Communications Minister publishes general scheme of the Online Safety and Media Regulation Bill

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On 10 January 2020, the Minister for Communications, Climate Action and Environment, Richard Bruton TD, published the general scheme of the Online Safety and Media Regulation Bill 2019 (hereinafter 'the Bill'). The purpose of the Bill is to create new online safety laws to bring legislation up to date with the EU Audiovisual Media Services Directive (AVMSD) which governs the EU-wide coordination of national legislation on all audiovisual media, which concerns both traditional TV broadcasts and on-demand services.

The proposed Bill will establish an Online Safety Commissioner as part of a wider "Media Commission", which will replace the Broadcasting Authority of Ireland, to oversee the new regulatory framework for online safety. The Online Safety Commissioner will govern the new framework through legally binding online safety codes relating to a wide range of matters, including harmful online content (cyberbullying, material promoting eating disorders, self-harm and suicide and "material which it is a criminal offence to disseminate", including "child sexual abuse material" and "content containing or comprising incitement to violence or hatred"); commercial communications; risk and impact assessments; and complaints handling. The Online Safety Commissioner will be responsible for designating which online services will be covered under the new law and to decide which codes apply to each designated service. Each Online Safety Code will set out the steps the designated service provider must take to keep their users safe online and will depend on the type of service that is being offered.

The proposed Bill authorises the Online Safety Commissioner with robust compliance, enforcement and sanction powers including: reporting requirements of compliance with online safety codes by designated online services; the auditing of complaints or issues relating to handling mechanisms operated by online services; and the appointment of authorised officers to assess compliance and carry out audits. The proposed Bill empowers the Online Safety Commissioner to issue a "compliance notice" to an online service where it is considered that the online service is not in compliance with an online safety code. The compliance notice will set out what an online service must do to bring itself into compliance and may include changing a system or policy, or the removal or restoration of content and the timeframe in which to take such actions. If an online service fails to take action following a compliance notice, the proposed bill also grants the

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Online Safety Commissioner the authority to issue a “warning notice” to a service provider, detailing what the service must do to bring itself into compliance and the sanction the Commissioner will take if the online service fails to comply. The proposed Bill provides that any sanctions to be imposed on a designated online service be sought by the whole Media Commission, following the failure of a service provider to comply with a warning notice. Under the proposed Bill, such sanctions include an “administrative financial sanction”, “compelling compliance” or the blocking of access to the offending designated online service in Ireland. The proposed Bill provides that “the application of each of these sanctions requires court approval whereupon the designated online service in question will have the opportunity to dispute its application.”

The government has referred the general scheme of the proposed Bill to the Office of the Attorney General for review and to the Joint Oireachtas Committee on Communications, Climate Action and Environment for examination. In addition, the Department of Communications, Climate Action and Environment will hold a number of stakeholder engagement sessions on key issues arisng from the general scheme of the proposed Online Safety and Media Regulation Bill.

Department of Communications, Climate Action and Environment, ‘General Scheme Online Safety Media Regulation Bill 2019’

https://www.dccae.gov.ie/enie/communications/legislation/Documents/154/General_Scheme_Online_Safety_Media_Regulation_Bill.pdf

Department of Communications, Climate Action and Environment, ‘Minister Bruton Publishes Draft Scheme of New Online Safety Law’

https://www.dccae.gov.ie/en-ie/news-and-media/press-releases/Pages/Minister-Bruton-Publishes-Draft-Scheme-of-New-Online-Safety-Law.aspx

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