

Ms Heather Humphreys TD,  
Minister for Justice and Equality,  
Dept of Justice and Equality,  
51 St. Stephen's Green,  
Dublin 2.

Dear Ms Humphreys,

Firstly, may I take this opportunity to thank you for the prompt commencement of the Criminal Justice (Perjury and Related Offences) Act 2021. We have publicly welcomed its commencement and have also written to various authorities and bodies<sup>1</sup> to express our desire to see effective enforcement of the new statute.

I write to you today because of a great deal of time wasted by this office in ascertaining the name of the plaintiffs' solicitor in a multi-party personal injuries case against a local authority, dismissed in the Circuit Court but appealed to the High Court, and reported extensively in the media last month. The case details were not uploaded to the High Court search facility, which prompted us to contact the local court office concerned for the information. This was refused, citing Section 42(a)(i) of the Data Protection Act, 1988. Since the information requested was a matter of *public record*, and not a *court record*, per the requirement of the Data Protection Act, this refusal had no basis in law. The matter was subsequently resolved to our satisfaction without ISME having to go through a full FOI request, therefore I will not labour that incident.

However, I must point out that the whole exercise would be redundant had Section 30<sup>2</sup> of the Civil Liability and Courts Act 2004 been commenced. The intention of the Oireachtas was clear in this section: a public register of the parties to personal injuries litigation is necessary in the public interest in order to identify possible abuses of our legal system. We (and other members of the Alliance for Insurance Reform) have long argued the necessity for such a register, yet continue to be rebuffed in its establishment despite weekly reports in the media (to which ISME regularly alerts your Department via social media tagging) of the most dubious, implausible, or plainly fraudulent cases presented before our courts, which claim to be understaffed to bear the burden.

It is simply incredible that 17 years after enactment of the principal act, Section 30 has not been commenced. Even with the passage in the meantime of GDPR and the Data Protection Act, the establishment of such a register is explicitly provided for in Section 60 (7) (m) of the Data Protection Act, annexed at Appendix A below. ISME would therefore be obliged to ascertain, at the earliest possible opportunity, the answers to the following four questions:

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<sup>1</sup> <https://isme.ie/isme-welcomes-the-commencement-of-the-criminal-justice-perjury-and-related-offences-act-2021/>

<sup>2</sup> <http://www.irishstatutebook.ie/eli/2004/act/31/section/30/enacted/en/html#sec30>

1. Why has Section 30 not been commenced before now?
2. Given the demonstrable need for the register provided for in Section 30, why is its commencement not provided for in the Department's Justice Plan 2021?<sup>3</sup>
3. Will you commit your Department to the commencement of Section 30 at the earliest opportunity?
4. Has your Department, or any Minister or Minister of State of it, been lobbied by any professional or regulatory body, association, council or society with a view to forestalling the commencement of Section 30; and if so, by whom? (While this information is notionally available on the register of lobbying, it is relatively easy to elide the substance of a lobbying request in the return).

While this note concerns the commencement of Section 30, it is opportune to point out that data privacy has also been lately invoked to prevent the legitimate and lawful exercise of restrictions in other areas of concern to SMEs, specifically:

- the right (or indeed responsibility) of employers to ascertain the vaccination status of workers in certain situations where maintenance of social distancing is not feasible, and,
- the right of data processors to withhold data from subject access requests for documentary or CCTV information in cases where civil litigation is commenced or contemplated.

Highlighted in red in the Appendix below are the explicit provisions in law for such restrictions. Yet the DPC continues to construe privacy rights in the most narrow and absolute of terms, which we consider to be at variance not merely with the spirit, but with the letter of both the GDPR and the Data Protection Act. Such absolutist interpretations of individual privacy are particularly perverse where their observance could place an employer in hazard of enforcement by another state agency such as the HSA. This is manifestly unfair and unjust.

Yours sincerely,



Neil McDonnell  
Chief Executive

CC    Tánaiste Leo Varadkar TD, DE TE  
      Minister of State Robert Troy TD, DE TE  
      Ms Oonagh McPhillips, Secretary General, Department of Justice  
      Ms Oonagh Buckley, Deputy Secretary General, Department of Justice  
      Ms Isolde Goggin, Chairperson, CCPC

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<sup>3</sup> [http://www.justice.ie/en/JELR/Department\\_of\\_Justice\\_Action\\_Plan\\_2021.pdf/Files/Department\\_of\\_Justice\\_Action\\_Plan\\_2021.pdf](http://www.justice.ie/en/JELR/Department_of_Justice_Action_Plan_2021.pdf/Files/Department_of_Justice_Action_Plan_2021.pdf)

## APPENDIX A

60. (1) The rights and obligations provided for in Articles 12 to 22 and Article 34, and Article 5 in so far as any of its provisions correspond to the rights and obligations in Articles 12 to 22—

- (a) are restricted to the extent specified in subsection (3), and
- (b) may be restricted in regulations made under subsections (5) or (6).

(2) Subsection (1) is without prejudice to any other enactment or rule of law which restricts the rights and obligations referred to in that subsection.

(3) Subject to subsection (4), the rights and obligations referred to in subsection (1) are restricted to the extent that—

- (a) the restrictions are necessary and proportionate—
  - (i) to safeguard cabinet confidentiality, parliamentary privilege, national security, defence and the international relations of the State,
  - (ii) for the prevention, detection, investigation and prosecution of criminal offences and the execution of criminal penalties,**
  - (iii) for the administration of any tax, duty or other money due or owing to the State or a local authority in any case in which the non-application of the restrictions concerned would be likely to prejudice the aforementioned administration,
  - (iv) in contemplation of or for the establishment, exercise or defence of, a legal claim, prospective legal claim, legal proceedings or prospective legal proceedings whether before a court, statutory tribunal, statutory body or an administrative or out-of-court procedure,**
  - (v) for the enforcement of civil law claims, including matters relating to any liability of a controller or processor in respect of damages, compensation or other liabilities or debts related to the claim, or**
  - (vi) for the purposes of estimating the amount of the liability of a controller on foot of a claim for the payment of a sum of money, whether in respect of damages or compensation, in any case in which the application of those rights or obligations would be likely to prejudice the commercial interests of the controller in relation to the claim,**

(b) the personal data relating to the data subject consist of an expression of opinion about the data subject by another person given in confidence or on the understanding that it would be treated as confidential to a person who has a legitimate interest in receiving the information, or

- (c) the personal data concerned are kept—
  - (i) by the Commission for the performance of its functions,
  - (ii) by the Information Commissioner for the performance of his or her functions, or
  - (iii) by the Comptroller and Auditor General for the performance of his or her functions.

(4) The Minister may prescribe requirements to be complied with when the rights and obligations referred to in subsection (1) are restricted in accordance with subsection (3).

(5) Subject to subsection (9), regulations may be made by a Minister of the Government where he or she considers it necessary for the protection of a data subject or the rights and freedoms of others restricting the rights and obligations referred to in subsection (1)—

- (a) (i) if the application of those rights and obligations would be likely to cause serious harm to the physical or mental health of the data subject, and
- (ii) to the extent to which, and for as long as, such application would be likely to cause such serious harm,

and

- (b) in relation to personal data kept for, or obtained in the course of, the carrying out of social work by a public authority, public body, a voluntary organisation or other body.

**(6) Subject to subsection (9), regulations may be made restricting the rights and obligations referred to in subsection (1) where such restrictions are necessary for the purposes of safeguarding important objectives of general public interest and such regulations shall include, where appropriate, specific provisions required by Article 23(2).**

(7) Important objectives of general public interest referred to in subsection (6) include:

- (a) preventing threats to public security and public safety;
- (b) avoiding obstructions to any official or legal inquiry, investigation or process, including any out-of-court redress procedure, proceedings pending or due before a court, tribunal of inquiry or commission of investigation;
- (c) preventing, detecting, investigating and prosecuting breaches of discipline by, or the unfitness or incompetence of, persons who are or were authorised by law to carry on a profession or any other regulated activity and the imposition of sanctions for same;**
- (d) preventing, detecting, investigating or prosecuting breaches of ethics for regulated professions;**
- (e) taking any action for the purposes of considering and investigating a complaint made to a regulatory body in respect of a person carrying out a profession or other regulated activity where the profession or activity is regulated by that body and the imposition of sanctions on foot of such a complaint;**
- (f) preventing, detecting, investigating or prosecuting, whether in the State or elsewhere, breaches of the law which are subject to civil or administrative sanctions and enforcing such sanctions;**
- (g) the identification of assets which are derived from, or are suspected to derive from, criminal conduct and the taking of appropriate action to deprive or deny persons of those assets or the benefits of those assets and any investigation or preparatory work in relation to any related proceedings;**
- (h) ensuring the effective operation of the immigration system, the system for granting persons international protection in the State and the system for the

acquisition by persons of Irish citizenship, including by preventing, detecting and investigating abuses of those systems or breaches of the law relating to those systems;  
(i) safeguarding the economic or financial interests of the European Union or the State, including on monetary, budgetary and taxation matters;

(j) safeguarding monetary policy, the smooth operation of payment systems, the resolution of regulated financial service providers (within the meaning of the Central Bank Act 1942 ), the operation of deposit-guarantee schemes, the protection of consumers and the effective regulation of financial service providers (within the meaning of the Central Bank Act 1942 );

**(k) protecting members of the public against—**

**(i) financial loss or detriment due to the dishonesty, malpractice or other improper conduct of, or the unfitness or incompetence of, persons concerned in the provision of banking, insurance, investment or other financial services or in the management of bodies corporate or other entities,**

(ii) financial loss or detriment due to the conduct of individuals who have been adjudicated bankrupt, or

(iii) financial loss or detriment due to the conduct of individuals who have been involved in the management of a body corporate which has been the subject of a receivership, examinership or liquidation under the Act of 2014;

**(l) protecting—**

**(i) the health, safety, dignity, well-being of individuals at work against risks arising out of or in connection with their employment, and**

(ii) members of the public against discrimination or unfair treatment in the provision of goods or services to them;

**(m) the keeping of public registers for reasons of general public interest, whether the registers are accessible to the public on a general or restricted basis;**

(n) safeguarding the integrity and security of examinations systems;

**(o) safeguarding public health, social security, social protection and humanitarian activities.**

(8) Where the rights and obligations referred to in subsection (1) are restricted in regulations made under subsection (6) on the basis of important objectives of general public interest of the State, other than the objectives referred to in subsection (7), the important objective or objectives of general public interest shall be identified in those regulations.

(9) Subject to subsection (10), regulations may be made under subsection (5) or (6)—

(a) by the Minister following consultation with such other Minister of the Government as he or she considers appropriate, or

(b) by any other Minister of the Government following consultation with the Minister and such other Minister of the Government as he or she considers appropriate.

(10) The Minister or any other Minister of the Government shall consult with the Commission before making regulations under subsection (5) or (6).

(11) The Commission may, on being consulted under subsection (10), make observations in writing on any matter which is of significant concern to it in relation to the proposed regulations and, if the Minister or any other Minister of the Government proposes to proceed to make the regulations notwithstanding that concern, that Minister shall, before making the regulations, give a written explanation as to why he or she is so proceeding to—

(a) the Committee established jointly by Dáil Éireann and Seanad Éireann known as the Committee on Justice and Equality or any Committee established to replace that Committee, and

(b) any other Committee (within the meaning of section 19 (1)) which that Minister considers appropriate having regard to the subject matter of the regulations.

(12) Regulations made under this section shall—

(a) respect the essence of the right to data protection and protect the interests of the data subject, and

(b) restrict the exercise of data subjects' rights only in so far as is necessary and proportionate to the aim sought to be achieved.