual-use or cyber-surveillance item the subject of the notice, or
 - (b) directing the exporter to apply for an authorisation to export the dual-use or cyber-surveillance item.
- (2) An exporter who receives a direction under *subsection (1)(b)* in relation to a dual-use or cyber-surveillance item shall not export the item to which the direction relates without an authorisation to do so.
- (3) An exporter who contravenes *subsection (2)* shall be guilty of an offence.

Order of Minister prohibiting export of dual-use item not specified in Annex I

12. (1) The Minister may—
- (a) where he or she is satisfied that it is required for reasons of public security including the prevention of acts of terrorism or for human rights considerations, and
 - (b) having consulted with such other Minister of the Government as he or she considers appropriate,
- by order prohibit the export without an authorisation of the dual-use item not specified in Annex I as is specified in the order.
- (2) An exporter who exports a dual-use item specified in an order under *subsection (1)* without an authorisation shall be guilty of an offence.

Direction that authorisation required to export dual-use item not specified in Annex I

13. (1) Notwithstanding that a dual-use item not specified in Annex I has not been specified in an order under *section 12*, where the competent authority is satisfied that an authorisation to export the item is required for reasons of public security including the

prevention of acts of terrorism or for human rights considerations, the competent authority may give notice to an exporter directing him or her to apply for an authorisation to export the dual-use item.

- (2) An exporter who exports a dual-use item in contravention of a direction under *subsection (1)* shall be guilty of an offence.

Obligations of broker under Article 6

- 14.** (1) A broker who contravenes Article 6.1 shall be guilty of an offence.

- (2) (a) Where a broker is aware that a dual-use item specified in Annex I in relation to which he or she proposes to provide brokering services is intended for use in a manner specified in paragraph (a), (b) or (c) of Article 4.1, he or she shall, at least 60 days before the provision of the brokering services, give notice to the competent authority.

(b) A broker who contravenes *paragraph (a)* shall be guilty of an offence.

- (3) A broker who, having been informed by the competent authority that a dual-use item not specified in Annex I is or may be intended for use in a manner specified in paragraph (a), (b) or (c) of Article 4.1, provides brokering services in relation to the dual-use item shall be guilty of an offence.

- (4) (a) Where a broker has grounds to suspect that a dual-use item, whether or not specified in Annex I, in relation to which he or she proposes to provide brokering services is or may be intended for use in a manner specified in paragraph (a), (b) or (c) of Article 4.1, he or she shall, at least 60 days before he or she provides brokering services, give notice to the competent authority of his or her grounds to so suspect.

(b) A broker who contravenes *paragraph (a)* shall be guilty of an offence.

Provision supplemental to section 14

- 15.** (1) After receipt of a notice referred to in *subsection (2)* or *(4)* of *section 14*, the competent authority shall consider the matter and give notice to the broker of the decision of the authority—

(a) that an authorisation is not required for the provision of brokering services in relation to the dual-use item the subject of the notice, or

(b) directing the broker to apply for an authorisation for the provision of brokering services in relation to the dual-use item.

- (2) A broker who receives a direction under *subsection (1)(b)* in relation to a dual-use item shall not provide brokering services in relation to the dual-use item without an authorisation.

- (3) A broker who contravenes *subsection (2)* shall be guilty of an offence.

Obligations of provider of technical assistance under Article 8

16. (1) Subject to *subsection (5)*, a provider of technical assistance who contravenes Article 8.1 shall be guilty of an offence.
- (2) (a) Subject to *subsection (5)*, where a provider of technical assistance is aware that a dual-use item specified in Annex I in relation to which he or she proposes to provide technical assistance is intended for use in a manner specified in paragraph (a), (b) or (c) of Article 4.1, he or she shall, at least 60 days before the provision of the technical assistance, give notice to the competent authority.
- (b) A provider of technical assistance who contravenes *paragraph (a)* shall be guilty of an offence.
- (3) Subject to *subsection (5)*, a provider of technical assistance who, having been informed by the competent authority that a dual-use item not specified in Annex I is or may be intended for use in a manner specified in paragraph (a), (b) or (c) of Article 4.1, provides technical assistance in relation to the dual-use item, shall be guilty of an offence.
- (4) (a) Subject to *subsection (5)*, where a provider of technical assistance has grounds to suspect that a dual-use item, whether or not specified in Annex I, in relation to which he or she proposes to provide technical assistance is or may be intended for use in a manner specified in paragraph (a), (b) or (c) of Article 4.1, he or she shall, at least 60 days before he or she provides the technical assistance, give notice to the competent authority of his or her grounds to so suspect.
- (b) A provider of technical assistance who contravenes *paragraph (a)* shall be guilty of an offence.
- (5) This section shall not apply to the provision of technical assistance in relation to a dual-use item where the technical assistance—
- (a) is provided within or into the territory of a destination specified in Part 2 of Section A of Annex II,
- (b) takes the form of transferring information that is in the public domain or consists of basic scientific research,
- (c) is provided to the Permanent Defence Forces on the basis of tasks assigned to them,
- (d) is provided for a basis or purpose which is cited in the exemptions from items of the Missile Technology Control Regime in Part I of Annex IV, or
- (e) is the minimum necessary for the installation, operation, maintenance (including checking) or repair of a dual-use item for which an authorisation has been granted and is in force.

Provision supplemental to section 16

17. (1) After receipt of a notice referred to in *subsection (2) or (4) of section 16*, the competent authority shall consider the matter and give notice to the provider of technical assistance of the decision of the authority—
- (a) that an authorisation is not required for the provision of technical assistance in relation to the dual-use item the subject of the notice, or
 - (b) directing the provider of technical assistance to apply for an authorisation for the provision of technical assistance in relation to the dual-use item.
- (2) A provider of technical assistance who receives a direction under *subsection (1)(b)* in relation to a dual-use item shall not provide technical assistance in relation to the dual-use item without an authorisation.
- (3) A provider of technical assistance who contravenes *subsection (2)* shall be guilty of an offence.

Order of Minister prohibiting transit of certain dual-use items

18. (1) The Minister may—
- (a) where he or she is satisfied that it is required because a non-Union dual-use item specified in Annex I or a dual-use item not specified in Annex I will or may be used in a manner specified in paragraph (a), (b) or (c) of Article 4.1, and
 - (b) having consulted with such other Minister of the Government as he or she considers appropriate,
- by order prohibit the transit through or from the State of the non-Union dual-use item or dual-use item as may be specified in the order.
- (2) A person who transits a dual-use item specified in an order under *subsection (1)* through or from the State shall be guilty of an offence.

Direction that authorisation required for transit of dual-use items specified in Annex I

19. (1) Notwithstanding that a dual-use item specified in Annex I has not been specified in an order made under *section 18(1)*, where the competent authority is satisfied an authorisation to transit the dual-use item specified in Annex I is required because the dual-use item will or may be used in a manner specified in paragraph (a), (b) or (c) of Article 4.1, the competent authority may, in accordance with Article 7.2, give notice to a person directing him or her to apply for an authorisation to transit the dual-use item.
- (2) A person who transits a dual-use item through or from the State in contravention of a direction under *subsection (1)* shall be guilty of an offence.

Obligations under Article 11

- 20.** (1) A person who contravenes Article 11.1 shall be guilty of an offence.
- (2) (a) A person may not, without an authorisation, transfer a dual-use item not specified in Annex IV from the State to another Member State where he or she knows or has been informed by the competent authority that the conditions referred to in paragraphs (a), (b) and (c) of Article 11.2 apply to the item.
- (b) A person who transfers a dual-use item in contravention of *paragraph (a)* shall be guilty of an offence.

Provision relating to decision of competent authority following receipt of relevant notice

- 21.** (1) Subject to *subsection (3)*, the competent authority shall make a decision in relation to a relevant notice received by it and give notice referred to in *section 11(1), 15(1) or 17(1)* as soon as may be after receipt of the relevant notice.
- (2) The competent authority may, having received a relevant notice, request such further information from the person who gave the relevant notice as the authority considers necessary to make its decision referred to in *sections 11(1), 15(1) and 17(1)*.
- (3) The competent authority shall not consider a relevant notice received by it where the person who gave the relevant notice fails to furnish any further information requested under *subsection (2)*.

PART 3

CONTROL OF MILITARY ITEMS

Interpretation for Part 3

- 22.** In this Part—

“broker” means a person who provides brokering services, within the meaning of this Part, from the customs territory of the European Union into the territory of a third country;

“brokering services” means—

- (a) negotiating or arranging transactions that may involve the transfer of a military item from a third country to another third country, or
- (b) buying or selling or arranging the transfer of a military item, owned by the provider of the brokering service, from a third country to another third country;

“Common Military List of the European Union” means the list referred to in Article 346(2) of the Treaty on the Functioning of the European Union which was drawn up on 15 April 1958 and has been updated periodically by the Council;

“export” means any of the following:

- (a) an export procedure within the meaning of Article 269 of the Union Customs Code;
- (b) a re-export within the meaning of Article 270 of the Union Customs Code but not including items in transit through the customs territory of the European Union;
- (c) transmission of software or technology by electronic media including by fax, telephone, electronic mail or any other electronic means to a destination outside the European Union, including making available in an electronic form such software and technology to legal and natural persons and partnerships outside the European Union;
- (d) oral transmission of technology when the technology is described over the telephone;

“exporter” means—

- (a) an individual carrying items to be taken out of the customs territory of the European Union where these items are contained in the private individual’s personal baggage, or
- (b) in all other cases—
 - (i) a person established in the customs territory of the European Union who has the power to determine and has determined that the items are to be taken out of that customs territory, or
 - (ii) any person established in the customs territory of the European Union who is a party to a contract under which items are to be taken out of that customs territory;

“transit” means—

- (a) the operation of transport of goods leaving the customs territory of the European Union and passing through the territory of one or more third countries with a final destination in another third country, or
- (b) the operation of transport of goods leaving the customs territory of the European Union and intended for re-importation into that customs territory within a period not exceeding 24 months.

National military export control list

- 23.** (1) The Minister, having consulted with such other Minister of the Government as he or she considers appropriate, may prescribe a list of items, other than dual-use items, which shall be known as the national military export control list.
- (2) An item for the time being prescribed under *subsection (1)* to be on the national military export control list shall be a “military item”.
- (3) The Minister may prescribe an item to be a military item where—
- (a) the item is included on the Common Military List of the European Union,

- (b) the item has been specially designed, developed or modified significantly for military purposes,
 - (c) it is necessary for, and proportionate to, the protection of the essential interests of the State's security, which are connected with the production of or trade in items listed in the Common Military List of the European Union, and
 - (d) it does not or will not adversely affect the conditions of competition in the internal market regarding products which are not intended for specifically military purposes.
- (4) Before prescribing an item to be on the national military export control list the Minister shall have regard to—
- (a) the State's commitment to multilateral non-proliferation regimes,
 - (b) the State's obligations under Council Common Position 2008/944/CFSP, and
 - (c) reasons of public security.

Control on export of military item

- 24.** (1) Subject to *section 27*, an exporter shall not export a military item unless he or she has been granted an authorisation for that export.
- (2) An exporter who contravenes *subsection (1)* shall be guilty of an offence.

Control on provision of brokering services in respect of military item

- 25.** (1) Subject to *subsections (2) and (3)*, a broker shall not provide brokering services in respect of a military item, where that item is being exported—
- (a) from one third country to another third country,
 - (b) from the State to a third country, or
 - (c) from a Member State other than the State to a third country,
- unless he or she has been granted an authorisation for the provision of the brokering services.
- (2) *Subsection (1)* shall apply to a broker—
- (a) in the State, who provides part only of the brokering services required in respect of a military item, or
 - (b) who provides brokering services in respect of a military item outside the State and is—
 - (i) an Irish citizen, or
 - (ii) a company or another body corporate or unincorporated body of persons constituted and otherwise subject to the laws of the State.
- (3) *Subsection (1)* shall not apply to a broker who provides brokering services in respect of a military item outside the State, pursuant to an authorisation or other licence or

consent for the provision of the brokering services with like effect to an authorisation, granted to the person according to the laws of a Member State other than the State.

- (4) A broker who contravenes *subsection (1)* shall be guilty of an offence.

Control on transit of military item

26. (1) A person shall not transit a military item through or from the State unless he or she has been granted an authorisation for the transit.

- (2) A person who contravenes *subsection (1)* shall be guilty of an offence.

Exemption for Defence Forces or Garda Síochána

27. The export of a military item shall not be an offence under *section 24* where the export is carried out on a temporary basis—

- (a) by the Defence Forces for any purpose connected with the despatch for service outside the State, under the provisions of the Defence Acts 1954 to 2015, of a contingent or member of the Defence Forces or for the purpose of—

(i) such military item being repaired, overhauled, refitted, modified, tested or maintained, and returned to the State,

(ii) such military item being used at international competitions, or

(iii) the testing of munitions,

or

- (b) by the Garda Síochána for any purpose connected with the despatch for service outside the State under the provisions of the Garda Síochána Act 2005 of a member of the Garda Síochána or for the purpose of—

(i) such military item being repaired, overhauled, refitted, modified, tested or maintained, and returned to the State,

(ii) such military item being used at international competitions, or

(iii) the testing of munitions.

PART 4

AUTHORISATION

Application for authorisation

28. (1) A person who requires an authorisation under the Dual-use Regulation or this Act shall, in accordance with this section, apply to the Minister for the authorisation.

- (2) An application for an authorisation shall—

(a) be in writing, in such form as may be prescribed,

- (b) specify the relevant activity or class of relevant activity in respect of which the applicant is applying for an authorisation,
 - (c) include, as respects the relevant activity or class specified in accordance with *paragraph (b)*, certification by the applicant as to the proposed use to which the item for which the authorisation is sought shall be put (in this section referred to as an “end-use certificate”), and
 - (d) contain such other information as may be prescribed concerning the applicant, agent, consignee, end-user, description and identification of the dual-use or military item, proposed end-use of the item, intended number of dual-use or military items proposed to be exported, and duration of the authorisation.
- (3) The Minister may, having received an application for an authorisation, request such further information from the applicant as the Minister considers necessary to make a decision under *section 29*.
- (4) The Minister shall not consider an application for an authorisation if the applicant fails to furnish further information requested under *subsection (3)*.

Decision of Minister on application for authorisation

- 29.** (1) In considering an application for an authorisation the Minister may consult with any other Minister of the Government or such other person as he or she considers appropriate.
- (2) The Minister shall, in considering an application for an authorisation—
- (a) for a dual-use item, take account of all relevant considerations including the matters set out in paragraphs (a) to (d) of Article 15, and
 - (b) for a military item, take account of the criteria set out in Article 2 of Council Common Position 2008/944/CFSP.
- (3) For the purpose of making a decision on an application for an authorisation, the Minister, in addition to complying with *subsection (2)* shall consider—
- (a) the information provided in the application,
 - (b) any further information furnished by the applicant pursuant to a request under *section 28(3)*, and
 - (c) any other matter that the Minister considers appropriate.
- (4) The Minister, having considered an application for an authorisation, shall decide—
- (a) to grant an authorisation,
 - (b) to grant an authorisation subject to conditions, or
 - (c) to refuse to grant an authorisation.
- (5) The Minister shall give notice to an applicant informing him or her of the decision under *subsection (4)* as soon as practicable after it is made and shall, subject to *subsection (8)*, provide reasons for the decision.

- (6) The Minister shall refuse to grant an authorisation if—
- (a) the granting of the authorisation would contravene the Dual-use Regulation, *Part 2* or *Part 3*,
 - (b) the applicant has, in purported compliance with this Act, provided information to the Minister which the applicant knows to be false or misleading in a material particular, or in respect of which the applicant is reckless as to whether or not it is false or misleading in a material particular,
 - (c) the applicant has committed an offence under this Act or any other enactment relating to the control of exports such that in the opinion of the Minister, the applicant is not a fit and proper person to hold an authorisation,
 - (d) in the opinion of the Minister, the granting of the authorisation would affect, or be likely to affect, the security or public order of the State, or
 - (e) in the opinion of the Minister, the granting of the authorisation would be inconsistent with European Union and international export control obligations, national security policy or human rights considerations.
- (7) The Minister shall make a decision on an application for an authorisation as soon as may be after receipt of the application.
- (8) Where the Minister believes that providing reasons for a decision on an application would create a risk to the security or public order of the State, he or she—
- (a) may decide not to provide the applicant with such reasons to the extent necessary in order to avoid or minimise such risk, and
 - (b) shall include in the notice under *subsection (5)* a statement to the effect that he or she is declining to give reasons for the decision under this subsection.
- (9) The Minister shall grant an authorisation in such form, including electronic form, as he or she may determine.

Prohibition on transfer of authorisation

- 30.** (1) A holder of an authorisation shall not transfer the authorisation to another person.
- (2) A person who transfers an authorisation in contravention of *subsection (1)* shall be guilty of an offence.
- (3) Any purported transfer of an authorisation in contravention of *subsection (1)* shall be void.

Requirement to keep records

- 31.** (1) A holder of an authorisation who—
- (a) exports a relevant item,
 - (b) provides brokering services in respect of a relevant item,
 - (c) provides technical assistance in respect of a dual-use item,

- (d) transits a relevant item, or
 - (e) transfers a dual-use item from the State to another Member State,
- under the authorisation shall make and keep a detailed record identifying each item exported, transmitted or transferred, or each brokering service or technical assistance provided, as the case may be, under the authorisation.
- (2) Where *subsection (1)(a)* applies, the record referred to in *subsection (1)* shall include, in particular, commercial documents such as invoices, manifests and transport and other dispatch documents containing sufficient information to allow the following to be identified:
 - (a) a description of the exported item;
 - (b) the quantity of the exported item;
 - (c) the name and address of the exporter and of the consignee;
 - (d) where known, the end-use and end-user of the item.
 - (3) Where *paragraph (b)* or *(c)* of *subsection (1)* applies, the record referred to in *subsection (1)* shall contain sufficient information to allow the following to be identified:
 - (a) a description of the item;
 - (b) the period during which the item was the subject of brokering services or technical assistance;
 - (c) the destination of the item and services or assistance;
 - (d) the countries concerned by the services or assistance.
 - (4) A record referred to in *subsection (1)* shall be kept for a period of not less than 5 years from the end of the calendar year in which the relevant activity referred to in *paragraph (a), (b), (c), (d)* or *(e)* was carried out (in this section referred to as the “retention period”).
 - (5) The holder of the authorisation shall make the record and documents contained therein available for inspection by or on behalf of the Minister at any time during the retention period.
 - (6) The holder of the authorisation shall after the retention period make arrangements, other than where the Minister otherwise directs or where legal proceedings are in being relating to the authorisation concerned, for those records to be destroyed or deleted.
 - (7) A person who fails to comply with *subsection (1), (2), (3), (4), (5)* or *(6)* shall be guilty of an offence.

Reporting

- 32. (1) The Minister may at any time give notice to the holder of an authorisation requesting him or her to provide a report to the Minister, in the form and in relation to the period

specified in the request, containing information regarding the carrying out by the holder of the authorisation of the activities to which the authorisation relates.

- (2) The holder of an authorisation shall provide the information requested by the Minister within the period specified in the request.
- (3) The holder of an authorisation shall, in relation to the authorisation, give notice to the Minister as soon as practicable, but in any event not later than 30 days from the date the matter comes to the knowledge of the holder, of any material matter.
- (4) An applicant shall, in relation to an application, give notice to the Minister as soon as practicable, but in any event not later than 30 days from the date the matter comes to the knowledge of the applicant, of any material matter.
- (5) In *subsection (3)*, “material matter” includes—
 - (a) any error on the face of the authorisation of which the holder of the authorisation is aware,
 - (b) any change in circumstances that is likely to have a bearing on the carrying out of the relevant activity to which the authorisation refers by the holder of the authorisation,
 - (c) any change to the information provided by the holder of the authorisation under *section 28(2)* or prescribed under *section 36(b)*, or
 - (d) any error made by the holder of the authorisation in the information provided by the holder under *section 28(2)* or prescribed under *section 36(b)*.
- (6) A person who fails to comply with *subsection (2)* or *(3)* shall be guilty of an offence.

Requirement to comply with authorisation

33. (1) A person shall carry out the relevant activity to which the authorisation refers in accordance with any conditions to which the authorisation is subject.
- (2) A person who fails to comply with *subsection (1)* shall be guilty of an offence.

Revocation, modification or suspension of authorisation

34. (1) The Minister may revoke or modify an authorisation or suspend the operation of an authorisation relating to the export of, or provision of brokering services or technical assistance in respect of a dual-use item or relating to a military item where—
 - (a) it appears to him or her to be necessary having considered—
 - (i) a report under *section 32(1)*,
 - (ii) a notice of a material matter under *section 32(3)*,
 - (iii) in relation to a military item, the requirement to give effect to any international agreement to which the State is a party and which has been ratified by the State, or
 - (iv) a request in that behalf to the Minister by the holder of the authorisation,

- (b) it appears to the Minister that relevant information was not provided with the application for the authorisation,
 - (c) in the absence of a notice under *section 32(3)*, the Minister becomes aware of a material matter within the meaning of *section 32(5)*, or
 - (d) the holder of the authorisation fails to comply with an order of the Circuit Court under *section 63*.
- (2) Before revoking or modifying an authorisation or suspending the operation of an authorisation under this section the Minister shall consider, as appropriate, the matters referred to in *paragraph (a)* or *(b)* of *section 29(2)*.
- (3) Where the Minister proposes to revoke or modify an authorisation or suspend the operation of an authorisation under this section, he or she shall, in accordance with procedures prescribed under *section 36*, give notice to the holder of the authorisation of the proposal and shall give the holder an opportunity to make observations in writing to it in relation to the matter.
- (4) The Minister may give notice to any person he or she considers appropriate of a proposal to revoke or modify an authorisation or suspend the operation of an authorisation and may request information in relation to the proposal from the person, to be provided to the Minister within the period specified in the notice.
- (5) The Minister may, having considered any observations made by the holder of the authorisation and any information provided under *subsection (4)* decide to revoke or modify the authorisation or suspend the operation of the authorisation or attach conditions to that revocation, modification or suspension and shall give notice to the holder of the authorisation of his or her decision which, in the case of a decision to suspend the operation of an authorisation, shall include the period of the suspension, and, subject to *subsection (7)*, provide the reasons for it and that the decision may be appealed under *section 43*.
- (6) Where the Minister attaches conditions under *subsection (5)* to the revocation, modification or suspension of the operation of an authorisation, the person who was the holder of the authorisation in the case of a revocation, or is the holder, in the case of a modification or suspension, shall be liable to comply with the conditions notwithstanding that revocation, modification or suspension.
- (7) Where the Minister believes that providing reasons for his or her decision to revoke, modify or suspend an authorisation would create a risk to the security or public order of the State, he or she—
- (a) may decide not to provide the recipient of the notice with such reasons to the extent necessary in order to avoid or minimise such risk, and
 - (b) shall include in the notice under *subsection (5)* a statement to the effect that he or she is declining to give reasons under this subsection for the decision.

Termination of suspension

- 35.** (1) A holder of an authorisation whose authorisation has been suspended under *section 34* may apply to the Minister before the expiry of the period of the suspension, upon the compliance by the holder with a condition attached under *section 34(6)* or having otherwise remedied the reasons for the suspension and in accordance with regulations under *section 36*, to terminate the suspension.
- (2) The holder of an authorisation who makes an application under *subsection (1)* shall furnish information, in such form as may be specified by the Minister, to satisfy the Minister that the suspension of the authorisation may be terminated.
- (3) The Minister may request the holder of the authorisation to furnish further information for the purpose of making a decision on an application under *subsection (1)*.
- (4) Where the Minister makes a request under *subsection (3)*, the application under *subsection (1)* shall not be considered until the holder of the authorisation concerned complies with that request.
- (5) The Minister, having considered an application under *subsection (1)* and any information furnished under *subsection (2)* or *(3)*, may decide to—
- (a) terminate the suspension of the authorisation, or
 - (b) refuse to terminate the suspension of the authorisation.
- (6) The Minister shall give notice to the holder of the authorisation of his or her decision, and, subject to *subsection (7)*, provide the reasons for it and that the decision may be appealed under *section 43*.
- (7) Where the Minister believes that providing reasons for his or her decision under *subsection (5)* would create a risk to the security or public order of the State, he or she—
- (a) may decide not to provide the recipient of the notice with such reasons to the extent necessary in order to avoid or minimise such risk, and
 - (b) shall include in the notice under *subsection (5)* a statement to the effect that he or she is declining to give reasons under this subsection for the decision.

Regulations relating to authorisations

- 36.** The Minister may, in relation to authorisations and, where an authorisation relates to an activity under the Dual-use Regulations or *Part 2*, for the purpose of giving further effect to the Dual-use Regulations, prescribe any or all of the following matters:
- (a) the form and manner in which an application shall be made, including by electronic means;
 - (b) any of the information referred to in *section 28(2)(d)*;
 - (c) procedure relating to information sought on foot of a request for information or further information under *section 28(3)*, *34(4)* or *35(3)*;

- (d) fees to be paid by the applicant in connection with an application;
- (e) classes of authorisation;
- (f) conditions that may be attached to each authorisation of a prescribed class, including—
 - (i) the duration of the authorisation,
 - (ii) the requirement that the holder of the authorisation provides an end-user certificate in respect of all exports, and
 - (iii) general conditions appropriate to the class of authorisation;
- (g) procedures relating to and information to be provided to or sought by the Minister in relation to a material matter;
- (h) procedures relating to and information to be provided to or sought by the Minister for the purposes of revocation or suspension of an authorisation under *section 34* or termination of a suspension under *section 35* and any other matter for the purposes of those sections;
- (i) the form, including electronic form, of an authorisation;
- (j) such other matters as the Minister considers necessary or expedient for the purposes of this section.

PART 5

INTERNAL REVIEWS AND APPEALS

CHAPTER 1

Internal review

Appointment of decision makers or reviewers

- 37.** The Minister may appoint such and so many of his or her officers as he or she considers appropriate—
- (a) to make a relevant decision (in *section 38* referred to as a “decision maker”), or
 - (b) to carry out a review of a relevant decision (in *section 38* referred to as a “reviewer”).

Internal review

- 38.** (1) A person who has been given notice of a relevant decision may, not later than 14 days from the date of the giving of the notice, request in writing (in this section referred to as a “review request”) a review of the relevant decision.
- (2) The review request shall state the reasons why the person making the request wishes the relevant decision to be reviewed.

- (3) The Minister shall, subject to *subsection (4)*, upon receipt of the review request, appoint a reviewer to review the relevant decision.
- (4) The reviewer shall not be the decision maker who made the relevant decision being reviewed and shall be of a grade senior to the grade of the decision maker.
- (5) The reviewer shall, as soon as practicable after being appointed, review the relevant decision, taking into account only the reasons stated in the review request and, as he or she thinks fit may decide to—
 - (a) affirm the relevant decision, or
 - (b) vary the relevant decision.
- (6) The reviewer shall not later than 21 days from the date of making his or her decision under *subsection (5)* give notice to the person who made the review request of the decision and, subject to *subsection (7)*, shall provide the reasons for it.
- (7) Where the reviewer believes that providing reasons for his or her decision under *subsection (5)* would create a risk to the security or public order of the State, he or she—
 - (a) may decide not to provide the person who made the review request with such reasons to the extent necessary in order to avoid or minimise such risk, and
 - (b) shall include in the notice under *subsection (6)* a statement to the effect that he or she is declining to give reasons under this subsection for the decision.
- (8) A notice under *subsection (6)* shall inform the person who made the review request that he or she may, under *section 43*, appeal the decision of the reviewer.
- (9) A person may not bring an appeal under *section 43* in relation to a decision under this section unless—
 - (a) the person made a review request of the relevant decision to which the decision under *subsection (5)* relates,
 - (b) the person has not withdrawn the review request referred to in *paragraph (a)*, and
 - (c) the reviewer has given notice of his or her decision under *subsection (6)*.

CHAPTER 2

Adjudicators

Appointment of adjudicators

- 39.** (1) The Minister—
- (a) may, in accordance with this section, appoint such and so many persons (in this Act referred to as “adjudicators”) to carry out the functions assigned to them by or under this Act, and
 - (b) shall form a panel of persons who have been appointed as adjudicators.
- (2) The Minister shall not appoint a person to be an adjudicator unless—

- (a) the person is a practising solicitor or barrister, within the meaning of the Legal Services Regulation Act 2015, or a former judge of the Circuit Court, High Court, Court of Appeal or Supreme Court,
 - (b) the Minister is satisfied that the person has the requisite knowledge or experience of matters relevant to the functions of an adjudicator, and
 - (c) the Minister is satisfied that it is appropriate for the person, having regard to the security or public order of the State, to carry out the functions of an adjudicator, including by reference to such clearance, verification or background checks as may be prescribed.
- (3) A person—
- (a) to whom the circumstances specified in one or more of *paragraphs (d) to (m) of subsection (8)* applies, or
 - (b) who stands appointed under *section 37*,
- shall not be appointed as an adjudicator.
- (4) The Minister, in so far as practicable and having regard to the knowledge or experience referred to in *subsection (2)(b)*, shall ensure an appropriate gender balance when appointing persons to the panel of adjudicators.
- (5) Subject to this Act, an adjudicator's functions under this Act shall be performed independently.
- (6) An adjudicator—
- (a) shall stand appointed for such period as the Minister may specify,
 - (b) shall be paid such fees and expenses as the Minister may, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, determine, and
 - (c) shall be appointed subject to such terms and conditions as the Minister may specify.
- (7) An adjudicator may at any time give notice to the Minister that he or she is resigning as an adjudicator.
- (8) The appointment of an adjudicator under this section shall cease upon—
- (a) the expiry of a period specified by the Minister under *subsection (6)(a)*,
 - (b) the revocation by the Government of the appointment under *section 40*,
 - (c) the resignation of the adjudicator,
 - (d) the conviction of the adjudicator on indictment of an offence,
 - (e) the conviction of the adjudicator of an offence involving fraud or dishonesty,
 - (f) the making of a declaration against the adjudicator under *section 819* of the Companies Act 2014 or the deeming of the adjudicator to be subject to such a declaration by virtue of *Chapter 5 of Part 14* of that Act,

- (g) the adjudicator being subject to, or being deemed to be subject to, a disqualification order within the meaning of Chapter 4 of Part 14 of the Companies Act 2014 whether by virtue of that Chapter or of any other provision of that Act,
 - (h) the adjudicator being nominated as a member of Seanad Éireann,
 - (i) the adjudicator being elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
 - (j) the adjudicator being regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to be a member of the European Parliament,
 - (k) the adjudicator being elected or co-opted as a member of a local authority,
 - (l) the adjudicator's name being removed, where the adjudicator is a practising barrister, from the roll of practising barristers (which shall be construed in accordance with section 2(1) of the Legal Services Regulation Act 2015), or
 - (m) the adjudicator's name being struck off, where the adjudicator is a practising solicitor, the roll of solicitors (which shall be construed in accordance with section 9 of the Solicitors Act 1954).
- (9) A person who is for the time being—
- (a) entitled under the Standing Orders of either House of the Oireachtas to sit therein, or
 - (b) a member of the European Parliament,
- shall, while the person is so entitled or is such a member, as the case may be, be disqualified for office as an adjudicator.
- (10) Where an adjudicator dies, resigns, ceases to be qualified for office, ceases to hold office or is removed from office, the Minister may appoint, in the same manner as the adjudicator who occasioned the casual vacancy was appointed, a person to be an adjudicator to fill the casual vacancy so occasioned.
- (11) A person appointed to be an adjudicator pursuant to *subsection (10)* shall hold office for that period of the term of office of the adjudicator who occasioned the casual vacancy concerned that remains unexpired at the date of the appointment and shall be eligible for reappointment as an adjudicator on the expiry of the said period.
- (12) The Civil Service Regulation Acts 1956 to 2005 shall not apply to an adjudicator.

Revocation of appointment as adjudicator

40. (1) The Government may revoke the appointment of an adjudicator if the Government is satisfied that one or more of the grounds specified in *subsection (2)* apply to the adjudicator.
- (2) The grounds referred to in *subsection (1)* are that an adjudicator—

- (a) has become incapable through ill-health of performing the functions of an adjudicator,
 - (b) has engaged in serious misconduct,
 - (c) has failed without reasonable cause to perform his or her functions under this Act for a continuous period of at least 3 months, or
 - (d) has contravened to a material extent a provision of the Ethics in Public Office Acts 1995 and 2001 that, by virtue of a regulation under section 3 of the Ethics in Public Office Act 1995, applies to the adjudicator.
- (3) Where the Government proposes to revoke the appointment of an adjudicator under *subsection (1)*, they shall give notice to the adjudicator concerned of the proposal.
- (4) A notice under *subsection (3)* shall include a statement—
- (a) of the reasons for the proposed revocation of appointment,
 - (b) that the adjudicator may, not later than 30 working days from the giving of the notice or such longer period as the Government may, having regard to the requirements of natural justice, specify in the notice, make representations to the Government in such form and manner as may be specified by the Government as to why the appointment of the adjudicator should not be revoked, and
 - (c) that where no representations are received within the period referred to in *paragraph (b)* or the period specified in the notice, as the case may be, the Government shall, without further notice to the adjudicator, proceed with the revocation of the appointment of the adjudicator in accordance with this section.
- (5) In considering whether to revoke the appointment of an adjudicator under *subsection (1)*, the Government shall take into account—
- (a) any representations made by the adjudicator under *paragraph (b)* of *subsection (4)* within the period referred to in that paragraph or the period specified in the notice, as the case may be, and
 - (b) any other matter the Government considers relevant for the purpose of their decision.
- (6) Where, having taken into account the matters referred to in *subsection (5)*, the Government decide to revoke the appointment of an adjudicator, they shall give notice to the adjudicator of the decision and the reasons for that decision.

Liability of adjudicators

- 41.** An adjudicator shall not be liable in damages in respect of any act done or omitted to be done by the adjudicator in the performance, or purported performance, of functions under this Act, unless the act or omission concerned was done in bad faith.

Rules concerning conduct of appeals before adjudicator

42. (1) The Minister, having consulted with the Minister for Justice, the Minister for Foreign Affairs, the Minister for Defence and any other Minister of the Government as he or she considers appropriate, may prescribe rules in relation to the conduct of appeals falling under this Chapter to be determined by an adjudicator.
- (2) Without prejudice to the generality of *subsection (1)*, rules prescribed under this section may include rules relating to the following:
- (a) requirements to give notice of an appeal;
 - (b) the identities, number of, or conduct of, parties to an appeal;
 - (c) requirements for notification of an appeal by a party to an adjudicator;
 - (d) the place at, time at and manner in which adjudicators may sit, including whether and how adjudicators shall sit individually or as a panel;
 - (e) information or documentation to be supplied to an adjudicator by parties to an appeal, and the manner in which it is to be so supplied;
 - (f) an adjudicator's power to require submission by a person of information or documentation that is necessary for the determination of an appeal;
 - (g) dismissal of an appeal which in the opinion of the adjudicator is frivolous or vexatious or without substance or foundation;
 - (h) advising the appellant of his or her rights in an appeal, including the right—
 - (i) to be present at the appeal,
 - (ii) to present a case in person at an appeal, or
 - (iii) to present a case through a legal representative at the appellant's own expense;
 - (i) procedures applicable to the hearing of an appeal;
 - (j) the calling and examination of witnesses in an appeal;
 - (k) time limits applicable to the conduct of appeals;
 - (l) the manner in which submissions are made to the adjudicator by parties to an appeal or other persons;
 - (m) procedures for the consolidation and hearing of two or more than two appeals together;
 - (n) procedures for delayed or abandoned appeals;
 - (o) procedures for the separation of appeals;
 - (p) procedures for imposing restrictions in relation to disclosure, publication or reporting, during or after the hearing of an appeal, of a matter that the adjudicator considers—
 - (i) to relate to the security or public order of the State, or

- (ii) to be commercially sensitive;
 - (q) recording of, or prohibiting the recording of, proceedings before an adjudicator;
 - (r) without prejudice to *section 44(3)*, requiring certain evidence in proceedings before an adjudicator to be given on oath or affirmation and, for that purpose, providing for an adjudicator to administer an oath or affirmation.
- (3) The Minister shall provide, or arrange for the provision of, such support of an administrative nature as the Minister considers necessary to enable the performance of an adjudicator's functions.

CHAPTER 3

*Review of relevant decisions***Procedure for appeal of decision under *section 38***

43. (1) A relevant person who wishes to engage in a relevant activity in relation to which a decision under *section 38(5)* has been made (in this section referred to as an “appellant”) may appeal the decision in accordance with this section.
- (2) An appellant shall give notice of his or her appeal to the Minister, in such form as the Minister may specify, where the appellant is appealing a decision referred to in *subsection (1)*, not later than 30 days from the date of receipt by the appellant of a notice under *section 38(6)*.
- (3) The Minister shall, as soon as practicable after receiving a notice under *subsection (2)*—
- (a) designate an adjudicator or adjudicators from amongst the panel referred to in *section 39* to hear the appeal, and
 - (b) give notice to the appellant of the adjudicator or adjudicators so designated.
- (4) An appellant shall—
- (a) submit his or her appeal to the adjudicator not later than 14 days from the date on which the notice under *subsection (3)* is given,
 - (b) in submitting his or her appeal, state all of the grounds upon which the appeal is made and provide to the adjudicator all of the documents and evidence upon which the applicant intends to rely to support those grounds, and
 - (c) subject to this Act, and to any rules prescribed under *section 42*, submit the appeal in such manner or subject to such conditions as the adjudicator may direct.
- (5) The Minister shall—
- (a) be the respondent to an appeal, and
 - (b) subject to *section 46*, when responding to an appeal, state all of the grounds upon which the appeal is responded to and provide to the adjudicator all of the documents and evidence upon which the Minister intends to rely to support those grounds.

- (6) An adjudicator may, in accordance with such rules as may be made under *section 42*, dismiss an appeal where he or she determines that it is frivolous, vexatious or without substance or foundation.
- (7) Subject to *subsection (8)*, a party to an appeal shall not be entitled, during the course of an appeal, to make submissions to the adjudicator other than submissions related to the grounds stated, or documents and evidence provided under, *subsection (4)* or *(5)*, as the case may be.
- (8) The adjudicator may, where he or she considers it necessary or expedient for the fair and proper determination of an appeal, require or permit a party to an appeal to—
 - (a) make submissions to the adjudicator other than submissions related to the grounds stated or documents and evidence provided under *subsection (4)* or *(5)*, as the case may be, or
 - (b) provide documents or evidence to the adjudicator other than documents or evidence provided under *subsection (4)* or *(5)*, as the case may be.
- (9) The adjudicator may refuse to consider a submission, document or evidence where the adjudicator considers that—
 - (a) the submission, document or evidence is not relevant to the appeal, or
 - (b) it is appropriate to do so in order to avoid undue repetition of submissions.
- (10) Bringing an appeal under this section does not suspend or otherwise alter the effect of a decision under *section 38* to which the appeal relates pending the decision of the adjudicator.

Oral hearing

- 44.** (1) An adjudicator may determine an appeal under *section 43* without an oral hearing unless, having regard to the particular circumstances of the appeal, the adjudicator considers that it is necessary to conduct an oral hearing in order to properly and fairly determine the appeal.
- (2) An adjudicator may give notice to a person requiring him or her to—
 - (a) attend an oral hearing, at such time and place as is specified in the notice,
 - (b) give evidence in respect of any matter in issue in an appeal, and
 - (c) produce any relevant documents within the person's possession, control or procurement.
 - (3) A person required to attend under *subsection (2)* may be examined and cross-examined at the oral hearing and any testimony so given shall be given on oath or affirmation.
 - (4) The adjudicator may limit the time within which each party to a particular appeal may make submissions at an oral hearing.

- (5) A person who does or fails to do anything that, if the adjudicator were a court having power to commit for contempt of court, would be contempt of such court, shall be guilty of an offence.

Decision of adjudicator

- 45.** (1) Following consideration of an appeal under *section 43*, an adjudicator shall—
- (a) where the adjudicator is satisfied that a serious or significant error was, or a series of errors were, made in making the decision to which the appeal relates, or that the decision was made without complying with this Act or with fair procedures, allow the appeal and remit the matter, for stated reasons, to the Minister to determine the matter—
 - (i) with a direction to make such determination taking into account the findings of the adjudicator, and
 - (ii) within such period, not being more than 30 days from the date on which the notice under *subsection (2)* is given, as the adjudicator may direct,
 - or
 - (b) where the adjudicator is not so satisfied, affirm the decision to which the appeal relates.
- (2) An adjudicator shall give notice of his or her decision under this section, as soon as practicable after it is made, to the Minister, the appellant and such other parties as the adjudicator may determine.
- (3) The decision of the adjudicator under this section shall be final save that an appeal from that decision may be made in accordance with *section 50*.

CHAPTER 4

Exceptional provisions regarding sensitive material and evidence

Treatment of certain material of relevance to security or public order of State in appeal against decision under *section 43*

- 46.** (1) Where the adjudicator is satisfied by information on oath or affirmation of the Minister, or of an officer of the Minister appointed by the Minister to provide such information, that there are reasonable grounds for believing that the disclosure to an appellant of relevant material would create a risk to the security or public order of the State, the adjudicator may—
- (a) where satisfied that the relevant material can be redacted in a way that removes that risk, direct the Minister to provide the relevant material to the appellant subject to such redactions,
 - (b) where satisfied that the relevant material or part thereof can be summarised or described in a way that removes that risk, direct the Minister to provide the appellant with such a summary or description, and

- (c) take the relevant material into account in making a decision under *section 45*, regardless of the extent to which the relevant material is provided to the appellant.
- (2) The information on oath or affirmation provided to the adjudicator under *subsection (1)* shall not, without the express authorisation of the Minister, be disclosed by any person to any person other than a party to the appeal.
- (3) When providing information on oath or affirmation under *subsection (1)*, the Minister may request the adjudicator to direct that—
 - (a) the information shall not be provided to a party to the appeal, and
 - (b) a summary of the information, provided to the adjudicator with the request, shall be provided to the party.
- (4) The adjudicator shall, if satisfied that the summary of the information provided with the Minister's request under *subsection (3)* is sufficiently clear and detailed to allow a party to the appeal effectively to challenge the basis on which, or way in which, the relevant material is provided to the party, direct that—
 - (a) the information shall not be provided to a party to the appeal, and
 - (b) the summary shall be provided to the party.
- (5) The Minister shall comply with a direction of the adjudicator under *subsection (1)* or *(4)*, as the case may be.
- (6) A person, other than the Minister or an adjudicator, who contravenes *subsection (2)* shall be guilty of an offence.

Appeals to be held otherwise than in public

- 47.** (1) Subject to *subsection (3)*, proceedings in relation to an appeal under *section 43* before an adjudicator shall be conducted otherwise than in public, and the adjudicator shall exclude from the hearing of any proceedings relating to the appeal before him or her all persons except—
- (a) a person providing services to the adjudicator, whose presence is necessary for the adjudicator to deal with the proceedings in accordance with this Act,
 - (b) the parties to the appeal,
 - (c) the legal representatives of the parties to the appeal, and
 - (d) a witness whose evidence is relevant to the appeal, for as long as the witness's presence is required for the purpose of providing such evidence.
- (2) This subsection shall apply to proceedings relating to an appeal under *section 43* before an adjudicator where the Minister—
- (a) is satisfied that conducting such proceedings, or specified matters forming part of such proceedings, in public would not create a risk to the security or public order of the State, and

- (b) gives notice to the adjudicator of that fact.
- (3) Where *subsection (2)* applies to proceedings, the adjudicator shall—
 - (a) as soon as practicable after receiving a notification under *paragraph (b)* of *subsection (2)*, give notice to the appellant of that fact, and
 - (b) conduct proceedings relating to the appeal or to the specified matters forming part of the appeal, as the case may be, to which *subsection (2)* applies, in public unless the adjudicator believes that there are good and sufficient reasons to conduct such proceedings otherwise than in public.

Confidentiality of proceedings

- 48.** (1) A person shall not disclose any information obtained—
- (a) by a party to an appeal before an adjudicator to which *section 47(2)* does not apply, and
 - (b) as a result of such an appeal,
- to any person other than—
- (i) a party to the appeal,
 - (ii) a legal representative of a party to the appeal,
 - (iii) the adjudicator,
 - (iv) a witness whose evidence is relevant to the appeal, to the extent such disclosure is necessary for the witness to give such evidence, or
 - (v) where an appeal is taken under *section 50*, to—
 - (I) the court,
 - (II) a party to the appeal,
 - (III) a legal representative of a party to the appeal, or
 - (IV) a witness whose evidence is relevant to the appeal, to the extent such disclosure is necessary for the witness to give such evidence.
- (2) A person who contravenes *subsection (1)* shall be guilty of an offence.

Designation of legal representatives in respect of certain matters

- 49.** (1) The Minister may by order designate a person (in this section referred to as an “approved legal representative”) for the purposes of this section.
- (2) The Minister shall not designate a person under *subsection (1)* unless the Minister is satisfied that—
- (a) the person is a person referred to in *paragraph (a)* or *(b)* of *section 39(2)*,
 - (b) the person has the requisite knowledge and experience to act as an approved legal representative, and

- (c) it is appropriate for the person, having regard to the security or public order of the State, to act as an approved legal representative, including by reference to such clearance, verification or background checks as may be prescribed.
- (3) Where—
- (a) the Minister is satisfied that an appeal under *section 43* or a specified matter forming part of such appeal is likely to create a particularly sensitive and serious risk to the security or public order of the State, and
- (b) *section 47(2)* does not apply to the appeal or specified matter forming part of the appeal, as the case may be,
- the Minister may specify that this section applies to that appeal or to that specified matter.
- (4) The Minister shall, as soon as practicable after specifying that this section applies to an appeal, or to a specified matter forming part of an appeal, give notice to the parties to the appeal of that fact.
- (5) No person other than an approved legal representative may represent a party to an appeal—
- (a) where this section applies to an appeal generally, before a court or adjudicator in relation to that appeal,
- (b) where this section applies to a specified matter forming part of an appeal, before a court or adjudicator, as the case may be, in respect of the matter, or
- (c) where this section applies to an appeal generally or to a specified matter forming part of an appeal, before a court in an application under *section 51* relating to that appeal.
- (6) A person shall cease to be an approved legal representative on and from the date—
- (a) the person ceases to be qualified to practice as a barrister or solicitor in the State, or
- (b) the Minister revokes the order designating the person for the purposes of this section.

CHAPTER 5

*Appeal against decision of adjudicator***Appeal against decision of adjudicator**

- 50.** (1) An appellant in relation to whose appeal a decision under *section 45(1)* is made may, by leave of the High Court, appeal to that court on a point of law not later than 30 days from the date on which the party was notified of the decision.
- (2) The High Court shall, in determining an appeal under this section, act as expeditiously as possible consistent with the administration of justice.

- (3) Rules of court may make provision for the expeditious hearing of appeals under this section.
- (4) The decision of the High Court in an appeal taken under this section is final and no appeal lies from the decision to the Court of Appeal except with the leave of the High Court, which shall only be granted if the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Court of Appeal.

Application to suspend effect of relevant decision

- 51.** Where an appeal under *section 50* relates to a decision under *section 38* concerning a relevant decision referred to in *paragraph (a)* of the definition of relevant decision in *section 2*, the bringing of the appeal does not suspend the effect of the relevant decision unless—
- (a) the appellant, in addition to making an appeal under *section 50*, applies to the High Court to have the effect of that relevant decision suspended until such time as the appeal is determined, and
 - (b) the High Court, where it considers it appropriate to do so having regard to all the circumstances of the case, orders that the effect of the relevant decision, or such particular effects of the relevant decision as the court may order, are suspended until the appeal is determined, or until such other time as the court may order.

Treatment of evidence in relation to appeals against decision of adjudicator

- 52.** (1) In an appeal under *section 50* or an application under *section 51* that relates to or involves relevant material, the High Court may—
- (a) where it is satisfied by information on oath or affirmation of the Minister, or of an officer of the Minister appointed by the Minister to provide such information, that there are reasonable grounds for believing that the disclosure to a party to the appeal of relevant material would create a risk to the security or public order of the State—
 - (i) where satisfied that the relevant material can be redacted in a way that removes that risk, direct the Minister to provide the relevant material to the appellant subject to such redactions, or
 - (ii) where satisfied that the relevant material or part thereof can be summarised or described in a way that removes that risk, direct the Minister to provide the appellant with such a summary or description,
 - (b) where it is not satisfied by the information on oath or affirmation referred to in *paragraph (a)* that the disclosure to a party of relevant material would create a risk to the security or public order of the State, direct that the relevant material, or such part of that material as the High Court may direct, be provided to the party, and

- (c) take the relevant material into account in making its decision in relation to the appeal or application, as the case may be, regardless of the extent to which, or ways in which, the relevant material is provided to the party in accordance with this section.
- (2) The Minister shall comply with a direction of the High Court under *subsection (1)*.
- (3) The information on oath or affirmation provided to the High Court under *subsection (1)* shall not, without the express authorisation of the Minister, be disclosed by the court, an officer or agent of the court, or any other person, to any person other than a party to the appeal.
- (4) When providing information on oath or affirmation under *subsection (1)*, the Minister may apply to the High Court *ex parte* for an order that—
 - (a) the information shall not be provided to a party to the appeal, and
 - (b) a summary of the information, provided to the High Court with the application, shall be provided to the party.
- (5) The High Court shall grant the order applied for under *subsection (4)* if it is satisfied that—
 - (a) the Minister has grounds for believing that providing the information on oath or affirmation under *subsection (1)* to a party would create a risk to the security or public order of the State, and
 - (b) the summary provided with the application for that order is sufficiently clear and detailed to allow the party effectively to challenge the basis on which, or way in which, the information on oath or affirmation is not being provided to it, or provided to it in part, as the case may be,and the Minister shall comply with such an order.
- (6) A person, other than the Minister or a judge, who contravenes *subsection (3)* shall be guilty of an offence.

Hearing of matters otherwise than in public

- 53.** The High Court may hear the whole or part of any proceedings before it under this Part otherwise than in public if that court considers that the security of the State or the interests of justice so require.

Proceedings before court other than High Court

- 54.** Where a court other than the High Court deals with an appeal in relation to which leave is granted under *section 50(4)*, then *sections 51, 52 and 53* shall apply to the appeal subject to the modification that a reference in those sections to the High Court is a reference to the court before which the appeal is heard and to any other necessary modifications.

PART 6

ENFORCEMENT

Interpretation for Part 6**55.** (1) In this Part—

“authorised officer” means a person appointed under *section 56* to be an authorised officer;

“compliance notice” means a compliance notice given under *section 61*;

“condemnation proceedings” has the meaning given to it by *section 65(1)*;

“notice of claim” has the meaning given to it by *section 64(6)*;

“premises” includes vehicle, vessel, ship and railway carriage;

“specified date” means—

- (a) subject to *paragraph (b)*, the date specified in the compliance notice, which shall not be earlier than the end of the period within which an appeal may be brought under *section 62*, or
- (b) where an appeal is brought under *section 62*, on the later of the date on which the compliance notice is confirmed on appeal or the appeal is withdrawn, or the date specified in the compliance notice as the date on which it is to come into effect;

“vehicle” means any conveyance in or by which any person or thing, or both, is or are, as the case may be, transported which is designed for use on land, in water or in the air, or in more than one of those ways, and includes—

- (a) a part of a vehicle,
- (b) an article designed as a vehicle but not capable of functioning as a vehicle, and
- (c) any container, trailer, tank or any other thing which is or may be used for the storage of goods in the course of carriage and is designed or constructed to be placed on, in, or attached to, any vehicle.

- (2) A reference in this Part to a compliance notice shall, if the compliance notice has been amended under *section 61(4)*, be construed as a reference to the compliance notice as so amended.

Authorised officers**56.** (1) The Minister may appoint—

- (a) such and so many of the officers of the Minister as he or she considers appropriate to be an authorised officer for the purposes of this Act, and
- (b) such other person as he or she deems appropriate to be an authorised officer for such period and subject to such terms (including terms as to remuneration and allowances for expenses) as he or she, with the consent of the Minister for Public

Expenditure, National Development Plan Delivery and Reform, may determine, for the purposes of this Act.

- (2) Each authorised officer shall be given a warrant of appointment and, when performing any function imposed under this Act, shall, on request by any person affected thereby, produce the warrant or a copy thereof, together with a form of personal identification to that person for inspection.
- (3) An appointment under this section shall cease—
 - (a) if the Minister revokes the appointment in writing,
 - (b) if the person appointed ceases to be an officer of the Minister, or
 - (c) if the appointment is for a fixed period, on the expiry of that period.

Powers of authorised officer to request information and enter premises

57. For the purposes of this Act, an authorised officer who has reasonable grounds for believing a person is engaged in a relevant activity may—

- (a) by notice given to any person who the authorised officer has reasonable grounds for believing is involved in a relevant activity, require that person—
 - (i) to furnish to him or her any information, records or other items referred to in *section 58* in the person's possession which the authorised officer reasonably requires and specified in the notice, within the period specified in the notice, and
 - (ii) where appropriate to attend before the authorised officer to answer such questions as the authorised officer may ask relative to those matters and to make a declaration of the truth of the answers to those questions,
- (b) following the receipt of information, records or evidence under *paragraph (a)*, by notice given, require that person to furnish such further information, records or other items that the authorised officer may reasonably require and specified in the notice, within the period specified in the notice, or
- (c) subject to *section 59*, enter (if necessary by the use of reasonable force) at all reasonable times any premises—
 - (i) that he or she has reasonable grounds for believing, has been or is being used in connection with a relevant activity, or
 - (ii) at which, he or she has reasonable grounds for believing, records or documents relating to a relevant activity are kept.

Powers of authorised officer on entry

58. (1) Where an authorised officer is carrying out a function in accordance with *section 57*, he or she may—

- (a) at a premises referred to in *section 57(c)*, request the production of an authorisation or such other documents as the authorised officer reasonably requires,
- (b) conduct, or cause to be conducted, such examinations and inspections of—
 - (i) any relevant item,
 - (ii) packaging of a relevant item,
 - (iii) any article or substance used in connection with the manufacture, labelling, packaging or storage of a relevant item,
 - (iv) production, test or analytical equipment, components, instruction manuals or other technical data related to a relevant item, or
 - (v) any machinery, plant, records or equipment, including electronic equipment, found at the premises as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,
- (c) require any person at the premises to—
 - (i) give to the authorised officer such assistance and information, including access to any electronic information system, and
 - (ii) produce to the authorised officer—
 - (I) such labels or packaging relating to relevant items, and
 - (II) books, documents or other records (and in the case of documents or records stored in non-legible form, a legible reproduction thereof),
that are in that person's possession or procurement, as the authorised officer may reasonably require for the purposes of his or her functions under this Act,
- (d) require any person at the premises to answer such questions as the authorised officer may ask relative to any matter in connection with compliance with this Act,
- (e) for the purposes of analysis and examination, take samples of—
 - (i) any substance or product—
 - (I) that is a relevant item, or
 - (II) that he or she has reasonable grounds for believing is a relevant item,
 - (ii) packaging relating to any such substance or product, or
 - (iii) any article or substance used in the manufacture, labelling, packaging or storage of any such substance or product,
found at the premises,
- (f) direct that any—

- (i) substance or product—
 - (I) that is a relevant item, or
 - (II) that he or she has reasonable grounds for believing to be a relevant item,or
 - (ii) packaging relating to any such substance or product,
that is found at the premises not be moved from the premises without his or her consent,
- (g) secure for later inspection a premises entered under *section 57(c)* or pursuant to a warrant under *section 59*, or any part of the premises, in which—
- (i) any substance or product—
 - (I) that is a relevant item, or
 - (II) that he or she has reasonable grounds for believing is a relevant item,
 - (ii) packaging relating to any such substance or product, or
 - (iii) any article or substance used in the manufacture, labelling, packaging or storage of any such substance or product,
is found or ordinarily kept, for such period as may reasonably be necessary for the purposes of his or her functions under this Act,
- (h) take possession of, remove from the premises and retain (for such period as he or she considers reasonably necessary for the purposes of his or her functions under this Act) for examination and analysis—
- (i) any substance or product that is a relevant item or that he or she has reasonable grounds for believing is a relevant item,
 - (ii) packaging relating to any such substance or product, or
 - (iii) any article or substance used in the manufacture, labelling, packaging or storage of any such substance or product,
found at the premises,
- (i) seize any relevant item and mark or otherwise identify it and remove it from the premises,
- (j) detain a vehicle, for such reasonable period necessary for the purposes of permitting an inspection or a search under this section either at the premises or at such other location to which the authorised officer requires it to be moved,
- (k) at the premises inspect and take copies of any records (including records stored in non-legible form), or extracts therefrom and retain them for such period as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,

- (l) require any person at the premises, to produce to the authorised officer such books, documents or other records (and in the case of documents or records stored in non-legible form, a legible reproduction thereof) that are in that person's possession or procurement, or under that person's control, as he or she may reasonably require for the purposes of his or her functions under this Act,
 - (m) require any person by or on whose behalf data equipment is or has been used in connection with a relevant activity, or any person having charge of, or otherwise concerned with the operation of, such data equipment or any associated apparatus or material, to afford the authorised officer all reasonable assistance in respect of its use, and
 - (n) examine with regard to any matter under this Act any person whom the authorised officer has reasonable grounds for believing to be—
 - (i) a holder of an authorisation,
 - (ii) employed at the premises concerned by a holder of an authorisation,
 - (iii) an applicant, or
 - (iv) involved in carrying out a relevant activity,and require the person to answer such questions as the authorised officer may ask relative to those matters and to make a declaration of the truth of the answers to those questions.
- (2) When carrying out a function under *subsection (1)*, an authorised officer may—
- (a) take such photographic or video evidence at the premises as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,
 - (b) require a person who apparently has control of, or access to, records, to provide the records,
 - (c) summon, at any reasonable time, a person—
 - (i) to give to the authorised officer such information as the authorised officer may reasonably require,
 - (ii) to provide to the authorised officer any records which the person has control of, or access to, and which the authorised officer may reasonably require, or
 - (iii) to provide an explanation of a decision, course of action, system or practice or the nature or content of any records provided under this section,
 - (d) inspect records provided under *paragraph (c)* or found in the course of searching and inspecting premises,
 - (e) take copies of or extracts from records so provided or found,
 - (f) subject to *subsection (4)*, take and retain records so provided or found for the period reasonably required for further examination,
 - (g) secure, for later inspection, any records so provided or found and any data equipment, including any computer, in which those records may be held,

- (h) require a person at the premises to provide an explanation of a decision, course of action, system or practice or the nature or content of any records,
 - (i) require a person at the premises to provide a report on any matter about which the authorised officer reasonably believes the person has relevant information,
 - (j) if a person at the premises who is required to provide a particular record is unable to provide it, require the person to state, to the best of that person's knowledge and belief, where the record is located or from whom it may be obtained, or
 - (k) require that any information given to an authorised officer under this Part be certified as accurate and complete by such person or persons and in such manner as the authorised officer may require.
- (3) Where records are not in legible form, an authorised officer, in the exercise of any of his or her powers under this Part, may—
- (a) operate any data equipment, including any computer, or cause any such data equipment or computer to be operated by a person accompanying the authorised officer, and
 - (b) require any person who appears to the authorised officer to be in a position to facilitate access to the records stored in any data equipment or computer or which can be accessed by the use of that data equipment or computer to give the authorised officer all reasonable assistance in relation to the operation of the data equipment or computer or access to the records stored in it, including—
 - (i) providing the records to the authorised officer in a form in which they can be taken and in which they are, or can be made, legible and comprehensible,
 - (ii) giving to the authorised officer any password necessary to make the records concerned legible and comprehensible, or
 - (iii) otherwise enabling the authorised officer to examine the records in a form in which they are legible and comprehensible.
- (4) Where an authorised officer proposes to retain any records taken by the authorised officer pursuant to this section for a period longer than 14 days after the date on which the records are taken, the authorised officer shall, before the end of that period of 14 days, or such longer period as the person concerned may agree, furnish, on request, a copy of the records to the person who it appears to the authorised officer, but for the exercise of the powers under this section, is entitled to possession of it.
- (5) A person at the premises shall give to an authorised officer such assistance as the authorised officer may reasonably require and make available to the authorised officer such reasonable facilities as are necessary for the authorised officer to exercise his or her powers under this Part including such facilities for inspecting and taking copies of any records as the authorised officer reasonably requires.
- (6) When performing a function under this Act an authorised officer may, subject to any warrant under *section 59*, be accompanied by such number of other authorised officers, officers of customs (within the meaning of the Customs Act 2015), members of the Garda Síochána as he or she considers appropriate.

- (7) An authorised officer shall not enter a dwelling, otherwise than—
- (a) with the consent of the occupier, or
 - (b) pursuant to a warrant under *section 59*.
- (8) Where an authorised officer believes, upon reasonable grounds, that a person has committed an offence under this Act, he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides and documentary confirmation thereof.
- (9) A statement or admission made by a person pursuant to a requirement under *paragraph (c)(i), (d) or (n) of subsection (1), paragraph (c)(i), (h), (i), (j) or (k) of subsection (2) or subsection (3)(b)* shall not be admissible as evidence in proceedings brought against that person for an offence (other than an offence under *section 69 or 70*).
- (10) In this section—
- “person at the premises” may include the owner or person in charge of the premises or any person employed at the premises;
- “person in charge” in relation to a premises means—
- (a) the person under whose direction and control any activities at that premises are being conducted, or
 - (b) the person whom the authorised officer reasonably believes to be directing and controlling any activities taking place at that premises.

Warrant required to enter dwelling

- 59.** Upon the sworn information of an authorised officer, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that records relating to the carrying out of a relevant activity are held at a dwelling, issue a warrant authorising a named authorised officer, accompanied by such other authorised officers, officers of customs, or members of the Garda Síochána the judge considers necessary to—
- (a) enter the dwelling, (if necessary by the use of reasonable force),
 - (b) inspect the dwelling, and
 - (c) exercise all or any of the powers conferred on an authorised officer under this section, *section 57 or subsection (1), (2) or (3) of section 58*.

Report of authorised officer

- 60.** Where an authorised officer performs functions under *section 57 or 58* he or she shall prepare and provide a report in writing to the Minister in relation to it.

Compliance notice

- 61.** (1) Where it appears to an authorised officer that it is necessary to do so in order to prevent or limit failure to comply with this Act, the authorised officer may give a

notice (in this Part referred to as a “compliance notice”) to a person who the authorised officer suspects has contravened or is contravening a provision of this Act.

- (2) A compliance notice shall—
 - (a) state, subject to *subsection (9)*, the grounds for the authorised officer’s being satisfied that there has been or is a contravention referred to in *subsection (1)*,
 - (b) require the recipient to take such measures to cease the contravention as are specified in the notice,
 - (c) state that the measures referred to in *paragraph (b)* are required to be taken by the specified date, and
 - (d) advise the recipient of his or her right, under *section 62*, to appeal against or apply to suspend the operation of the compliance notice.
- (3) A compliance notice—
 - (a) may be given whether or not there has been a prosecution for an offence under this Act in relation to the relevant activity concerned, and
 - (b) shall not prejudice the initiation of a prosecution for an offence under this Act in relation to the matter the subject of the compliance notice.
- (4) At any time where he or she considers it appropriate or necessary having regard to his or her functions under this Act, an authorised officer may give a compliance notice amending a compliance notice (including a compliance notice amended under this subsection).
- (5) A compliance notice shall remain in force—
 - (a) unless it is discharged on appeal or varied,
 - (b) until the authorised officer revokes it, or
 - (c) until the authorised officer gives notice to the recipient stating that the compliance notice has been complied with.
- (6) A person who fails to comply with a compliance notice by the specified date shall be guilty of an offence.
- (7) A person who continues to fail to comply with a compliance notice after the specified date shall be guilty of an offence.
- (8) Where a person does not comply with a compliance notice by the specified date the authorised officer may take any measures he or she considers necessary to mitigate or remedy any risks to security or public order arising from the matter the subject of the compliance notice and the authorised officer may recover the cost of such measures from the person to whom the compliance notice is given as a simple contract debt in a court of competent jurisdiction.
- (9) Where the authorised officer believes that providing grounds under *subsection (2)(a)* would create a risk to the security or public order of the State, he or she—

- (a) may decide not to provide those grounds to the recipient of the compliance notice, and
 - (b) shall include in the compliance notice a statement to the effect that he or she is declining to give grounds under this subsection.
- (10) In considering whether or not providing grounds under *subsection (2)(a)* would create a risk to the security or public order of the State, the authorised officer shall—
- (a) for a dual-use item, take account of all relevant considerations, including the matters set out in paragraphs (a) to (d) of Article 15, and
 - (b) for a military item, take account of the criteria set out in Article 2 of Council Common Position 2008/944/CFSP.

Appeal against or application to suspend compliance notice

- 62.** (1) A person to whom a compliance notice is given may, not later than 28 days from the date on which the compliance notice is given to him or her, appeal against the compliance notice to the District Court and, in determining the appeal the District Court may, if it is satisfied that there are reasonable grounds for so doing in the interests of justice and having regard to the need to mitigate or remedy any risks to security or public order arising from the matter the subject of the compliance notice—
- (a) confirm the compliance notice, with or without modification, or
 - (b) discharge the compliance notice.
- (2) Where a compliance notice is confirmed under *subsection (1)*, the District Court may, on the application of the appellant, suspend the operation of the compliance notice for such period as, in the circumstances of the case, the judge considers appropriate.
- (3) A person who appeals, under *subsection (1)*, against a compliance notice or who applies to have the operation of the compliance notice suspended, shall at the same time as bringing the appeal or making the application, give notice to the authorised officer of the appeal or application and the authorised officer shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal or the application.

Application to Circuit Court

- 63.** (1) An authorised officer may apply to the Circuit Court for an order requiring the person to whom a compliance notice has been given to comply with the notice where the authorised officer is of the opinion that the person has failed to comply with the notice.
- (2) An application under *subsection (1)* shall be made on not less than 10 days' notice to the person to whom the compliance notice was given.
- (3) Upon the hearing of an application under *subsection (1)*, the Circuit Court may—
- (a) make the order sought,

- (b) make the order sought subject to such variations to those measures as may be specified in the order, or make the order sought subject to such other measures for the like purpose as may be specified in the order, or
- (c) dismiss the application.

Forfeiture

64. (1) Any relevant item in respect of which an offence has been committed under this Act or any items which are packed with or used in concealing such relevant items, are liable to forfeiture and, where any such relevant items or items are found in, on, or in any manner attached to, any vehicle, such vehicle is deemed to have been made use of in the transport of such relevant items or items and shall also be liable to forfeiture.
- (2) Where any relevant items, items or vehicles are liable to forfeiture under *subsection (1)*, anything containing or that contained such relevant items, items or vehicles and anything made use of in the transport of such relevant items, items or vehicles, is liable to forfeiture.
- (3) Subject to *subsection (4)*, an authorised officer shall give notice of the seizure of anything as liable to forfeiture and of the grounds for seizure to any person who to the officer's knowledge was at the time of the seizure the owner or one of the owners of the thing seized.
- (4) Notice under *subsection (3)* need not be given under this section to a person if the seizure was made in the presence of the person whose offence or suspected offence occasioned the seizure or, in the case of anything seized in any vessel or aircraft, in the presence of the master or pilot-in-command of such vessel or aircraft.
- (5) Notice under *subsection (3)* shall, if the person concerned has no known address in the State, be deemed to have been duly given to the person by publication of notice of the seizure concerned in *Iris Oifigiúil*.
- (6) Where relevant items or other items referred to in *subsection (1)* or vehicles have been seized under this section as liable to forfeiture, a person (in this section referred to as the "claimant") may—
- (a) not later than 30 days from the date of the notice of seizure under this section, or
 - (b) where no such notice has been given, not later than 30 days from the date of the seizure,
- give notice to the Minister of a claim (in this section referred to as a "notice of claim") that the goods seized are not so liable.
- (7) A notice of claim shall specify the full name and address of the claimant and the basis on which the claim is grounded and, where that address is outside the State, any documents relating to condemnation proceedings may be served at that address by post.
- (8) If, on the expiration of a period referred to in *subsection (6)*, no notice of claim has been given, the thing seized shall be deemed to have been duly condemned as

forfeited, and the forfeiture shall apply from the date when the liability to forfeiture arose.

- (9) Where a notice of claim has been given, the Minister shall, subject to *subsections (1) and (2) of section 66*, bring condemnation proceedings for the condemnation of the thing concerned.

Proceedings for condemnation by court

- 65.** (1) Proceedings for condemnation by the court (in this section referred to as “condemnation proceedings”) are civil proceedings, and such proceedings shall be commenced in the name of the Minister.
- (2) Where in any condemnation proceedings the court finds that the thing seized was, at the time of seizure, liable to forfeiture, the court shall condemn it as forfeited, and in any other case the court shall order its release.
- (3) Condemnation proceedings may be instituted in the High Court or, if in the opinion of the Minister the value of the thing seized (that is to be the subject of such proceedings) does not exceed—
- (a) €75,000, the Circuit Court, or
 - (b) €15,000, the District Court.
- (4) In any condemnation proceedings, the claimant or any solicitor acting on behalf of such claimant, shall state on oath that the thing seized was, or was to the best of his or her knowledge and belief, the property of the claimant at the time of the seizure.
- (5) The Minister may, in his or her discretion, stay or compound any condemnation proceedings.
- (6) The Minister may restore anything seized which is the subject of condemnation proceedings.
- (7) Where in any condemnation proceedings—
- (a) judgment is given for the claimant and the court or judge certifies that there was probable cause for making such seizure or detention, no authorised officer or other person who made or assisted in making the seizure is liable to any civil or criminal proceedings on account of the seizure or detention of the thing seized, and
 - (b) anything is condemned as forfeited, the forfeiture shall apply from the date when the liability to forfeiture arose.

Power to deal with seizures, before and after condemnation

- 66.** (1) The Minister may, in his or her discretion, restore anything seized as liable to forfeiture under this Act.

- (2) Without prejudice to *subsection (1)*, the Minister may as he or she thinks fit, and notwithstanding that the thing seized has not yet been condemned, or deemed to have been condemned, as forfeited—
 - (a) if a notice of claim in relation to such thing has been duly given under *section 64*, deliver it up to the claimant on payment to the Minister of such sum as the Minister deems proper, being a sum not exceeding that which represents the value of the thing, including any tax or duty on it that has not been paid, or
 - (b) if the thing seized is, in the opinion of the Minister, of a perishable or hazardous nature, sell or destroy it.
- (3) If, where anything is delivered up, sold or destroyed under *subsection (2)*, it is held by the court in condemnation proceedings that such thing was not liable to forfeiture at the time of its seizure, the Minister shall, subject to any deduction allowed under *subsection (4)*, on demand tender to such claimant—
 - (a) where a sum has been paid by such claimant under *subsection (2)(a)*, an amount equal to that sum,
 - (b) if the thing has been sold under *subsection (2)(b)*, an amount equal to the proceeds of sale, or
 - (c) if the thing has been destroyed under *subsection (2)(b)*, an amount equal to the market value of the thing at the time of its seizure.
- (4) Where the amount to be tendered under *subsection (3)* includes any sum on account of any duty or tax chargeable on the thing which has not been paid before its seizure, the Minister may deduct from the amount so much of it as represents the duty or tax.
- (5) If the claimant accepts any amount tendered under *subsection (3)*, such claimant shall not be entitled to maintain proceedings in any court on account of the seizure, detention, sale or destruction of the thing concerned.
- (6) All things seized by an authorised officer as liable to forfeiture shall after condemnation of such things be either sold or destroyed or otherwise disposed of in such manner as the Minister may direct.

Legal privilege

- 67.** (1) Subject to *subsection (2)*, nothing in this Act shall compel the disclosure by any person of privileged legal material or authorise the taking of privileged legal material.
- (2) The disclosure of information may be compelled, or possession of it taken, pursuant to this Act, notwithstanding that it is apprehended that the information is privileged legal material provided that the compelling of its disclosure or the taking of its possession is done by means whereby the confidentiality of the information can be maintained (as against the person compelling such disclosure or taking such possession) pending the determination by the High Court of the issue as to whether the information is privileged legal material.

- (3) Without prejudice to *subsection (4)*, where, in the circumstances referred to in *subsection (2)*, the disclosure of information has been compelled or possession taken of it pursuant to this Act, the person—
- (a) to whom such information has been so disclosed, or
 - (b) who has taken possession of it,
- shall (unless the person has, within the period subsequently mentioned in this subsection, been served with notice of an application under *subsection (4)* in relation to the matter concerned) apply to the High Court for a determination as to whether the information is privileged legal material and an application under this section shall be made not later than 30 days from the date of the disclosure or the taking of possession.
- (4) A person who, in the circumstances referred to in *subsection (2)*, is compelled to disclose information, or from whose possession information is taken, pursuant to this Act, may apply to the High Court for a determination as to whether the information is privileged legal material.
- (5) Pending the making of a final determination of an application under *subsection (3)* or *(4)*, the High Court may give such interim or interlocutory directions as the court considers appropriate including, without prejudice to the generality of the foregoing, directions as to—
- (a) the preservation of the information, in whole or in part, in a safe and secure place in any manner specified by the court,
 - (b) the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the court considers to be appropriate for the purpose of—
 - (i) examining the information, and
 - (ii) preparing a report for the court with a view to assisting or facilitating the court in the making by the court of its determination as to whether the information is privileged legal material.
- (6) In this section—
- “computer” includes a personal organiser or any other electronic means of information storage or retrieval;
- “information” means information contained in a book, document or record, a computer or otherwise;
- “privileged legal material” means information which, in the opinion of the High Court, a person is entitled to refuse to produce on the grounds of legal professional privilege.

Application of provisions relating to security and hearings otherwise than in public

68. Each of *sections 52* and *53* shall apply to an appeal under *section 62*, an application

under *section 63* or condemnation proceedings, subject to the following and any other necessary modifications:

- (a) the reference in each of *sections 52* and *53* to High Court shall be construed—
 - (i) in the case of *section 62*, as a reference to the District Court,
 - (ii) in the case of *section 63*, as a reference to the Circuit Court, and
 - (iii) in the case of condemnation proceedings, as a reference to the High Court, Circuit Court or District Court where the proceedings are instituted in accordance with *section 62*;
- (b) the reference in *section 52* to relevant material shall be construed as including a reference to any decision, evidence, document, material or other matter that is relevant to an appeal under *section 62*, an application under *section 63* or condemnation proceedings.

PART 7

OFFENCES AND PENALTIES

Obstruction

69. A person shall be guilty of an offence if he or she—

- (a) obstructs or interferes with an authorised officer or a member of the Garda Síochána in the course of exercising a power conferred on the officer or member concerned by this Act or a warrant under *section 59* or impedes the exercise by the authorised officer or member, as the case may be, of such power,
- (b) fails or refuses to comply with a requirement of an authorised officer under a requirement under *paragraph (c), (d), (l), (m) or (n) of section 58(1), paragraph (b), (c) or (i) of section 58(2), or section 58(3)(b)*, or in purported compliance with such requirement gives information or makes a declaration to the authorised officer or member that he or she knows to be false or misleading in any material respect, or
- (c) fails or refuses to comply with a direction of an authorised officer under *section 58(1)(f)*.

False or misleading information

70. A person who provides information to the Minister in purported compliance with this Act that he or she knows to be false or misleading in a material particular or is reckless as to whether it is false or misleading in a material particular shall be guilty of an offence.

Penalties for offences

71. (1) A person guilty of an offence under *section 31(7), 32(6), 33(2), 52(6), 61(6), 69* or *70* shall be liable—

- (a) on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months or both, or
 - (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 3 years or both.
- (2) A person guilty of an offence under *section 44(5)* shall be liable—
- (a) on summary conviction to a class C fine or imprisonment for a term not exceeding 6 months or both, or
 - (b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 3 years or both.
- (3) A person guilty of an offence under—
- (a) *subsection (1), (2), (3)(b), (4)(b), (5), (6)(b) or (7)(b) of section 10,*
 - (b) *section 11,*
 - (c) *section 12,*
 - (d) *section 13,*
 - (e) *subsection (1), (2)(b), (3) or (4)(b) of section 14,*
 - (f) *section 15,*
 - (g) *subsection (1), (2)(b), (3) or (4)(b) of section 16,*
 - (h) *section 17(3),*
 - (i) *section 18,*
 - (j) *section 19,*
 - (k) *subsection (1) or (2)(b) of section 20,*
 - (l) *section 24,*
 - (m) *section 25,*
 - (n) *section 26,*
 - (o) *section 30,*
 - (p) *section 46,*
 - (q) *section 48, or*
 - (r) *section 61(7),*
- shall be liable—
- (i) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or
 - (ii) on conviction on indictment, to a fine not exceeding the greater of €10,000,000 or 3 times the value of the relevant items in respect of which the offence is committed or imprisonment for a term not exceeding 5 years or both.

Offence by body corporate

72. (1) Where an offence under this Act is committed by a body corporate and it is proved that the offence was committed with the consent, connivance or approval of, or was attributable to any wilful neglect on the part of any director, manager, secretary or other officer of the body corporate, that person shall, as well as the body corporate, 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.
- (2) Where the affairs of a body corporate are managed by its members, *subsection (1)* shall apply 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, manager, secretary or other officer of the body corporate.

PART 8

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

Information sharing

73. (1) The Minister may share information with a relevant body and enter into a data sharing arrangement with that relevant body where it is necessary and proportionate for the purpose of the performance of a function of the Minister under *Part 4, 5 or 6*.
- (2) The information referred to in *subsection (1)* may—
- (a) include the name, address and contact details of a relevant person,
 - (b) identify an item as a relevant item,
 - (c) identify the relevant activity engaged in or proposed to be engaged in by a relevant person,
 - (d) be information required for the purpose of consideration under *section 29(3)*,
 - (e) be commercial information relating to that relevant activity including the destination or end-use of the relevant item, or
 - (f) include such other information as may be prescribed by the Minister for the purposes of *subsection (1)*.
- (3) The Minister may prescribe—
- (a) the relevant bodies with whom the information may be shared, and
 - (b) such conditions as the Minister considers appropriate to impose on the sharing of the information including, subject to the General Data Protection Regulation, sharing of any personal data.
- (4) In this section, “relevant body” means—
- (a) the Minister for Foreign Affairs,
 - (b) the Minister for Justice,

- (c) the Minister for Defence,
- (d) any other Minister of the Government who the Minister is satisfied, performs functions which are relevant to the purpose referred to in *subsection (1)*,
- (e) the Garda Síochána,
- (f) the Defence Forces, and
- (g) the Revenue Commissioners.

Transitional provisions

74. (1) Where, immediately before the coming into operation of *section 8*, an application for a licence was made in accordance with the Regulations of 2021 or an application for an authorisation was made in accordance with the Order of 2009 and—
- (a) a decision has not been made by the Minister in relation to the application before that coming into operation, the application shall be taken to be an application under this Act, or
 - (b) a decision has been made to grant the licence or authorisation but notice of the decision has not been given to the applicant, the decision shall be taken to be a decision in accordance with this Act and the licence or authorisation shall be taken to be granted, subject to any conditions referred to in the decision, under this Act.
- (2) Where a relevant activity, in relation to which a licence has been granted under the Regulations of 2021 or an authorisation has been granted under the Order of 2009 before the coming into operation of *section 8* is not carried out, or in relation to a global authorisation granted under the Order of 2009, is not fully carried out before that coming into operation, the licence or authorisation shall on the giving of notice in that behalf to the Minister by the person to whom the licence or authorisation was granted, in such form or manner as may be directed by the Minister, be taken to be an authorisation granted subject to the same, if any, conditions under this Act, without the requirement to apply for an authorisation under *Part 5*.
- (3) Where an appeal is made to the Minister under and in accordance with the Regulations of 2018 before the coming into operation of *section 8* and the appeal has not been determined under Regulation 7 of those Regulations—
- (a) the appeal shall be taken to be an appeal under *section 43*, and
 - (b) Regulations 5 and 6 of the Regulations of 2018 shall continue to apply to the decision the subject of the appeal until the determination of the appeal under *Part 5*.