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**AN BILLE FÁN BHFORFHEIDHMÍ UM CHEARTA DO  
THOMHALTÓIRÍ 2004  
CONSUMER RIGHTS ENFORCER BILL 2004**

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**EXPLANATORY MEMORANDUM**

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*Introduction*

With the recent emergence of a perceived “rip-off” culture in Ireland, a new framework is needed to enhance consumer rights and enable consumers to exercise those rights.

Current legislation is outdated and unclear while the penalties for breaches of that legislation are far too low.

The Office of the Director of Consumer Affairs (ODCA) lacks the powers and legitimacy to properly represent the consumer or offer adequate redress.

In the absence of appropriate Government action, Fine Gael has published this Bill. Its publication marks the fulfilment of a commitment given by Fine Gael in March of this year at the launch of its pro-consumer policy.

*Purpose of the Bill*

This Bill will replace the ODCA with an independent Consumer Rights Enforcer with strengthened powers. It will be charged with developing a code of conduct for service providers, a quality mark for those service providers who best adhere to that code and a review of the jurisdiction of the Small Claims Court to ensure it best meets the needs of consumers seeking redress.

The Consumer Rights Enforcer will “name and shame” those service providers it believes are failing to provide consumers with an adequate standard of service.

Further, the Consumer Rights Enforcer will have a seat at Partnership level to ensure any national agreements do not impact too disproportionately on consumers.

The Bill will also allow for increases in fines and penalties to discourage breaches of legislation designed to protect consumers.

*Provisions of the Bill*

*Section 1* sets out the short title of the Bill which is the Consumer Information (Amendment) Bill 2004.

*Section 2* is the interpretation section, it defines two terms which are used in the Act, namely, the “Act of 1958” and also the “Principal Act”.

*Section 3* changes the name of the Director of Consumer Affairs to the Consumer Rights Enforcer.

*Section 4* provides a new mechanism to ensure that the appointment of the Consumer Rights Enforcer is wholly independent. The Consumer Rights Enforcer will be recommended by the Dáil and Seanad and will be appointed by the President.

*Section 5* confers a series of powers which we believe are necessary in order to ensure that the rights of the consumer are upheld and where necessary, enforced. These new powers are in addition to the powers which already exist. This Bill will enable the Consumer Rights Enforcer to name and shame those found to be charging excessive prices. The Consumer Rights Enforcer should also be responsible for maintaining a website showing price league tables. A further key feature of the Consumer Rights Enforcer's role would be in the development of codes of conduct for specific service providers and retailers so as to ensure that when the price of a product or service goes down, that reduction is passed on to the consumer in a systematic and transparent way.

The new Consumer Rights Enforcer would also establish a scheme for attributing a quality mark to suppliers of goods and services who consistently deliver a high standard of service. With this heightened consumer-driven focus, the Consumer Rights Enforcer will work with local authorities throughout the country in order to ensure that the interests of the consumer are addressed at local level.

In addition to monitoring and acting at a national level, the Consumer Rights Enforcer will also have a specific role in working jointly with local authorities in order to drive a pro-consumer agenda at local level.

The Small Claims Court can only hear claims involving up to a maximum of €1,270. This level is set by Ministerial regulation. Under *section 4* of this Bill, the Consumer Rights Enforcer will have a role in reviewing the jurisdiction of the Small Claims court to see whether it is affording consumers adequate opportunity of redress.

Over the past number of years, unions, employers and the State have negotiated a series of pay deals through national partnership agreements. Perhaps one of the most serious failings of this process and other comparable processes is the fact that the specific needs of the consumer have not been represented at these negotiations. We propose to remedy this by giving the Consumer Rights Enforcer a place at the negotiation table, to ensure that the voice of the consumer is heard. In addition to this, the Consumer Rights Enforcer will also have a right to be consulted on legislation which impacts on consumers.

*Section 6* of the Bill increases the penalties for breach of the Consumer Information Act 1978. The outdated £500 fine is replaced with a fine of €3,000 and the £10,000 penalty is replaced with the more severe €100,000 penalty.

*Section 7* of the Bill allows the Consumer Rights Enforcer to impose an administrative fine in lieu of proceeding with a summary prosecution. In the consumer rights area, traditionally there has been a relatively low level of prosecutions. This is due to a number of factors, including the burden of gathering evidence sufficient to sustain a summary conviction and also, the cost of seeing the prosecution process through from beginning to end.

This gives the defendant the option of paying the fine and avoiding a court case and possible conviction. The application of a provision such as this should have the effect of saving time and expense where people do not dispute their guilt or where there is strong evidence that would be likely to secure a conviction in court. The wording of this section has been modelled on similar provisions relating to the imposition of fines in respect of offences under the Litter Acts; Road Traffic Acts and Company Law Enforcement Act 2001.

*Section 8* of the Bill provides that the Consumer Rights Enforcer may be called to appear before any Committee of the Houses of the Oireachtas to account for the general administration of the Office.

*Section 9* of the Bill amends the penalty provisions in the Prices Act 1958 so as to increase the penalties applicable for the failure to display a price list as required by law. The £100 penalty is increased to €3,000. The daily continuing offence penalty is raised from £10 to €300. The penalty on indictment is raised from £500 to €100,000 while the continuing offence element of it is raised from £50 to €1,000.

*An Teachta Pilib Ó hÓgáin,  
Deireadh Fómhair, 2004.*