



AN BILLE UM CHLEACHTAIS SRIANTA (LEASÚ), 1987
RESTRICTIVE PRACTICES (AMENDMENT) BILL, 1987

*Mar a ritheadh ag dhá Theach an Oireachtais
As passed by both Houses of the Oireachtas*

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AN BILLE UM CHLEACHTAIS SRIANTA (LEASÚ), 1987
RESTRICTIVE PRACTICES (AMENDMENT) BILL, 1987

BILL

entitled

AN ACT TO AMEND AND EXTEND THE RESTRICTIVE 5
PRACTICES ACT, 1972, THE MERGERS, TAKE-OVERS
AND MONOPOLIES (CONTROL) ACT, 1978, THE PRICES
ACT, 1958, THE CONSUMER INFORMATION ACT, 1978,
THE MERCHANDISE MARKS ACTS, 1887 TO 1970, THE 10
POSTAL AND TELECOMMUNICATIONS SERVICES
ACT, 1983, AND THE SALE OF GOODS AND SUPPLY OF
SERVICES ACT, 1980, TO MAKE PROVISION IN RESPECT
OF SHORT WEIGHT AND SHORT MEASURE AND TO
MAKE OTHER PROVISIONS IN RELATION TO THE 15
MATTERS AFORESAID.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary and General

Short title,
collective citation
and construction.

1.—(1) This Act may be cited as the Restrictive Practices (Amend- 20
ment) Act, 1987.

(2) The Principal Act and *sections 10 to 23* of this Act may be cited
together as the Restrictive Practices Acts, 1972 and 1987, and shall
be construed together as one.

(3) The Act of 1978 and *sections 24, 25 and 26* of this Act may be 25
cited together as the Mergers, Take-overs and Monopolies (Control)
Acts, 1978 and 1987, and shall be construed together as one.

Interpretation.

2.—(1) In this Act—

“the Act of 1978” means the Mergers, Take-overs and Monopolies
(Control) Act, 1978;

“the Act of 1980” means the Sale of Goods and Supply of Services 30
Act, 1980;

“the Commission” means the Fair Trade Commission;

“the Director” means the holder of the office of Director of Consumer
Affairs established by section 9 of the Consumer Information Act,

1978, and known as the Director of Consumer Affairs and Fair Trade by virtue of *section 5 (2)* of this Act;

“the Examiner” means the Examiner of Restrictive Practices;

“functions” includes powers and duties;

5 “the Minister” means the Minister for Industry and Commerce;

“the Principal Act” means the Restrictive Practices Act, 1972.

(2) A reference in this Act to a section is to a section of this Act unless it is indicated that a reference to some other provision is intended.

10 (3) A reference in this Act to a subsection is a reference to the subsection of the section in which the reference occurs unless it is indicated that a reference to some other provision is intended.

3.—The enactments and statutory instruments (within the meaning of the Statutory Instruments Act, 1947) specified in the *Second Schedule* to this Act are hereby repealed or revoked from the commencement of this Act to the extent specified in the third column thereto. Repeals and revocations.

4.—This Act shall come into operation on such day as the Minister may by order appoint. Commencement.

20

PART II

Amendment to Principal Act and to the Act of 1978

5.—(1) The Restrictive Practices Commission shall be known as the Fair Trade Commission. Fair Trade Commission and Director of Consumer Affairs and Fair Trade.

25 (2) The office of Director of Consumer Affairs shall be known as the office of the Director of Consumer Affairs and Fair Trade and the holder of the office shall be known as the Director of Consumer Affairs and Fair Trade.

30 6.—(1) The functions vested in the Examiner by the Principal Act and by section 10 of the Act of 1978 are hereby transferred to the Director. Transfer of functions of Examiner to Director.

(2) References to the Examiner in the Principal Act or in any order made thereunder and in section 10 of the Act of 1978 and in this Act, except where the context otherwise requires, shall be construed as references to the Director.

35 (3) Where, immediately before the commencement of this Act, any legal proceedings are pending to which the Examiner is a party and the proceedings have references to functions transferred by this section to the Director, the name of the Director, shall, in so far as the proceedings relate to any functions transferred by this section, be substituted in the proceedings for that of the Examiner or added in the proceedings, as may be appropriate, and the proceedings shall not abate by reason of such substitution.

40 (4) Anything commenced before the commencement of this Act by or under the authority of the Examiner may, so far as it relates to

functions transferred by this section to the Director, be carried out and completed on or after such commencement by the Director.

(5) Every document granted or made in the exercise of a function transferred by this section shall, if and in so far as it was operative immediately before the commencement of this Act, have effect on and after such commencement as if it had been made by the Director. 5

Transfer of functions of Examiner to Commission.

7.—(1) The functions vested in the Examiner by the Act of 1978, other than by section 10 of that Act, are hereby transferred to the Commission.

(2) References to the Examiner in the Act of 1978 or in any order made thereunder, other than in section 10 of that Act, shall be construed as references to the Commission. 10

(3) Where, immediately before the commencement of this Act, any legal proceedings are pending to which the Examiner is a party and the proceedings have references to functions transferred by this section to the Commission, the name of the Commission, shall, in so far as the proceedings relate to any functions transferred by this section be substituted in the proceedings for that of the Examiner or added in the proceedings, as may be appropriate, and the proceedings shall not abate by reason of such substitution. 15 20

(4) Anything commenced before the commencement of this Act by or under the authority of the Examiner may, so far as it relates to functions transferred by this section to the Commission, be carried out and completed on and after such commencement by the Commission.

(5) Every document granted or made in the exercise of a function transferred by this section shall, if and so far as it was operative immediately before the commencement of this Act, have effect on and after such commencement as if it had been made by the Commission. 25

Orders relating to restrictive practices.

8.—(1) Notwithstanding anything in the Principal Act, whenever the Minister considers it expedient, in the interests of the orderly and proper regulation of competition, he may, after consultation with the Commission, the Director and any other Minister of the Government concerned, by order do, in relation to goods and services, all or any of the following: 30

(a) prohibit restrictive practices including arrangements, agreements or understandings which prevent or restrict competition or restrain trade or the provision of any service or which involve resale price maintenance; 35

(b) prohibit unfair practices or unfair methods of competition (whether or not relating to price); 40

(c) make such provision as the Minister thinks necessary to ensure the equitable treatment of all persons in regard to the supply or distribution of goods or the provision of services;

(d) make such other provision in regard to restrictive practices or unfair practices or unfair methods of competition (whether or not relating to price) affecting the supply and distribution of goods or the provision of services as he thinks fit. 45

(2) The Minister may by order revoke or amend an order under this section. 50

(3) An order under this section shall not have effect unless it is confirmed by an Act of the Oireachtas but, upon being so confirmed, it shall have the force of law in accordance with its terms.

5 (4) A person who contravenes (whether by act or omission) any provision of an order under this section for the time being in force shall be guilty of an offence under the Principal Act and the offence shall be deemed for the purposes of section 23 of that Act to be an offence under that Act.

10 (5) Sections 5, 10, 19, 22 and 24 of the Principal Act shall apply to an order made under this section.

15 9.—Notwithstanding anything in this Act or in the Principal Act, the provision of a service, being a service provided under a contract of employment, may not be the subject of fair practice rules under section 4 of the Principal Act, an enquiry under section 5 of that Act, or an investigation under section 14 of that Act except with the prior approval in writing of the Minister given with the consent of the Minister for Labour. Service provided under a contract of employment.

20 10.—Section 1 of the Principal Act is hereby amended by the substitution for the definition of “service” of the following new definition: Amendment of section 1 of Principal Act.

“‘service’ includes any professional service but does not include any service provided by a local authority within the meaning of section 2 of the Local Government Act, 1941.”.

25 11.—Section 4 of the Principal Act is hereby amended by the insertion in subsection (1) after “may” of “on their own initiative or”, and the said subsection (1), as so amended, is set out in the Table to this section. Amendment of section 4 of Principal Act.

TABLE

30 (1) The Commission may, on their own initiative or on the recommendation of the Examiner or at the request of an association representing persons engaged either in the supply and distribution of goods or in the provision of services, prepare and publish rules representing, in the opinion of the Commission, fair practice conditions with regard to the supply and distribution of such goods or the provision of such services.

35 12.—Section 5 of the Principal Act is hereby amended by the substitution of the following paragraph for paragraph (a) of subsection (1): Amendment of section 5 of Principal Act.

40 “(a) The Commission shall, on the recommendation of the Examiner or at the request of the Minister, and may, on the application by any person whose request for an enquiry has been refused by the Examiner or on their own initiative, cause an enquiry to be held—

45 (i) into the conditions which obtain in regard to the supply and distribution of any kind of goods or to one or more aspects of the supply and distribution of one or more kinds of goods,

(ii) into the conditions which obtain in regard to the provision of any service or to one or more aspects

of the provision of one or more kinds of service,
or

(iii) into one or more aspects of the operation of an
order under section 8.”.

Amendment of
section 6 of
Principal Act.

13.—Section 6 of the Principal Act is hereby amended by the
substitution of the following subsection for subsection (2): 5

“(2) Where a report has been made by the Director to the
Commission under section 14 of this Act on matters which, in
the opinion of the Commission, are relevant to a proposed
enquiry, a notice given under subsection (1) of this section shall
include a statement that a copy of the report may be obtained
from the Commission on application by an interested party.”. 10

Amendment of
section 8 of
Principal Act.

14.—Section 8 of the Principal Act is hereby amended by the
substitution of the following subsection for subsection (4):

“(4) If the Commission, in a report to the Minister, recom- 15
mend the making of an order and if at the expiration of a period
of twelve months after he has received the report the Minister
has not made the order, he shall, within twenty-one days after
the said period, lay before each House of the Oireachtas a
statement in writing giving the reasons why he has not made the 20
order.”.

Amendment of
section 10 of
Principal Act.

15.—Section 10 of the Principal Act is hereby amended by the
substitution in subsection (1) of “, and may, on their own initiative”
for “transmitted by the Examiner”, and the said subsection, as so
amended, is set out in the Table to this section. 25

TABLE

(1) The Commission shall, on the recommendation of the Examiner or at the
request of the Minister, and may, on their own initiative, hold a special review of
the operation of an order under section 8.

Amendment of
section 12 of
Principal Act.

16.—The Principal Act is hereby amended by the insertion in 30
section 12 of the following subsections:

“(2) The Commission may, for the purpose of their functions
when conducting a study or analysis under this section, require
any person to produce to the Commission any document in his
power or control or to give to the Commission any information 35
which the Commission may reasonably require.

(3) Any person who refuses to produce any document in his
power or control or to give to the Commission any information
which the Commission may reasonably require shall, subject to
subsection (4), be guilty of an offence. 40

(4) (a) Any person of whom a requirement has been made
under *subsection (2)*, may apply to the High Court
for a declaration under this section.

(b) Any person of whom a requirement has been made
under *subsection (2)* and who refuses to comply 45
with that requirement, may, within 7 days of such
refusal, apply to the High Court for a declaration
under this section.

5 (c) The High Court, having heard such evidence as may
be adduced and any representations that may be
made by the Commission and a person referred to
in *paragraph (a)* of this subsection, may, at its
discretion, declare that the exigencies of the
common good do not warrant the exercise by the
Commission of the powers conferred on them by
this section, and upon the making of such a decla-
10 ration the Commission shall withdraw the rel-
evant requirement under this section.”.

17.—The Principal Act is hereby amended by the substitution of
the following section for section 14: Amendment of
section 14 of
Principal Act.

“Powers etc. of
Director.

14.—(1) The Director may and, at the request
of the Minister or the Commission, shall—

- 15 (a) investigate any aspect of the supply or
distribution of goods or of the pro-
vision of a service,
- (b) investigate any aspect of the operation of
an order under this Act,
- 20 (c) investigate in the State any aspect of the
supply or distribution of goods or the
provision of a service by a person out-
side the State.
- (2) The Director may investigate any aspect of
25 the operation of fair practice rules.
- (3) Where the Director carries out an inves-
tigation under *subsection (1)* of this section, at the
request of the Minister or the Commission, he
shall furnish a report of his investigation to the
30 Minister or the Commission as appropriate.
- (4) Nothing in this section shall prevent the
Director from furnishing the Minister or the Com-
mission with a report of any investigation carried
out by him under this section.”.

35 18.—Section 15 of the Principal Act is hereby amended by— Amendment of
section 15 of
Principal Act.

- (a) the insertion in subsection (1) of section 15 after “functions”
of “or the Commission of any of their functions” and the
said subsection as so amended is set out in the Table to
this section,

40 TABLE

(1) For the purpose of obtaining any information necessary for the exercise by
the Examiner of any of his functions or the Commission of any of their functions
under this Act, an authorised officer may, on production of his authorisation if so
required—

- 45 (a) at all reasonable times enter and inspect premises at which any activity
in connection with the business of supplying or distributing goods or
providing a service, or in connection with the organisation or assistance
of persons engaged in any such business, is carried on,
- (b) require the person who carries on such activity and any person employed

in connection therewith to produce to the authorised officer any books, documents or records relating to such activity which are in that person's power or control, and to give to the authorised officer such information as he may reasonably require in regard to any entries in such books, documents and records, 5

- (c) inspect and copy or take extracts from any such books, documents and records,
- (d) require a person mentioned in paragraph (b) to give to the authorised officer any information he may require in regard to the persons carrying on such activity (including in particular, in the case of an unincorporated body of persons, information in regard to the membership thereof and its committee of management or other controlling authority) or employed in connection therewith, 10
- (e) require a person mentioned in paragraph (b) to give to the authorised officer any information which the officer may reasonably require in regard to such activity. 15

and

(b) the substitution of the following subsection for subsection (6):

“(6) In this section ‘authorised officer’ means a person authorised in writing by the Director or by a member of the Commission for the purposes of this Act.”. 20

Amendment of section 18 of Principal Act.

19.—Section 18 of the Principal Act is hereby amended by the substitution of the following subsection for subsection (1): 25

“(1) The Minister shall lay before each House of the Oireachtas a copy of the report made by the Commission of every enquiry under section 5 or section 9 and of every special review under section 10 within four months of the receipt by him of such report.”. 30

Amendment of section 19 of Principal Act.

20.—Section 19 of the Principal Act is hereby amended by the insertion after “motion” of “of the Director or” and the section, as so amended, is hereby set out in the Table to this section.

TABLE

19. It shall be lawful for a court of competent jurisdiction to grant an injunction on the motion of the Director or of the Minister or of any other person to enforce compliance with the terms of an order under section 8 for the time being in force notwithstanding that any other proceedings, civil or criminal, may lie for that purpose. 35

Amendment of section 23 of Principal Act.

21.—The Principal Act is hereby amended by the substitution of the following section for section 23: 40

“23.—(1) Every person who commits an offence under this Act for which no special penalty is provided shall—

- (a) on summary conviction, be liable to a fine not exceeding £500 (together with, in the case of a continuing offence, a fine not exceeding £50 for every day on which the offence is continued) or, at the discretion of the Court, to imprisonment for a term not exceeding six months or to both such fine and such imprisonment, or 45

- (b) on conviction on indictment, be liable to a fine not 50

5 exceeding £10,000 (together with, in the case of a continuing offence, a fine not exceeding £1,000 for every day on which the offence is continued) or, at the discretion of the Court, to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.

10 (2) (a) Where a person is convicted of an offence under this Act by reason of his failure, neglect or refusal to comply with a provision in an order requiring him to perform a specified act within a specified period or before a specified date, and the said act remains, after the date of such conviction, unperformed by him, such person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding

15 £50 for each day, after the date of such first-mentioned conviction, on which the act remains unperformed by him or, at the discretion of the Court, to imprisonment for a term not exceeding six months.

20 (b) An offence under this subsection shall be a continuing offence and accordingly fresh proceedings in respect thereof may be taken from time to time."

22.—Section 24 of the Principal Act is hereby amended by—

Amendment of section 24 of Principal Act.

25 (a) the substitution in subsection (1) of "the Director" for "the Minister" and the subsection, as so amended, is set out in the Table to this section, and

(b) the substitution in subsection (2) of "eighteen months" for "twelve months", and the subsection, as so amended, is set out in the Table to this section.

TABLE

30 (1) Summary proceedings in relation to an offence under this Act may be prosecuted by the Director.

(2) Notwithstanding section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be instituted within eighteen months from the latest day on which the offence was committed.

35 23.—The First Schedule to the Principal Act is hereby amended—

Amendment of First Schedule to Principal Act.

(a) in paragraph 5 by—

(i) the substitution in subparagraph (1) of "their terms" for "its terms",

40 (ii) the deletion in subparagraph (1) of "non-contributory",

(iii) the insertion in subparagraph (1) of "or schemes" after "scheme",

(iv) the insertion in subparagraph (2) of "or schemes" after "scheme", and

45 (b) in paragraph 9 by the insertion in subparagraph (1) of the words "or by any other Act conferring powers, duties and functions on the Commission" after "Act",

and the said subparagraphs as so amended are set out in the Table to this section.

TABLE

5. (1) The Minister shall, with the consent of the Minister for Finance, as soon as may be make and carry out according to their terms a scheme or schemes for the granting of pensions, gratuities or other allowances to or in respect of members of the Commission ceasing to hold office other than members in respect of whom an award under the Superannuation Acts, 1834 to 1963, may be made. 5

(2) In the case of a member of the Commission who was appointed a member of the Fair Trade Commission on the 26th day of November, 1969, and who had before such appointment been a member of the Industrial Development Authority, a scheme or schemes under this paragraph shall provide for reckoning, as service as a member of the Commission, service by such person in a pensionable capacity as a member of the Industrial Development Authority. 10

9. (1) No person shall disclose information available to him by virtue of the powers of obtaining information conferred by this Act or by any other Act conferring powers, duties and functions on the Commission or through being present at a meeting of the Commission held in private. 15

Amendment of section 1 of Act of 1978.

24.—Section 1 of the Act of 1978 is hereby amended by the substitution for the definition of “service” of the following new definition:

“‘service’ includes any professional service, but does not include— 20

- (i) any service provided by the holder of a licence under section 9 of the Central Bank Act, 1971,
- (ii) any service provided by a trustee savings bank certified under the Trustee Savings Banks Acts, 1863 to 1965, 25
- (iii) any service provided under a contract of employment,
- (iv) any service provided by a local authority within the meaning of section 2 of the Local Government Act, 1941.”.

Amendment of section 8 of Act of 1978.

25.—Section 8 of the Act of 1978 is hereby amended by the insertion of the following subsection: 30

“(4) The Commission may, for the purpose of this section, delegate one or more of their members to carry out an investigation and to report thereon in accordance with this section and may make different delegations for different investigations and may revoke a delegation.”. 35

Amendment of section 13 of Act of 1978.

26.—Section 13 of the Act of 1978 is hereby amended by—

- (a) the insertion in paragraph (a) of subsection (1) after “motion” of “of the Director or”, and the said paragraph, as so amended, is set out in the Table to this section, and 40
- (b) the substitution in paragraph (a) of subsection (5) of “the Director” for “the Minister”, and the said paragraph as so amended is set out in the Table to this section.

TABLE

(1) (a) It shall be lawful for a court of competent jurisdiction to grant an injunction on the motion of the Director or of the Minister or of any other person to enforce compliance with the terms of an order under section 9 or 11 for the time being in force. 45

(5) (a) Summary proceedings in relation to an offence under this section may be prosecuted by the Director. 50

PART III

Amendment to certain other enactments

- 27.—Section 2 of the Prices Act, 1958, is hereby amended by the
5 insertion after the definition of “authorised officer” of the following
definition “‘the Director’ means the holder of the office of Director
of Consumer Affairs established by section 9 of the Consumer Infor-
mation Act, 1978; and known as the Director of Consumer Affairs
and Fair Trade by virtue of section 5 (2) of the *Restrictive Practices
(Amendment) Act, 1987*;”.
- Amendment of
section 2 of Prices
Act, 1958.
- 28.—Section 24 (as amended by the Prices (Amendment) Act,
10 1965) of the Prices Act, 1958, is hereby amended by the insertion in
subsection (1) after “the Minister” of “or the Director”, and the
subsection, as so amended, is set out in the Table to this section.
- Amendment of
section 24 of Prices
Act, 1958.

TABLE

- 15 (1) An authorised officer may, for the purpose of obtaining any information
which the Minister or the Director may require for enabling him to exercise his
functions under this Act, do any one or more of the following things—
- 20 (a) at all reasonable times enter premises at which any activity in connection
with the business of manufacturing or processing or packaging or
supplying or distributing commodities or the business of rendering a
service or carrying out work or a process or in connection with the
organisation or assistance of persons engaged in any such business is
carried on, and inspect the premises,
- 25 (b) require the person who carries on such activity and any person employed
in connection therewith to produce to him any books, documents or
records relating to such activity which are in that person's power or
control and to give him such information as he may reasonably require
in regard to any entries in such books, documents or records,
- 30 (c) inspect and copy or take extracts from such books, documents or
records,
- 35 (d) require such person to give to him any information he may reasonably
require in regard to the persons carrying on such activity (including,
in particular, in the case of an unincorporated body of persons, infor-
mation in regard to the membership thereof and of its committee of
management or other controlling authority) or employed in connection
therewith,
- (e) require such person to give to him any other information which he may
reasonably require in regard to such activity.

- 29.—Section 28 of the Prices Act, 1958, is hereby amended by the
40 insertion in subsection (1) after “the Minister” of “or the Director”
and the said subsection as so amended is set out in the Table to this
section.
- Amendment of
section 28 of Prices
Act, 1958.

TABLE

- 45 (1) Proceedings in relation to an offence under any section of this Act may be
brought and prosecuted by the Minister or the Director.

- 30.—The Consumer Information Act, 1978 is hereby amended by—
- (a) the substitution for subsection (1) of section 13 of the fol-
lowing subsection:
- Amendment of
Consumer
Information Act,
1978.

“(1) Where an advertisement in relation to the supply or provision of any goods, services, accommodation or facilities is published and does not include the name and address of the person who procured such publication or his agent, the publisher of the advertisement, shall, if the Director or an officer of the Minister so requests within 12 months of the publication of the advertisement, give to the Director or officer the name and address of such person or his agent.”, 5

(b) the substitution for section 16 of the following section: 10

“16. (1) In this section ‘authorised officer’ means a whole-time officer of the Minister authorised in writing by the Minister or the Director to exercise, for the purpose of the Acts, the Sale of Goods and Supply of Services Act, 1980, the enactments and the Regulations specified in the *First Schedule* to the *Restrictive Practices (Amendment) Act, 1987*, and this Act, the powers conferred by this section. 15

(2) Every authorised officer shall be furnished with a warrant of his appointment as an authorised officer which shall indicate the enactment or statutory instrument under which he is acting and, when exercising any power conferred on him by subsection (3) of this section shall inform any person affected of the title of the enactment to which the investigation relates and, if requested to do so, produce the warrant to him. 20 25

(3) An authorised officer may, for the purpose of obtaining any information which may be required in order to enable the Minister or the Director, as the case may be, to exercise his functions under the Acts, the Sale of Goods and Supply of Services Act, 1980, the enactments or the Regulations specified in the *First Schedule* to the *Restrictive Practices (Amendment) Act, 1987*, and this Act, on production of the authorisation of the officer, if so required— 30 35

(a) at all reasonable times enter premises at which any trade or business or any activity in connection with a trade or business is carried on and inspect the premises and any goods on the premises and, on paying or making tender of payment therefor, take any of the goods, 40

(b) require any person who carries on such trade, business or activity and any person employed in connection therewith to produce to the officer any books, documents or records relating to such trade, business or activity which are in that person’s power or control and to give him such information as he may reasonably require in regard to any entries in such books, documents and records, 45

(c) inspect and copy or take extracts from such books, documents and records, 50

(d) require any such person to give to the officer any information the officer may require in regard to the persons carrying on such trade, business or activity (including, in particular, in the case of an 55

unincorporated body of persons, information in regard to the membership thereof and of its committee of management or other controlling authority) or employed in connection therewith,

5 (e) require any such person to give to the officer any other information which the officer may reasonably require in regard to such activity.

10 (4) A person who obstructs or impedes an authorised officer in the exercise of a power, or does not comply with a requirement, under this section shall be guilty of an offence under this Act.”,

(c) the substitution for section 18 of the following section:

15 “18. (1) Summary proceedings in relation to an offence under this Act may be brought and prosecuted by the Minister.

(2) Notwithstanding section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under the Acts or this Act may be instituted within 18 months from the date of the offence.”,

20 (d) the amendment of section 19 by the insertion after “offence under” of “the Acts, the Sale of Goods and Supply of Services Act, 1980, or” and the said section as so amended is set out in the Table to this paragraph.

TABLE

25 19. Where an offence under the Acts, the Sale of Goods and Supply of Services Act, 1980, or this Act which is committed by a body corporate or an unincorporated
30 body of persons is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person (or any person acting on his behalf) being a director, manager, secretary, member of the committee of management or other controlling authority of any such body or being any other similar officer of any such body, that person or the person so acting as the case may be shall also be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

35 31.—Section 40 of the Act of 1980 is hereby amended by the deletion of paragraph (a) in subsection (5). Amendment of section 40 of the Act of 1980.

32.—(1) The Act of 1980 is hereby amended by the substitution of the following section for section 55: Amendment of section 55 of the Act of 1980.

“55. (1) The Director of Consumer Affairs and Fair Trade shall have the following additional functions—

40 (a) to keep under general review practices or proposed practices in relation to any of the obligations imposed on persons by any provision of this Act or the Act of 1893,

45 (b) to carry out examinations of any such practices or proposed practices where the Director considers that, in the public interest, such examinations are proper or the Minister so requests,

(c) to request persons engaging in or proposing to engage in such practices as are, or are likely to be, contrary

to the obligations imposed on them by any provision of this Act or the Act of 1893 to discontinue or refrain from such practices,

(d) to institute proceedings in the High Court for orders requiring persons engaging or proposing to engage in any practices as are, or are likely to be, contrary to the obligations imposed on them by any provision of this Act or the Act of 1893, to discontinue or refrain from such practices. 5

(2) The Minister may by order confer on the Director of Consumer Affairs and Fair Trade such further functions as he considers appropriate for the purposes of this Act." 10

Orders under the Consumer Information Act, 1978, or the Act of 1980.

33.—(1) The Consumer Information Act, 1978, is hereby amended by the substitution for paragraph (a) of subsection (4) of section 26 of the following paragraph: 15

“(4) (a) Every order made under section 9, 10, 11 or 12 of this Act, or under paragraph (b) of this subsection, shall be laid before each House of the Oireachtas as soon as may be after it is made, and if a resolution annulling the order is passed by either House, within the next twenty-one days on which that House has sat after the order has been laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.”. 20

(2) Section 5 of the Act of 1980 is hereby amended by the substitution for subsection (2) of the following subsection: 25

“(2) Every order made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made, and if a resolution annulling the order is passed by either House, within the next twenty-one days on which that House has sat after the order has been laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.”. 30

Amendment of section 31 of Merchandise Marks Act, 1931.

34.—Section 31 of the Merchandise Marks Act, 1931, is hereby amended by the substitution for subsection (4) of the following subsection: 35

“(4) Nothing in this section shall operate to affect the power of any person (other than the Minister for Agriculture) to prosecute in respect of any offence under the Principal Act or an offence under this Act.”. 40

PART IV

Miscellaneous

Prosecution of offences by Director.

35.—(1) A prosecution for a summary offence under the Acts or the Regulations specified in the *First Schedule* to this Act may be brought and prosecuted by the Director. 45

(2) The powers of prosecution conferred on the Director by subsection (1) shall be deemed to be functions of the Director for the purposes of sections 9 and 16 of the Consumer Information Act, 1978.

36.—(1) Subject to *subsection (2)*, no person shall disclose information available to him by virtue of the functions conferred on him by the Consumer Information Act, 1978, the Act of 1980, or any of the enactments or Regulations specified in the *First Schedule* to this Act. Prohibition of disclosure of information.

(2) *Subsection (1)* does not apply to—

(a) a communication made by the Director or an authorised officer in the execution of his functions under the Consumer Information Act, 1978, the Act of 1980, or any of the enactments or Regulations specified in the *First Schedule* to this Act, or

(b) the disclosure of information for the purposes of legal proceedings.

(3) If any person contravenes *subsection (1)* he shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding £800.

37.—If any person makes a false statement, knowing it to be false, to the effect that— Impersonating an authorised officer.

(a) he is an authorised officer within the meaning of section 16 of the Consumer Information Act, 1978, or section 23 of the Prices Act, 1958, or section 15 of the Principal Act (as inserted by *section 18* of this Act), or

(b) he has authority to act for or on behalf of the Minister or the Director or the Commission,

he shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding £800.

38.—The Consumer Information Act, 1978, is hereby amended by the insertion after section 9 of the following section: Superannuation of Director.

“9A. (1) The Minister may, with the concurrence of the Minister for Finance, make a scheme or schemes for the granting of pensions, gratuities and other allowances on retirement or death to or in respect of a Director ceasing to hold office, other than a Director in respect of whom an award under the Superannuation Acts, 1934 to 1963, may be made.

(2) A scheme or schemes made under this section shall fix the time and conditions of retirement for all persons to or in respect of whom pensions, gratuities or allowances on retirement or death are payable under the scheme or schemes.

(3) The Minister, with the concurrence of the Minister for Finance, may amend a scheme made by him under this section.

(4) If any dispute arises as to the claim of any person to or the amount of any pension, gratuity or allowance payable in pursuance of a scheme under this section, such dispute shall be submitted to the Minister for Finance.

(5) Every scheme submitted and approved of under this section shall be laid before each House of the Oireachtas as soon as may be after it is approved of and if either House, within the next

twenty-one days on which that House has sat after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.”.

Short weight and short measure.

39.—(1) Subject to *subsection (2)*, any person who sells or exposes for sale or offers for sale any goods by weight, measure or number shall be guilty of an offence if the quantity of goods sold, exposed for sale or offered for sale is less than that purported to be sold, exposed for sale or offered for sale or than corresponds with the price charged on the basis of— 5
10

- (i) the total price to be paid for the goods;
- (ii) the stated price per number or unit of measurement, as the case may be, used to determine the total price.

(2) This section shall not apply to goods which are packed in accordance with the provisions of the Packaged Goods (Quantity Control) Act, 1980. 15

(3) A person guilty of an offence under *subsection (1)* shall be liable on summary conviction to a fine not exceeding £800 or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or to both the fine and the imprisonment. 20

(4) An inspector may at all reasonable times enter any place or premises where he has reasonable cause to believe that any goods are sold or exposed for sale or offered for sale by weight, measure or by number and may weigh, measure, count or otherwise examine such goods for the purpose of ensuring compliance with this section. 25

(5) Any proceedings for a summary offence under this section may be brought and prosecuted by an inspector.

(6) In this section “an inspector” means an inspector appointed under—

- (a) section 43 of the Weights and Measures Act, 1878; or 30
- (b) section 81 (as amended by section 19 of the Weights and Measures Act, 1889) of the Weights and Measures Act, 1878.

Judicial notice of signature of Director and signature of a member of the Commission.

40.—All courts shall take judicial notice of the signature of the Director and the signature of a member of the Commission and every document purporting to be a warrant or authority signed by the Director or signed by a member of the Commission shall be received in evidence and shall be deemed to be such warrant or authority without further proof until the contrary is shown. 35

Power of High Court to authorise inspection of accounts maintained by financial institutions.

41.—(1) Section 15 (as amended by *section 18* of this Act and as applied by section 8 (3) of the Act of 1978) of the Principal Act and section 16 (as amended by *section 30* of this Act) of the Consumer Information Act, 1978, shall not apply to accounts maintained by a financial institution. 40

(2) Whenever— 45

- (a) the Director considers it necessary for the exercise by him of any of his functions, or

(b) the Commission consider it necessary for the exercise by them of any of their functions,

to examine accounts maintained by a financial institution, the Director or the Commission, as the case may be, may apply to the High Court for an order under this section.

(3) Whenever the High Court is satisfied that it is reasonable to do so and is satisfied that the exigencies of the common good so warrant, it may make an order authorising an authorised officer—

(a) at all reasonable times to enter and inspect any premises of a financial institution where he reasonably believes that there are accounts maintained by it,

(b) to require any director of or person employed by the institution to produce to him any specified accounts maintained by it that are in the power or control of that person or director and to give to the officer any information that he may reasonably require in regard to the accounts, and

(c) to inspect and make copies of or take extracts from such accounts,

subject to such conditions (if any) as it thinks proper and specifies in the order.

(4) (a) In this section references to accounts maintained by a financial institution shall be construed as references to any accounts maintained by or for or on behalf of any person in the institution, either solely or jointly with another person or persons, or any books, documents or other records maintained by it relating to such accounts;

(b) in this section—

“authorised officer” means, as may be appropriate, an authorised officer within the meaning of section 15 (6) (as amended by *section 18* of this Act and applied by section 8 (3) of the Act of 1978) of the Principal Act or an authorised officer within the meaning of section 16 (as amended by *section 30* of this Act) of the Consumer Information Act, 1978;

“books” means—

(i) bankers’ books within the meaning of the Bankers’ Books Evidence Acts, 1879 and 1959, and

(ii) records and documents of persons referred to in section 7 (4) of the Central Bank Act, 1971;

“director” includes any person occupying the position of director by whatever name called;

“financial institution” means—

(i) a person who holds or has held a licence under section 9 of the Central Bank Act, 1971, and

(ii) a person referred to in section 7 (4) of that Act;

“records”, for the avoidance of doubt, includes records recorded and stored electronically.

Sections 30, 35, 36.

FIRST SCHEDULE

Enactments and Statutory Instruments under which summary prosecutions may be brought by Director. 5

Hire Purchase (Amendment) Act, 1960.

Industrial Research and Standards Act, 1961.

Trading Stamps Act, 1980.

European Communities (Indication of Prices of Foodstuffs) Regulations, 1983 (S.I. No. 359 of 1983). 10

European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations, 1982 (S.I. No. 205 of 1982).

European Communities (Names and Labelling of Textile Products) Regulations, 1973 (S.I. No. 43 of 1973).

Section 3.

SECOND SCHEDULE

15

PART I

Repeal of enactments

Session and Chapter or Number and Year	Short title	Extent of Repeal
50 and 51 Vict., c. 28	Merchandise Marks Act, 1887	Section 15 insofar as it relates to summary proceedings.
No. 48 of 1931	Merchandise Marks Act, 1931	Sections 19 and 30.
No. 15 of 1960	Hire Purchase (Amendment) Act, 1960	Section 14 (1).
No. 20 of 1961	Industrial Research and Standards Act, 1961	Section 46 (1).
No. 11 of 1972	Restrictive Practices Act, 1972	Section 13 (1).
No. 11 of 1972	Restrictive Practices Act, 1972	Section 16.
No. 11 of 1972	Restrictive Practices Act, 1972	Section 25.
No. 11 of 1972	Restrictive Practices Act, 1972	Second Schedule paragraphs 1, 2, 4 and 5.
No. 20 of 1972	Prices (Amendment) Act, 1972	Section 2 (2).
No. 1 of 1978	Consumer Information Act, 1978	Section 23.
No. 23 of 1980	Trading Stamps Act, 1980	Section 14 (1).
No. 24 of 1983	Postal and Telecommunications Services Act, 1983	Sections 48, 49 and 52 (1).

PART II

Revocation of Statutory Instruments

Number and Year	Title	Extent of Revocations
S.I. No. 359 of 1983	European Communities (Indication of Prices of Foodstuffs) Regulations, 1983	Regulation 13 (1).
S.I. No. 205 of 1982	European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations, 1982	Regulation 18 (insofar as it relates to the Minister).
S.I. No. 43 of 1973	European Communities (Names and Labelling of Textile Products) Regulations, 1973	Regulation 3 (2).

AN BILLE UM CHLEACHTAIS SRIANTA
(LEASÚ), 1987

BILLE

dá ngairtear

Acht do leasú agus do leathnú an Achta um Chleachtas Srianta, 1972, an Achta um Chumaisc, Táthcheangail agus Monaplachtaí (Rialú), 1978, an Achta Praghsanna, 1958, an Achta um Fhaisnéis do Thomhaltóirí, 1978, na nAchtanna Marcanna Earraí Ceannaíochta, 1887 go 1970, an Achta Seirbhísí Poist agus Teileachumarsáide, 1983, agus an Achta um Dhíol Earraí agus Soláthar Seirbhísí, 1980, do dhéanamh socrú maidir le gearrmheáchan agus gearrthomhas agus do dhéanamh socrú eile i ndáil leis na nithe réamhráite.

*Ritheadh ag dhá Theach an Oireachtais,
17 Nollaig, 1987*

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

Le ceannach díreach ón Oifig Dhíolta Foilseachán Rialtais, Teach Sun Alliance, Sráid Theach Laighean, Baile Átha Cliath 2, nó trí aon díoltóir leabhar.

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RESTRICTIVE PRACTICES
(AMENDMENT) BILL, 1987

BILL

entitled

An Act to amend and extend the Restrictive Practices Act, 1972, the Mergers, Take-overs and Monopolies (Control) Act, 1978, the Prices Act, 1958, the Consumer Information Act, 1978, the Merchandise Marks Acts, 1887 to 1970, the Postal and Telecommunications Services Act, 1983, and the Sale of Goods and Supply of Services Act, 1980, to make provision in respect of short weight and short measure and to make other provisions in relation to the matters aforesaid.

*Passed by both Houses of the Oireachtas,
17th December, 1987*

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