Online Safety and Media Regulation Bill

Explanatory Note - Administrative financial sanctions

The Online Safety and Media Regulation Bill creates a hierarchy of sanctions be applied to non-compliant services. The aim of an efficient regulatory system is to create a culture of compliance which minimises serious non-compliance. It is essential that where non-compliance occurs, that it is responded to appropriately.

The Law Reform Commission in the Report on Regulatory Powers and Corporate Offences describes the power to impose administrative financial sanctions as “one of the most effective” in the regulatory toolkit and that “the power to impose administrative financial sanctions is both valuable and necessary in ensuring that financial and economic regulators have the requisite powers to achieve their regulatory objectives.”

Traditionally, regulatory bodies have only been able to avail of such powers in limited legal contexts, such as to give effect to European Union legislation. This is the case, for example, with the Data Protection Commission.

However, recent case law (Purcell v. Central Bank [2016] IEHC 514) and the recommendations of the above mentioned Law Reform Commission Report have highlighted that such sanctions are permissible where they do not constitute the administration of justice by a non-court entity. Certain safeguards must be built into such a system, for example where a regulator seeks to impose an administrative financial sanction against, such sanction will be subject to confirmation by a court.

The procedure for administrative financial sanctions is out in Heads 16A-16D of the general scheme of the proposed Bill. Administrative financial sanctions may be imposed where a regulated entity has failed to comply with a warning notice issued by the Commission, or where the Commission decides to do so following an investigation. The Commission does not have the power to make a final determination in this regard (save where a regulated entity elects for the Commission to do so) and decisions to impose such sanctions will require court confirmation. A regulated entity may appeal the decision to impose such a sanction of the amount of the sanction.

The upper amount of the administrative financial sanctions that the Media Commission may seek to impose on an online service will be decided in the coming months.