



STATUTORY INSTRUMENTS.

S.I. No. 500 of 2023

COMMUNICATIONS REGULATION AND DIGITAL HUB
DEVELOPMENT AGENCY (AMENDMENT) ACT 2023 (PART 7)
REGULATIONS 2023

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I, EAMONN RYAN, Minister for the Environment, Climate and Communications, in exercise of the powers conferred on me by sections 75, 78 and 80 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (No. 4 of 2023), hereby make the following regulations:

Citation

1. These Regulations may be cited as the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (Part 7) Regulations 2023.

Interpretation

2. (1) In these Regulations –

“Act of 2023” means the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (No. 4 of 2023);

“adjudicator” has the same meaning as it has in Part 7 of the Act of 2023;

“Chief Adjudicator” means the Chief Adjudicator appointed under section 76(3) of the Act of 2023;

“Commissioner” means a member of the Commission;

“division” means an uneven number of adjudicators sitting together for the purpose of a particular adjudication or part of an adjudication;

“legally qualified person” means a person who, for a period of not less than 10 years, has been –

- (a) a practising barrister or a practising solicitor within the meaning of the Legal Services Regulation Act 2015,
- (b) a registered lawyer, having the same right of audience as a practising barrister or a solicitor qualified to practise by virtue of Regulation 10 of the European Communities (Lawyers’ Establishment) Regulations 2003 (S.I. No. 732 of 2003), or
- (c) in practice as a barrister or solicitor in a Member State of the European Union, an EEA state, Switzerland or the United Kingdom of Great Britain and Northern Ireland.

Eligibility for nomination as adjudicator

3. (1) The following categories of persons shall be eligible for nomination by the Commission under section 75 of the Act of 2023 for appointment by the Minister as adjudicators:

- (a) legally qualified persons;
- (b) persons who, in the opinion of the Commission, possess expertise or experience in one or more of the following areas sufficient to enable the person to effectively perform the functions of an adjudicator:
 - (i) regulation, including regulation of utilities;
 - (ii) economics;
 - (iii) law;
 - (iv) accounting or finance;
 - (v) telecommunications engineering;
 - (vi) the electronic communications industry.

(2) A person shall not be eligible for nomination by the Commission under section 75 of the Act of 2023 if the person –

- (a) has been convicted on indictment of an offence,
- (b) has been convicted of an offence involving fraud or dishonesty,
- (c) has been adjudicated bankrupt and the bankruptcy has not been annulled or discharged,
- (d) has had a declaration made against him or her under section 819 of the Companies Act 2014 or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act,
- (e) is a member of either House of the Oireachtas,
- (f) is a member of the European Parliament, or
- (g) holds judicial office.

Term of appointment of adjudicator and renewal

4. (1) The term of appointment of an adjudicator shall be up to 5 years from the date of his or her appointment, as specified in the instrument of appointment.

(2) Notwithstanding paragraph (1), where an employee of the Commission, or a Commissioner, who has been appointed as an adjudicator ceases to be so employed or to be a Commissioner the term of appointment of the person as an adjudicator shall expire on the date on which he or she ceases to be so employed or to be a Commissioner.

(3) Notwithstanding paragraph (1), the term of appointment of an adjudicator shall expire if he or she is –

- (a) convicted on indictment of an offence,

- (b) convicted of an offence involving fraud or dishonesty,
- (c) adjudicated bankrupt, or
- (d) elected or appointed to hold an office referred to in subparagraph (e), (f) or (g) of Regulation 3(2),

on the date of such conviction, adjudication, election or appointment.

(4) Where the term of appointment of an adjudicator expires by the passage of time, the term of appointment shall, subject to paragraphs (5) and (6), be renewable and the adjudicator shall be deemed to seek such renewal unless he or she, in advance of the expiry, informs the Minister in writing to the contrary.

(5) Where a person seeks, or is deemed to seek, renewal of his or her term of appointment as an adjudicator the Minister shall nominate an independent person (the “assessor”) to assess whether the person continues to satisfy the eligibility criteria set out in Regulation 3.

(6) Where the assessor confirms to the Minister that the person seeking renewal of his or her appointment continues to satisfy the eligibility criteria set out in Regulation 3 the Minister shall, subject to section 76(2) of the Act of 2023, reappoint the person as an adjudicator.

(7) Where a person is appointed as an adjudicator for more than one term he or she shall not serve for a cumulative period of more than 10 years.

Term of appointment of Chief Adjudicator

5. (1) An adjudicator appointed by the Commission to be the Chief Adjudicator shall serve in that position for the term specified by the Commission in the instrument of appointment, which shall be less than or equal to the adjudicator’s term of appointment.

(2) Where the Commission appoints an adjudicator to be the Chief Adjudicator for more than one term he or she shall not serve for a cumulative period of more than 10 years.

Resignation of adjudicator

6. An adjudicator may resign at any time by giving notice in writing to the Minister and such resignation shall take effect on and from the date specified in the notice or the date of receipt of the notice, whichever is later.

Revocation of appointment as adjudicator

7. (1) The Commission shall notify the Minister where it has reasonable grounds to believe that –

- (a) an adjudicator has become incapable through ill-health of effectively performing his or her functions,
- (b) an adjudicator has engaged in serious misconduct, which may include, but is not limited to, serious or repeated breaches of their obligations under these Regulations or the Act of 2023, or

- (c) an adjudicator has engaged in any conduct, including the receipt of remuneration which has the potential to give rise to an actual or perceived conflict of interest during his or her term of appointment and which conflict the Commission considers is likely to continue.
- (2) Following a notification under paragraph (1), the Minister shall cause an independent assessment of the information received to be carried out by a person who possesses relevant experience and expertise.
- (3) On completion of the assessment, the assessor shall furnish a copy of his or her findings and a recommendation to the Minister, which shall –
- (a) where the assessor is of the opinion that an adjudicator has become incapable through ill-health of effectively performing his or her functions, specify the nature of the ill-health and include a medical report, whether procured by the adjudicator in the course of treatment or by the assessor in the course of the assessment,
 - (b) where the assessor is of the opinion that an adjudicator has engaged in serious misconduct, specify the nature of the serious misconduct alleged,
 - (c) where the assessor is of the opinion that an adjudicator has engaged in conduct which has the potential to give rise to an actual or perceived conflict of interest during his or her term of appointment, specify the conduct, the nature of the conflict of interest, whether or not in the opinion of the assessor the conflict of interest has arisen, and if so, whether or not it is likely to continue, and the basis for such opinion.
- (4) Where a recommendation under paragraph (4) supports the revocation of an adjudicator's appointment, the Minister shall submit the recommendation to the Government for consideration.
- (5) Following consideration of a recommendation submitted in accordance with paragraph (4), the Government may revoke the appointment of the adjudicator.

Functions of Chief Adjudicator

8. The functions of the Chief Adjudicator shall include –
- (a) assigning adjudications to an adjudicator or to a division,
 - (b) re-assigning adjudications from one adjudicator to another where the Chief Adjudicator sees fit to do so,
 - (c) directing employees of the Commission who have been required to assist adjudicators or an adjudicator (including the Chief Adjudicator) under section 81 of the Act of 2023,
and

- (d) directing persons appointed by the Commission to assist adjudicators or an adjudicator (including the Chief Adjudicator) under section 81 of the Act of 2023.

Rules concerning adjudications by adjudicators sitting together

9. (1) Unless the Chief Adjudicator directs otherwise –

- (a) a referral for adjudication on consent made pursuant to section 68(3)(c) of the Act of 2023 shall be dealt with by an adjudicator sitting alone, and
- (b) a referral for adjudication under section 69(b) of the Act of 2023 shall be dealt with by a division.

(2) The number of adjudicators in a division shall be 3 unless the Chief Adjudicator directs that it is necessary, due to the complexity of the matter being adjudicated upon, that more than 3 adjudicators sit together.

- (3) (a) The Chief Adjudicator may assign an adjudicator to a division for any particular period or for any particular adjudication or category of adjudications, as he or she sees fit.
- (b) Without prejudice to subparagraph (a) and so far as reasonably practicable –
 - (i) an adjudicator sitting alone shall be a legally qualified person, and
 - (ii) at least one adjudicator sitting in a division shall be a legally qualified person.

(4) The conduct of an adjudication by an adjudicator or a division otherwise than in accordance with paragraph (1) or (2) shall not be grounds for challenging any act or decision of that adjudication.

Decisions of divisions

10. (1) Where an adjudication is being determined by a division the Chief Adjudicator shall appoint an adjudicator to act as chairperson of the division.

(2) The decision of a division shall be that of a majority of its members.

(3) Only one decision shall be delivered by a division and no dissenting decisions shall be prepared.

(4) The chairperson of a division shall –

- (a) deal with any case-management or procedural issues that arise in any matter assigned to the division, and
- (b) provide the Commission with the decision of the division.

Rules concerning terms and conditions of employment and promotion of employees of Commission who act as adjudicators

11. Where an employee of the Commission acts as an adjudicator his or her access to promotion and increments shall not be varied by the Commission in any way that would prejudice his or her independence in the performance of his or her functions.

Person assisting adjudicator may not participate in decision-making

12. A person assisting an adjudicator or a division (whether required under section 81(1)(a) or appointed under section 81(1)(b) of the Act of 2023) shall not participate in the making of the decision of the adjudicator or division under section 90(2) of the Act of 2023.

Measures to ensure independence of adjudicators

13. The Commission shall, at all times, ensure –

- (a) effective internal separation between the functions of the Commission and the functions of adjudicators, and
- (b) that the structure, policies, practices and functions of, and working arrangements within, the Commission are consistent with section 77 of the Act of 2023.

Policies and measures to identify and manage conflicts of interest

14. The Commission shall publish policies and implement measures to identify and manage conflicts of interest on the part of –

- (a) adjudicators, and
- (b) any employee of the Commission or other person (including any consultant or adviser) required or appointed under section 81 of the Act of 2023 to assist an adjudicator or a division.

Annual report by Commission

15. (1) The Chief Adjudicator shall report to the Minister annually on the compliance by adjudicators with the principle of independence under section 77 of the Act of 2023 (including any regulations made thereunder).

(2) The Commission shall report to the Minister annually on the compliance by the Commission with the principle of independence under section 77 of the Act of 2023 (including any regulations made thereunder) and the policies that the Commission has adopted in order to ensure compliance with that principle.



GIVEN under my Official Seal,
23 October, 2023.

EAMONN RYAN,
Minister for Communications, Climate Action and
Environment.

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