

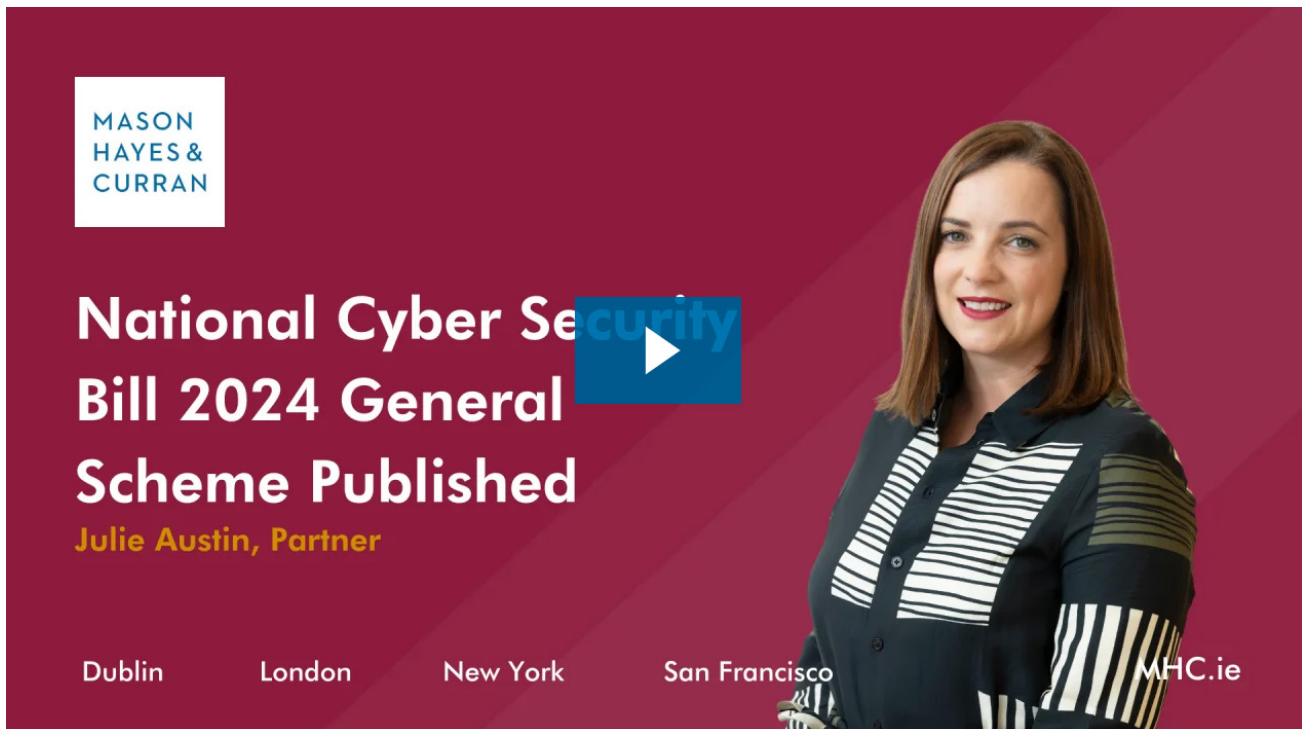
# Government & Public Sector Update

## In Brief

Q3 2024



## Welcome



Welcome to the autumn edition of our [Government & Public Sector](#) Update series. In this interactive magazine, we feature our most popular insights from the past month. We hope you find it informative.

First up in the above video, [Technology](#) partner, [Julie Austin](#) discusses Ireland's new National Cyber Security Bill 2024, which is set to enhance cybersecurity measures across critical sectors including public administration. We also examine a selection of other topics and trends impacting our clients including:

- [The National Cyber Security Bill 2024](#)
- [The Enhanced Role for Pharmacists](#)
- [The Judicial Appointments Commission](#)

Please feel free to contact a member of our team if you wish to discuss these topics or any other issues impacting your organisation.

## Key Contacts



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# Expert Taskforce Publishes Details of Further Enhanced Role for Pharmacists



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New regulations came into force on 1 March 2024. These regulations aim to enhance the role of pharmacists in the delivery of community healthcare. Under the new measures, pharmacists can extend the validity of certain prescriptions to a 12-month maximum period. The regulations also permit doctors and other prescribers, such as nurses and dentists, to write prescriptions for up to 12 months where it is clinically appropriate. Additional recommendations now suggest that a pharmacist's role should be expanded further, to allow for prescribing for common conditions, with a view to eventually expanding their role to "Independent Pharmacist Prescribing". The expansion of the role would involve pharmacists prescribing across the health service.

The measures introduced in March 2024 allow prescriptions to be written by the prescriber, including doctors, dentists, and nurse prescribers, where appropriate, for a period of up to 12 months. Where the prescription provided is for more than six but less than 12 months, a patient may ask their pharmacist, from 1 September, to consider extending it up to 12 months, where the prescription was issued on or after 1 March 2024.

The pharmacist's role in this process ensures that an assessment of appropriateness is carried out before the prescription is extended. The measures enhance the need for collaboration between the healthcare

professions involved to discuss and collectively consider how best to manage the patient's care. Prescribers can also indicate on prescriptions that an extension would not be in the best interests of the patient at the time the prescription issues. The measures do not apply to all medication. For instance, controlled drugs are not eligible for extension. However, many standard medications will be included.

Following this expansion concerning prescription time limits, it has now been recommended by the Taskforce established by the Minister for Health that pharmacists should be able to prescribe for a series of common conditions, or minor ailments. This will allow community care to be practiced through pharmacists where patients would otherwise have to attend at their General Practitioner to obtain prescription-only medicines. Eight medical conditions have been identified for inclusion:

- Allergic rhinitis
- Cold sores
- Conjunctivitis
- Impetigo
- Oral thrush
- Shingles
- Cystitis, and
- Thrush

Training will be offered to pharmacists by the Pharmaceutical Society of Ireland (PSI) to allow them to deliver this service, which will then be available to patients in community pharmacies. It is anticipated that this service will be available from early 2025. Minister for Health, Stephen Donnelly has also asked Department officials to examine the implementation of broader models of pharmacist prescribing within the Irish health system, as already occurs in other jurisdictions. This would involve pharmacists prescribing more complex conditions in specific circumstances.

## Conclusion

The extension of both prescriptions, and the ability of pharmacists to prescribe, is to be welcomed by patients and healthcare professionals. However, it imposes a separate burden on those professionals affected to ensure that they exercise their professional judgement appropriately. It is important for those healthcare professionals to consider issues such as:

- The necessity for ongoing treatment
- Patient safety
- The appropriateness of a new, or extended prescription for the patient concerned, and
- The views of others involved in the patient's care

The PSI, the pharmacy regulator, is developing updated guidelines and providing training to support pharmacists with these developments. We expect that guidance will also issue from other regulatory bodies. Time should be taken to review the details of this guidance and to engage fully with the training available to ensure compliance with it in both the interests of the patient, and the profession to work within their scope of practice.

For more information and helpful advice, contact a member of our [Public, Regulatory & Investigations](#) team.

# The Judicial Appointments Commission

## *A new body for judicial appointments in Ireland*



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Once established, the Judicial Appointments Commission (the Commission) will replace the Judicial Appointments Advisory Board (JAAB). The Commission will be the sole body responsible for recommending to the Government candidates for judicial office. Under the Constitution, judges are formally appointed by the President on the advice of the Government. The Commission will play a key role in the selection of judges, as the Government can only advise the President to appoint individuals recommended by the Commission.

### Background

The Commission will be established under the Judicial Appointments Commission Act 2023 (the Act). While many of its provisions have been commenced, the Commission itself has not yet been established. The Minister for Justice has indicated her intention to establish the Commission this year.

The significance of the legislation is underscored by its referral to the Supreme Court by the President. The referral was made under Article 26 of the Constitution to test the constitutionality of certain provisions. It marked the first time that the current President invoked this procedure, and only the sixteenth time in history that it has been utilised. The arguments considered by the Supreme Court included whether the legislation infringed upon the Government's constitutional role in judicial appointment. Ultimately, the Supreme Court determined that the legislation was constitutional.

The Court specifically noted that the Government retains discretion in deciding whether to advise the President to appoint a candidate recommended by the Commission.

### Functions of the Commission

The Commission's primary function will be to select and recommend candidates to the Government for appointment to judicial roles in the State. It will also be responsible for recommending candidates for nomination to judicial roles outside the State, such as the European Court of Human Rights. The Commission's function will be achieved through a streamlined and transparent process, ensuring merit-based recommendations, and fair, open competition among the widest possible pool of suitable candidates.

Previously, the JAAB recommended potential candidates to the Government, but the Government was not restricted to those nominees. Under the new Act, the Commission will recommend three candidates per vacant judicial office, and the Government can only consider these individuals for appointment. The Government will then advise the President on the appointment of its chosen nominee. The Supreme Court judgment confirms that this limits the Government's choice, as it can only decide whether to advise the President to appoint a Commission-recommended individual. If it decides not to do so, the process must restart. This new procedure significantly addresses previous concerns about political bias and connections influencing judicial appointments.

Another key function of the Commission, is to publish a judicial selection statement. The statement will set out the knowledge, skills and attributes required for judicial office, along with the selection procedures, including the application format. Draft statements will be published as soon as practicable after the relevant provisions of the Act take effect. The Commission may conduct public consultation on those drafts.

## Composition of the Commission

The Commission will consist of nine members:

- The Chief Justice as chair
- The President of the Court of Appeal
- Two members of the Judicial Council
- Four lay members, and
- The Attorney General as an *ex-officio*, non-voting member

When the Commission is recommending individuals for appointment to the High Court, Circuit Court or District Court, the President of the relevant court will serve as a member in place of the President of the Court of Appeal.

The Commission will be supported in its functions by a Judicial Appointments Commission Office, also established under the Act. The Office, led by a Director, will implement the Commission's policies and decisions.

## Conclusion

The establishment of the Commission marks a significant milestone in Ireland's judicial appointments process. It will further strengthen the reputation of independence of the Irish judiciary and ensure that it continues to uphold the interests of justice and serve the people of Ireland effectively.

For more information and helpful advice, contact a member of our [Public, Regulatory & Investigations](#) team.

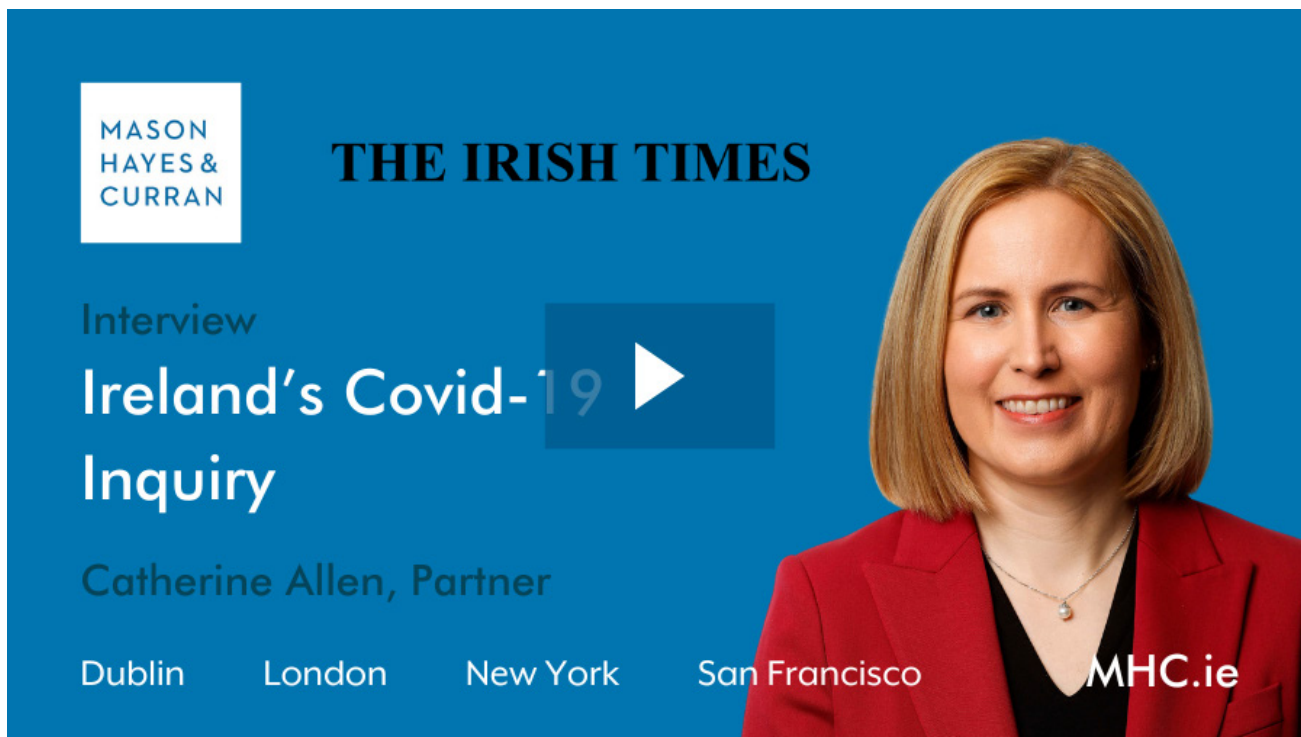


# Catherine Allen Interview on Ireland's Covid-19 Inquiry



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Catherine Allen, Partner and Head of our [Public, Regulatory & Investigations](#) team, recently contributed to the Irish Times video on Ireland's [Covid-19 inquiry](#).

It is expected that the inquiry will be established by the Irish Government to investigate the handling of the pandemic in healthcare settings such as hospitals and nursing homes.

The Terms of Reference for the inquiry are due to be announced shortly.

Catherine discussed the likely goals of the inquiry, the difference between statutory and non-statutory inquiries and the approach the Government is expected to take.

Watch the video on the Irish Times website [here](#), or read our latest insight on the [Covid-19 inquiry](#).

# National Cyber Security Bill 2024 General Scheme Published



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The Irish Government published the long-awaited General Scheme for the [National Cyber Security Bill 2024](#) on 30 August 2024. A general scheme in Irish law is an important early stage in the legislative process which broadly sets out what a full draft Bill is expected to look like. The next step will be for the full draft Bill to be presented before the Irish legislature.

Once finalised and enacted, the Bill will:

- Transpose the Network and Information Security Directive EU 2022/2555 (NIS2) into Irish law
- Establish the general framework for Ireland's national cybersecurity strategy, and
- Establish Ireland's National Cyber Security Centre on a statutory basis and set out its mandate and role

NIS2 forms part of a package of measures to improve the resilience and incident response capabilities of public and private entities, competent authorities and the EU as a whole in the field of cybersecurity and critical infrastructure protection. Entities regulated under NIS2 are categorised as 'Essential' or 'Important' depending on factors such as size, industry sector and criticality. In basic terms, these are entities in sectors which are considered critical to the EU's security and the functioning of its economy and society, such as:

- Energy
- Transportation

- Banking
- Digital infrastructure such as data centre service providers and providers of electronic communications networks and services
- Digital providers such as social networks and online marketplaces
- Medical devices, and
- Wholesale food production and distribution

The General Scheme sets out an initial draft structure for how NIS2 will be transposed into Irish law. Key aspects of the General Scheme include:

## 1. Designation of national competent authorities

The National Cyber Security Centre (NCSC) will be designated as the competent authority for the management of large-scale cybersecurity incidents and crises in Ireland. The NCSC will also be designated as Ireland's Computer Security Incident Response Team (CSIRT) with a range of responsibilities including incident handling. The General Scheme also provides that the NCSC will act as lead competent authority. This means it will act as the central coordinator in Ireland and the central authority for engagement with the European Commission and other Member States.



The General Scheme also provides for the designation of the following sector-specific competent authorities which will oversee implementation and enforcement of the cybersecurity regime within their relevant sectors:

| Competent Authority  | Industry Sector  |
|--|--|
| Commission for the Regulation of Utilities                       | <ul style="list-style-type: none"> <li>Energy</li> <li>Drinking water</li> <li>Waste water</li> </ul>  |
| Commission for Communications Regulation                         | <ul style="list-style-type: none"> <li>Digital infrastructure</li> <li>ICT service management</li> <li>Space</li> <li>Digital providers</li> </ul> |
| Central Bank of Ireland  | <ul style="list-style-type: none"> <li>Banking</li> <li>Financial market</li> </ul>  |
| Irish Aviation Authority   | Transport - aviation   |
| Commission for Rail Regulation                                   | Transport - rail   |
| The Minister for Transport                                       | Transport - maritime   |
| National Transport Authority                                     | Transport - road   |
| An Agency or Agencies under the remit of the Minister for Health | Health   |
| NCSC   | All other sectors set out in the Schedules to the Bill   |

## 2. Cybersecurity risk management measures

The General Scheme will transpose the risk management and reporting obligations under NIS2 into Irish law. All entities will be required to put in place appropriate and proportionate technical, operational and organisational measures to manage the risks posed to the security of network and information systems. Organisations will need to conduct risk assessments and implement measures based on an all-hazards approach to mitigate risk. This might include examining supply chain security, cyber hygiene practices, human resources security, etc.

The European Commission has also published a Draft Implementing Regulation (DIR) elaborating on the security measures that certain Digital Infrastructure and Digital Provider entities will be expected to implement.

The management board of Essential and Important entities will be required to:

- Approve, oversee the implementation of and monitor the application of the risk management measures, and
- Follow cyber security risk-management training and encourage their employees to take relevant cyber security training on a regular basis.

### 3. Incident reporting

All entities will have an obligation to report certain cyber incidents to the CSIRT. The timelines for reporting are extremely tight, with an early warning to be made within 24 hours of becoming aware of the breach. Notifications to customers may also be required. The DIR provides further clarity around the proposed reporting thresholds for certain Digital Infrastructure and Digital Provider entities.

### 4. Enforcement powers and personal liability for company officers

The relevant competent authority in each sector will, as noted, be responsible for supervision and enforcement. The General Scheme provides for a broad range of sometimes novel supervision and enforcement powers, including the appointment of independent adjudicators.

Notably, the General Scheme provides that senior management may be held personally liable for an organisation's non-compliance with its cybersecurity risk-management obligations, including incident reporting. Following a finding of non-compliance, organisations will first be issued with a Compliance Notice setting out the suspected breach and directing the organisation to remedy its non-compliance. Where an organisation subsequently fails to comply with a Compliance Notice, it commits an offence and is liable to fines and penalties. The relevant competent authority may also apply to the High Court to restrict senior management from their positions. If the organisation operates under a license or permit issued by the competent authority, the competent authority may also temporarily suspend the licence until compliance is achieved.

In line with NIS2, the maximum fine which can be issued for infringements under the General Scheme is:

- For essential entities, €10 million or at least 2% of an organisation's worldwide group turnover in the previous financial year, whichever is greater
- For important entities, €7 million or at least 1.4% of an organisation's worldwide group turnover in the previous financial year, whichever is greater

### 5. The National Cyber Security Centre

The NCSC is already responsible for advising and informing government IT and critical national infrastructure providers of current threats and vulnerabilities associated with network information security. As noted, the General Scheme provides the NCSC with a statutory footing, clarifying its role and mandate. The General Scheme also intends to give the NCSC specific powers to engage in a range of scanning activities to identify systems vulnerable to specific exploits.

## Top Tips for Businesses

With the deadline for transposition fast approaching, here are our top three tips for businesses:

- **First**, determine if your business is caught by NIS2 and how. NIS2 applies to a number of new sectors that were not originally in scope under NIS1 including ICT service management (B2B), public administration, waste management, medical devices, pharma and wholesale food businesses. The fact that your business was not caught by NIS1 does not mean it will not be caught by NIS2.
- **Second**, consider which jurisdiction your business will be subject to. The general rule is that, if an entity provides services or is established in more than one Member State, it will fall under the separate and concurrent jurisdiction of each of those Member States. In that case, businesses will need to understand how NIS2 was implemented in those jurisdictions. The rules on jurisdiction will however differ for public administration entities, Digital Infrastructure and Digital Providers, some of which will only be regulated in their Member State of 'main establishment' in the EU.
- **Third**, start preparing your compliance plans. The obligations under NIS2 fall into three buckets, (i) governance, (ii) cybersecurity measures, and (iii) incident reporting. Most compliance plans that we are developing with clients will include developing training for management bodies, conducting cyber security risk assessments, updating incident reporting procedures and conducting supply chain audits. We are also assisting clients in coordinating their approach to compliance across NIS2 and similar existing and forthcoming EU laws such as GDPR, the ePrivacy Directive and DORA.

## Conclusion

The General Scheme has not yet faced any pre-legislative scrutiny by the Government. It will be subject to further scrutiny as part of the legislative process once the text of the Bill is finalised. However, the deadline for EU Member States to transpose the NIS2 into national law is **17 October 2024**.

Given the upcoming deadline and the fact that the European Commission has indicated that cybersecurity is one of its top priorities, it is anticipated that the legislative process will be streamlined with limited amendments made to the proposed General Scheme before the text of the Bill is finalised and enacted. Organisations should identify whether or not they are subject to the obligations set out in the General Scheme, so they are prepared to comply with this legislation when it enters into force.

For more information and expert advice, contact a member of our [Privacy & Data Security](#) team.

## Public Law

We are recognised as the premier public sector practice in Ireland.

We have a deep understanding of the public and regulated sector environment and the governing laws and regulations. Our expertise covers all areas from strategic advice on governance issues to statutory interpretation and legislative drafting. A core practice area of our team is judicial review and public law litigation, including contentious public procurement matters.

We have specialist expertise in advising and acting for clients in public and private inquiries of any kind – both statutory and non-statutory.

We have a deep understanding of the way public bodies function and the environment in which they operate. We specialise in advising public sector clients on what statutory bodies can properly do, and the procedures they must follow.

Our team is a national leader in professional regulation. We have extensive experience and knowledge, and act in numerous professional regulatory sectors.

We also understand that the legal environment surrounding public bodies is increasing in complexity, as pressures for efficiency and value must be reconciled with requirements of transparency, accountability, and procedural fairness.

[Contact our  
Public Law team](#)

## About Us

We are a business law firm with 120 partners and offices in Dublin, London, New York and San Francisco.

Our legal services are grounded in deep expertise and informed by practical experience. We tailor our advice to our clients' business and strategic objectives, giving them clear recommendations. This allows clients to make good, informed decisions and to anticipate and successfully navigate even the most complex matters.

Our working style is versatile and collaborative, creating a shared perspective with clients so that legal solutions are developed together. Our service is award-winning and innovative. This approach is how we make a valuable and practical contribution to each client's objectives.

## What Others Say

### Our Public Law Team

*Praised for the 'trustworthiness, expertise and wisdom' of its public law team.*

Legal 500, 2024

### Our Public Law Team

*"The firm is notably engaged, both intellectually and pragmatically, in the analysis and management of clients' positions and interests."*

Chambers & Partners, 2024