



AN BILLE UM CHOSAINT TOMHALTÓIRÍ 2007
CONSUMER PROTECTION BILL 2007

Mar a ritheadh ag Seanad Éireann
As passed by Seanad Éireann

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AN BILLE UM CHOSAINT TOMHALTÓIRÍ 2007
CONSUMER PROTECTION BILL 2007

BILL

entitled

5 AN ACT TO GIVE EFFECT TO THE UNFAIR COMMERCIAL
PRACTICES DIRECTIVE (DIRECTIVE NO. 2005/29/EC OF
THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL OF 11 MAY 2005), TO ESTABLISH A BODY TO
10 BE KNOWN AS AN GHNÍOMHAIREACHT NÁISIÚNTA
TOMHALTÓIRÍ OR, IN THE ENGLISH LANGUAGE,
THE NATIONAL CONSUMER AGENCY AND TO
DEFINE ITS FUNCTIONS, TO MAKE NEW PROVISION
IN RELATION TO PYRAMID SELLING SCHEMES, TO
15 AMEND THE INDUSTRIAL DEVELOPMENT ACT 1993
AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY MATTERS

20 **1.—(1)** This Act may be cited as the Consumer Protection Act 2007. Short title and commencement.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions,
25 including the application of *section 4* to different enactments specified in *Schedule 2* and to different provisions of those enactments.

2.—(1) In this Act—

Interpretation and application.

“advertisement” includes any form of advertising or marketing;

30 “Agency” means the National Consumer Agency established by *section 7*;

“authorised officer” means a person appointed under *section 30*;

“chief executive” means the chief executive officer of the Agency;

“code of practice” means any code, agreement or set of rules or standards that is not imposed by or under an enactment but purports to govern or define commercial practices of one or more traders (whether generally or in respect of a particular trade, business or professional sector or one or more commercial practices) who agree, commit or undertake to abide or be bound by such rules or standards; 5

“commercial practice” means any conduct (whether an act or omission), course of conduct or representation by the trader in relation to a consumer transaction, including any such conduct or representation made or engaged in before, during or after the consumer transaction; 10

“consumer” means a natural person (whether in the State or not) who is acting for purposes unrelated to the person’s trade, business or profession; 15

“consumer transaction” means a promotion or supply of a product to a consumer;

“contravene”, in relation to a provision, includes fail to comply with the provision;

“Directive” means Directive No. 2005/29/EC of the European Parliament and of the Council of 11 May 2005¹ concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council; 20 25

“Director” means the Director of Consumer Affairs;

“enactment” means an Act (within the meaning of the Interpretation Act 2005) or any instrument made under a power conferred by an Act (within that meaning); 30

“establishment day” means the establishment day appointed under *section 6*;

“existing enactments” means—

(a) food legislation, within the meaning of the Food Safety Authority of Ireland Act 1998, in respect of functions vested in the Director immediately before the commencement of *section 37*, 35

(b) the enactments specified in *Part 1 of Schedule 1* and any instruments made under those enactments for the time being in force, and 40

(c) the regulations made under the European Communities Act 1972 for the time being in force specified in *Part 2 of Schedule 1*;

“financial year” means a period of 12 months ending on 31 December in any year and, in the case of the first financial year of the Agency, means the period commencing on the establishment day and ending on 31 December in the year in which the establishment day falls; 45

¹O.J. No. L149, 11/06/2005, p. 22.

“goods” means real or personal property of any nature or description, and includes—

- (a) ships, aircraft or other vehicles,
- (b) animals,
- 5 (c) minerals, trees or crops, whether on, under or attached to land or not,
- (d) gas, electricity or water,
- (e) computer software,
- 10 (f) tickets or like evidence of a right to be in attendance at a particular place at a particular time or times or a right of transportation,
- (g) any voucher, coupon or other document or thing intended to be used as a substitute for money in the payment, in whole or in part, for a product or otherwise exchanged for a product, and
- 15 (h) any description of interest (present or future, vested or contingent) or obligation arising out of or incidental to goods;

“goods or services” means goods or services or both;

20 “invitation to purchase” means a representation by the trader in a consumer transaction that—

- (a) indicates characteristics of the product and includes its price, and
- (b) enables the consumer to purchase the product;

25 “Minister” means the Minister for Enterprise, Trade and Employment;

“prescribed” means prescribed by regulations made by the Minister;

“product” means goods or services;

“public body” means—

- 30 (a) a board, authority or other body, other than a company under the Companies Acts, established by or under statute;
- (b) a company under the Companies Acts in which all the shares are held—
- 35 (i) by or on behalf of a Minister of the Government, or
- (ii) by directors appointed by a Minister of the Government;
- (c) a company under the Companies Acts in which all the shares are held by a board, authority or body referred to in *paragraph (a)* or by a company referred to in *paragraph (b)*;
- 40

“purchase” means to buy, obtain or acquire by any method and includes accept, receive, be vested with, lease, take possession, control or occupation of, and agree to do any of those things (but does not include expropriate);

“relevant State” means a state that is a contracting State to the EEA Agreement within the meaning of the European Communities (Amendment) Act 1993; 5

“relevant statutory provisions” means—

- (a) existing enactments,
- (b) the Merchandise Marks Act 1970 and any instruments made under that Act for the time being in force, 10
- (c) certain provisions of the Prices Act 1958 referred to in *section 90* and the enactments specified in *subsection (1)(a) to (e)* of that section to the extent to which they remain in force for the purposes of this Act, 15
- (d) the enactments specified in *subsection (1)(a) to (c)* of *section 91*, and
- (e) this Act and any instrument made under this Act for the time being in force;

“representation” includes— 20

- (a) any oral, written, visual, descriptive or other representation by a trader, including any commercial communication, marketing or advertising, and
- (b) any term or form of a contract, notice or other document used or relied on by a trader in connection with a consumer transaction; 25

“services” means any service or facility provided for gain or reward or otherwise than free of charge, including, without limitation—

- (a) services or facilities for—
 - (i) banking, insurance, grants, loans, credit or financing, 30
 - (ii) amusement, cultural activities, entertainment, instruction, recreation or refreshment,
 - (iii) accommodation, transport, travel, parking or storage, or
 - (iv) the care of persons, animals or things, 35
- (b) membership in a club or organisation or any service or facility provided by the club or organisation, and
- (c) any rights, benefits, privileges, obligations or facilities that are, or are to be provided, granted or conferred in the course of services, 40

but does not include services provided under a contract of employment;

“supply”, in relation to the supply of goods or services to a consumer, includes—

- 5
- (a) sell, lease, take by way of mortgage or other security, assign, award by chance or otherwise effect a disposition of,
 - (b) offer or agree to supply or expose or display for supply;

“trader” means—

- (a) a person who is acting for purposes related to the person’s trade, business or profession, and
- 10 (b) a person acting on behalf of a person referred to in *paragraph (a)*;

“transactional decision” means, in relation to a consumer transaction, any decision by the consumer concerning whether, how or on what terms to do, or refrain from doing, any of the following:

- 15
- (a) purchase the product;
 - (b) make payment in whole or in part for the product;
 - (c) retain or return the product after its purchase;
 - (d) dispose of the product;
 - (e) exercise a contractual right in relation to the product;

20 “voluntary body” means—

- (a) a body corporate, or
- (b) an unincorporated body of persons,

other than a public body.

25 (2) In this Act, “the average consumer” has the meaning assigned to it in the Directive, and when applied in relation to a particular commercial practice or product of a trader—

- (a) if the commercial practice or product is directed at a particular group of consumers, the expression shall be read as “the average member of that group”, and
 - 30 (b) if the commercial practice or the product is a practice or product that would be likely to materially distort the economic behaviour only of a clearly identifiable group of consumers whom the trader could reasonably be expected to foresee as being particularly vulnerable because of their mental or physical infirmity, age or credulity, the expression shall be read as “the average member of that vulnerable group”.
- 35

(3) A word or expression that is used in this Act and is also used in the Directive shall have in this Act the same meaning as it has in the Directive.

40

(4) A court shall construe this Act in a manner that gives effect to the Directive, and for this purpose the court shall have regard to the provisions of the Directive, including its preambles.

(5) Notwithstanding Article 3(10) of the Directive but subject to sections 5 to 6A (inserted by *section 96*) of the Hallmarking Act 1981, *Part 3* applies to commercial practices relating to indications of the standard of fineness of articles of precious metal.

Regulations.

3.—(1) The Minister may make regulations in relation to any matter referred to in this Act as prescribed or to be prescribed. 5

(2) Every regulation or order (other than an order under *section 1* or *6*) 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 regulation or order is passed by either such House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under it. 10

(3) The power to make regulations under this section includes the power to make provision in such regulations to give effect to— 15

(a) a provision of the treaties of the European Communities, or

(b) an act adopted by an institution of those Communities which regulates any of the matters to which this Act applies. 20

Repeals.

4.—(1) Each enactment specified in *Schedule 2* is repealed to the extent specified in *column (3)* of that Schedule.

(2) Section 20(5)(b) of the National Standards Authority of Ireland Act 1996 is amended by deleting “the Merchandise Marks Acts 1887 to 1978, and”. 25

(3) The following are revoked:

(a) the Prices (Stabilisation of Profit Margins of Retailers of Motor Cars) Order 1984 (S.I. No. 223 of 1984);

(b) the Consumer Information (Diesel and Petrol) (Reduction in Retail Price) Order 1997 (S.I. No. 179 of 1997). 30

Expenses.

5.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of monies provided by the Oireachtas.

PART 2 35

NATIONAL CONSUMER AGENCY

CHAPTER 1

The Agency

Establishment day.

6.—The Minister shall by order appoint a day to be the establishment day for the purposes of this Act. 40

7.—(1) On the establishment day there shall stand established a body to be known as an Ghníomhaireacht Náisiúnta Tomhaltóirí or, in the English language, the National Consumer Agency and in this Act referred to as the Agency, to perform the functions conferred on it by this Act.

(2) The Agency shall be a body corporate with perpetual succession and an official seal and shall have power—

- (a) to sue, and may be sued, in its corporate name,
- (b) to acquire, hold and dispose of land or an interest in land, with the approval of the Minister given with the consent of the Minister for Finance, and
- (c) to acquire, hold and dispose of any other property, with the approval of the Minister given with the consent of the Minister for Finance.

(3) Subject to this Act, the Agency shall be independent in the performance of its functions.

8.—(1) The functions of the Agency are—

Functions of Agency.

- (a) to promote and protect the interests and welfare of consumers,
- (b) to enforce the relevant statutory provisions, including by the prosecution of offences, by way of summary proceedings,
- (c) to encourage compliance with the relevant statutory provisions,
- (d) to investigate instances of suspected offences under any of the relevant statutory provisions,
- (e) at its discretion, to refer cases to the Director of Public Prosecutions where the Agency has reasonable grounds for believing that an indictable offence under any of the relevant statutory provisions has been committed.

(2) Without prejudice to the generality of *subsection (1)*, in performing its functions under this Act, the Agency—

- (a) may, and shall when requested by the Minister, advise and, as appropriate, make recommendations to the Government, the Minister, any other Minister of the Government or any Minister of State, in relation to any proposals for legislative change, or any other policy matters, concerning, or which would be likely to impact on, consumer protection and welfare,
- (b) may, and shall when requested by the Minister, and after consultation with such persons as it considers appropriate having regard to the proposals to be submitted, submit to the Minister, any other Minister of the Government or any Minister of State any proposals it considers appropriate for amendment of any enactment, or for new enactments, concerning consumer protection and welfare,

- (c) shall advise and, as appropriate, make recommendations to the Government, the Minister, any other Minister of the Government, any Minister of State, any public body or any prescribed body within the meaning of *section 21* in relation to any matter concerning, or which the Agency considers would be likely to impact on, consumer protection and welfare, 5
 - (d) shall foster and promote contacts, co-operation and the exchange of information with and shall consult with consumer groups and representatives, 10
 - (e) shall co-operate with other competent authorities whether in the State or elsewhere charged with responsibility for the enforcement of laws relating to consumer protection and welfare or the promotion of consumer protection and welfare, 15
 - (f) shall promote the development of alternative dispute resolution procedures as a means of resolving disputes arising out of consumer transactions,
 - (g) shall conduct or commission research, studies and analysis on matters relating to the functions of the Agency and, as it considers appropriate, publish in the form and manner that the Agency thinks fit, such findings as it considers appropriate, 20
 - (h) shall promote public awareness and conduct public information campaigns for the purpose of educating and advising consumers in relation to consumer protection and welfare, 25
 - (i) shall promote educational initiatives and activities relating to consumer information and awareness and advise, when requested, the Minister or any other Minister of the Government, Departments of State or any public body whose activities are concerned with matters relating to any of the purposes of this Act, and any educational or training institution, 30
 - (j) for the purposes of performing its functions under *paragraphs (g) to (i)*, may, through the provision of financial or other resources, support the activities relating to consumer protection and welfare of such voluntary bodies as the Agency considers appropriate, 35
 - (k) shall review and approve codes of practice in accordance with *section 86*; 40
 - (l) shall prepare and publish guidelines to traders in accordance with *section 88*;
 - (m) shall perform the functions assigned to the Director under the existing enactments and transferred to the Agency pursuant to *section 37*. 45
- (3) The Agency shall have all such powers as are necessary or expedient for the performance of its functions.
- (4) The Agency may delegate the performance of any of its functions to any member of the Agency or to any member of its staff, 50

including the chief executive, duly authorised in that behalf by the Agency.

5 (5) Nothing in this section or any other provision of this Act imposes a duty on the Agency to consider whether to investigate a matter relating to *Part 3* that is referred to it by a trader but the Agency may, in the case of a matter so referred to it, consider whether to do so (and, accordingly, may proceed to investigate the matter) where it is satisfied the matter may affect the interests and welfare of consumers.

10 **9.—(1)** The Minister may consult the Agency regarding proposals for legislation relating to consumer protection and welfare. Review of legislation.

(2) The Agency shall—

(a) keep under review the relevant statutory provisions,

15 (b) submit, from time to time, to the Minister or such other Minister of the Government having responsibility for any other statutory provisions relating to, or which impact on, consumer protection and welfare any proposals that it considers appropriate relating to any of the relevant statutory provisions or any other statutory provisions or for making or revoking any instruments under those provisions,

20 (c) undertake such reviews of the relevant statutory provisions as the Minister may direct, and

25 (d) assist in the preparation of such draft legislation as the Minister may direct.

(3) Before submitting proposals to the Minister or any other Minister of the Government, as the case may be, the Agency shall consult any other person who, it appears to the Agency, is appropriate in the circumstances to be consulted or whom the Minister or the other
30 Minister of the Government, as the case may be, directs is to be consulted.

10.—(1) The Agency shall consist of the following members: Membership of Agency.

(a) a chairperson; and

(b) 12 ordinary members.

35 (2) The chief executive shall, for the duration of his or her appointment, be an *ex officio* member of the Agency.

(3) The members of the Agency (other than the chief executive) shall, as soon as practicable after the establishment day, be appointed by the Minister, and shall be persons who, in the opinion of the
40 Minister, have experience of or shown capacity in matters relevant to the functions of the Agency.

(4) The Minister shall, in so far as is practicable and having regard to the relevant experience of the persons concerned, ensure an equitable balance between men and women in the composition of the
45 Agency.

(5) A member of the Agency shall be paid by the Agency, out of monies at its disposal, such remuneration (if any) and allowances for expenses incurred by him or her as the Minister, with the consent of the Minister for Finance, may from time to time determine.

(6) Subject to *subsection (5)*, a member of the Agency shall hold office on such terms and conditions as the Minister may determine. 5

(7) On the anniversary of the establishment day and on each subsequent anniversary of the establishment day, 2 members of the Agency (other than the chairperson and the chief executive) shall retire from office. 10

(8) The members to retire under *subsection (7)* in any year shall be those who have been longest in office since their last appointment, and where there are members whose appointment was made on the same day and who are obliged to retire under *subsection (7)*, the members to retire shall, unless those members otherwise agree, be determined by lot. 15

(9) A member of the Agency (other than the chief executive) shall not serve for more than 10 consecutive years.

(10) A person shall be disqualified for holding and shall cease to hold office as a member of the Agency if he or she— 20

- (a) is adjudicated bankrupt,
- (b) makes a composition or arrangement with his or her creditors,
- (c) is convicted of an indictable offence in relation to a company, 25
- (d) is convicted of an offence involving fraud or dishonesty, whether or not in connection with a company,
- (e) has a declaration under section 150 of the Companies Act 1990 made against him or her or is subject or is deemed to be subject to a disqualification order by virtue of Part VII of that Act, or 30
- (f) has a conflict of interest of such significance that, in the opinion of the Minister requires that he or she should not hold or should cease to hold such office.

(11) A member of the Agency may at any time resign from office by letter addressed to the Minister and the resignation shall take effect on the date specified in the letter or the date the letter is received by the Minister whichever is later. 35

(12) The Minister may at any time remove a member of the Agency from office if, in the Minister's opinion— 40

- (a) the member has become incapable through ill-health of effectively performing the duties of the office,
- (b) the member has committed stated misbehaviour, or
- (c) the removal appears to the Minister to be necessary for the effective performance of the functions of the Agency. 45

(13) Subject to *subsection (9)*, a member of the Agency whose period of membership expires by the passage of time shall be eligible for re-appointment as a member of the Agency.

5 (14) Subject to *section 12(3)*, the Agency may act notwithstanding any vacancy or vacancies in its membership.

10 (15) If a member of the Agency dies, resigns, retires, becomes disqualified or otherwise ceases to hold office or is removed from office, the Minister may appoint a person to be a member of the Agency to fill the vacancy so occasioned and the person so appointed shall be appointed in the same manner as the member who occasioned the vacancy.

(16) Where a vacancy occurs, the Minister shall take steps to fill it as soon as practicable.

15 **11.—(1)** The Minister shall designate a member of the Agency as chairperson. Chairperson of Agency.

(2) The term of office of the chairperson of the Agency shall be 5 years.

20 (3) Where the chairperson of the Agency ceases during his or her term of office as chairperson to be a member of the Agency, he or she shall also then cease to be chairperson of the Agency.

25 (4) The chairperson of the Agency may at any time resign his or her office as chairperson by letter sent to the Minister, and the resignation shall, unless it is previously withdrawn in writing, take effect at the commencement of the meeting of the Agency held next after the Agency has been informed by the Minister of the resignation.

30 (5) The chairperson of the Agency shall, unless he or she sooner dies or otherwise ceases to be chairperson by virtue of *subsection (3)* or *(4)*, hold office until the expiration of his or her period of membership of the Agency and, if he or she is re-appointed as a member of the Agency, he or she shall be eligible for re-appointment as chairperson of the Agency.

12.—(1) The Agency shall hold such and as many meetings as may be necessary for the performance of its functions. Meetings and procedures of Agency.

35 (2) The Minister may, in consultation with the chairperson of the Agency, fix the date, time and place of the first meeting of the Agency.

(3) The quorum for a meeting of the Agency shall be 5.

(4) At a meeting of the Agency—

40 (a) the chairperson of the Agency shall, if present, be the chairperson of the meeting, and

45 (b) if and so long as the chairperson of the Agency is not present or if the office of chairperson is vacant, the members of the Agency who are present shall choose one of their number to be the chairperson of the meeting.

(5) Each member of the Agency (including the chairperson of the meeting concerned) present at a meeting shall have a vote.

(6) At a meeting of the Agency, a question on which a vote is required shall be determined by a majority of votes of the members of the Agency present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote. 5

(7) Subject to this Act, the Agency shall regulate, by standing orders or otherwise, the procedure and business of the Agency.

Committees.

13.—(1) The Agency may establish committees— 10

(a) to assist and advise the Agency on matters relating to any of its functions or on such matters as the Agency may from time to time determine, or

(b) to perform such functions of the Agency as may be delegated by it from time to time. 15

(2) A committee shall consist of a chairperson and such number of other members as the Agency may determine and may include persons who are not members of the Agency or of its staff.

(3) The chairperson and other members of a committee shall be appointed by the Agency. 20

(4) The Agency, when appointing a member of a committee, shall—

(a) have regard to the range of qualifications and experience necessary for the proper and effective discharge of the functions of the committee, 25

(b) have regard to the desirability of an equitable balance between men and women in the composition of the committee,

(c) fix the member's period of membership, and

(d) fix the terms of his or her membership. 30

(5) The members of a committee may be paid by the Agency such fees as the Agency may determine, subject to the consent of the Minister and the Minister for Finance.

(6) A member of a committee may be removed at any time from membership of the committee by the Agency. 35

(7) The Agency may at any time dissolve a committee.

(8) The Agency may regulate the procedure and business of a committee but, subject to any such regulation, a committee may regulate its own procedure and business.

(9) A committee may act notwithstanding a vacancy or vacancies in its membership. 40

14.—(1) There shall be a chief executive officer of the Agency Chief executive.
who shall be known, and is referred to in this Act, as the chief
executive.

5 (2) The chief executive shall, subject to *subsection (3)*, be
appointed by the Agency with the approval of the Minister and may,
with the approval of the Minister, be removed from office for stated
reasons by the Agency.

(3) Where a competition to appoint a chief executive is held prior
to the establishment day the successful candidate may be appointed
10 by the Minister as the chief executive designate of the Agency.

(4) The chief executive—

15 (a) shall hold office under a written contract of service (which
contract may be renewed) for such period, not being
more than 5 years, as is specified in the contract, subject
to such terms and conditions (including terms and condi-
tions relating to remuneration, allowances for expenses
and superannuation) as are so specified, being terms and
conditions which are determined from time to time by
the Agency with the approval of the Minister given with
20 the consent of the Minister for Finance, and

(b) shall be paid out of monies at the disposal of the Agency.

25 (5) The chief executive shall not hold any other office or occupy
any other position in respect of which emoluments are payable, or
carry on any business, without the consent of the Agency and the
approval of the Minister.

(6) The chief executive is subject to the control of the members
of the Agency and, except as regards voting at meetings of the
Agency, is required to comply with any lawful directions given by
those members with respect to the carrying out of the chief execu-
30 tive's functions.

(7) The person who, immediately before the establishment day,
holds the position of chief executive designate of the Agency shall,
on the establishment day, become the chief executive and shall hold
such office until such time as the Agency appoints a chief executive
35 under *subsection (2)*.

(8) A person who was the chief executive shall not, for a period
of 12 months following his or her resignation, removal or retirement
from office, hold any other office or employment or act as a consult-
ant where he or she is likely to use or disclose information acquired
40 by him or her in the performance of his or her functions as chief
executive.

15.—(1) The chief executive shall carry on, manage and control Functions of chief
generally the staff, administration and business of the Agency and
executive.
shall perform such other functions as may be conferred on him or
45 her by or under this Act or as may be determined by the Agency.

(2) The chief executive may do all such acts or things as are neces-
sary or expedient for the purposes of the exercise of his or her func-
tions under this Act.

50 (3) The chief executive shall advise the Agency in relation to the
performance of the functions of the Agency and shall make any

proper proposals to the Agency on any matter relating to the activities of the Agency.

(4) The chief executive shall be responsible to the Agency for the performance of his or her functions and the implementation of the Agency's policies. 5

(5) The chief executive shall provide the Agency with such information, including financial information, in relation to the performance of his or her functions as the Agency may require.

(6) Subject to *subsection (7)*, the chief executive may perform such of his or her functions as he or she may deem proper through or by any member of staff of the Agency duly authorised by the chief executive in that behalf. 10

(7) (a) The functions of the chief executive may be performed in his or her absence or when the position of chief executive is vacant by such member of the staff of the Agency as may from time to time be designated for that purpose by the Agency. 15

(b) A member of staff of the Agency designated under *paragraph (a)* shall have all the powers, rights and duties conferred on the chief executive by this Act and each reference in this Act to the chief executive shall be deemed to include a reference to such member of staff. 20

Attendance of chief executive before Committee of Public Accounts.

16.—(1) The chief executive shall, whenever he or she is so required by the committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that committee on— 25

(a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Agency is required by or under statute to keep, 30

(b) the economy and efficiency of the Agency in the use of its resources,

(c) the systems, procedures and practices employed by the Agency for the purpose of evaluating the effectiveness of its operations, and 35

(d) any matter affecting the Agency referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann. 40

(2) In the performance of his or her duties under *subsection (1)*, the chief executive shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy. 45

17.—(1) The chief executive shall, at the request in writing of an Oireachtas Committee, attend before it to give account for the general administration of the Agency as may be required by the Committee.

Attendance of chief executive before other Oireachtas Committees.

5 (2) In this section “Oireachtas Committee” means a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas, other than—

(a) the Committee referred to in *section 16(1)*,

(b) the Committee on Members Interests of Dáil Éireann, or

10 (c) the Committee on Members Interests of Seanad Éireann,

or a sub-committee of such a committee.

18.—(1) Where a member of the Agency, the chief executive or a member of the staff of the Agency is—

Membership of either House of the Oireachtas, European Parliament or local authority.

(a) nominated as a member of Seanad Éireann, or

15 (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament, or

(c) regarded pursuant to section 19 of the European Parliament Elections Act 1997 as having been elected to that Parliament, or

20 (d) elected or co-opted as a member of a local authority,

he or she shall thereupon—

(i) in the case of a member of the Agency or the chief executive, cease to be a member of the Agency or the chief executive, as the case may be, and

25 (ii) in the case of a member of the staff of the Agency, stand seconded from employment by the Agency and shall not be paid by, or entitled to receive from, the Agency any remuneration or allowances for expenses in respect of the period commencing on such nomination or election, or
30 when he or she is so regarded as having been elected or on such election or co-option, as the case may be, and ending when he or she ceases to be a member of such House, a representative of such Parliament or a member of a local authority.

35 (2) Without prejudice to the generality of *subsection (1)*, that subsection shall be read as prohibiting the reckoning of a period therein mentioned as service with the Agency for the purposes of any superannuation benefits payable under *section 36* or otherwise.

(3) A person who is for the time being—

40 (a) entitled under the Standing Orders of either House of the Oireachtas to sit therein,

(b) a member of the European Parliament, or

(c) entitled under the standing orders of a local authority to sit as a member thereof,

shall, while he or she is so entitled or is such a member, be disqualified from becoming a member of the Agency, the chief executive or a member of the staff of the Agency.

(4) In this section “local authority” means a local authority for the purposes of the Local Government Act 2001. 5

Indemnity for members of Agency.

19.—(1) Where the Agency is satisfied that a person to whom this section applies has discharged his or her duties in pursuance of the functions of the Agency in good faith, the Agency may, in the manner and to the extent and subject to the terms and conditions that the Agency may determine from time to time in consultation with the Minister, indemnify that person against all actions or claims however they arise in respect of the discharge by him or her of his or her duties. 10

(2) This section applies to—

- (a) a member of the Agency, 15
- (b) a member of a committee,
- (c) a member of staff of the Agency, including the chief executive,
- (d) a person whose services are provided to the Agency under *section 26*, and 20
- (e) an authorised officer.

Strategy statement and work programme of Agency.

20.—(1) As soon as practicable after the establishment day, and thereafter at least 3 months before each third anniversary of the establishment day, the Agency shall prepare and submit to the Minister a strategy statement for the following 3 year period. 25

(2) A strategy statement shall—

- (a) specify the key objectives, outputs and related strategies (including the use of resources) of the Agency,
- (b) have regard to the need to ensure the most beneficial, effective and efficient use of the Agency’s resources, 30
- (c) except for the first strategy statement, include a review of the outcomes and effectiveness of the preceding strategy statement,
- (d) specify the manner in which the Agency proposes to assess its performance in respect of the objectives referred to in *paragraph (a)*, taking account of relevant performance indicators (financial and non-financial), 35
- (e) be prepared in the form and manner that the Minister may from time to time direct, and
- (f) include any other matters that the Minister may from time to time direct. 40

(3) When preparing the strategy statement, the Agency may consult such persons as it considers appropriate.

5 (4) As soon as practicable after a strategy statement has been submitted to the Minister under *subsection (1)*, the Minister shall cause a copy of the strategy statement to be laid before each House of the Oireachtas and the strategy statement shall be published in the form and manner that the Agency considers appropriate.

(5) The Agency shall prepare and submit to the Minister, at least 2 months before the commencement of each financial year, a work programme relating to the discharge of its functions, including—

10 (a) having regard to the strategy statement, the objectives of the Agency for that year and its strategy for achieving those objectives,

(b) the priorities of the Agency for that year, having regard to those objectives and its available resources, and

15 (c) any other matters that the Minister may from time to time specify when issuing directions or guidelines under *subsection (6)*.

20 (6) The Minister may, from time to time, issue directions or guidelines to the Agency concerning the preparation of the work programme and the Agency shall comply with those directions and prepare the work programme in accordance with those guidelines.

21.—(1) As soon as practicable after the commencement of this section, there shall be entered into between the Agency and every one of the prescribed bodies one or more agreements for the purposes of—

Provision for co-operation between Agency and certain prescribed bodies.

25 (a) facilitating co-operation between the Agency and the prescribed bodies in the performance of their respective functions in so far as they relate to issues of consumer protection and welfare,

30 (b) avoiding duplication of activities by the Agency and any of the prescribed bodies,

(c) enabling the Agency to be consulted in relation to any decisions by prescribed bodies which affect consumers,

35 (d) where appropriate, conducting joint studies or analysis of matters relating to consumer protection or issues of concern to consumers,

and each such agreement that is entered into is referred to in this section as a “co-operation agreement”.

40 (2) It shall not be necessary for the purposes of *subsection (1)* that the same prescribed bodies be party to each agreement entered into with the Agency in pursuance of that subsection.

(3) A co-operation agreement shall include provisions—

45 (a) enabling each party to furnish to another party information in its possession if the information is required by that other party for the purpose of the performance by it of any of its functions,

(b) enabling each party to forbear to perform any of its functions in relation to a matter in circumstances where it

is satisfied that another party is performing functions in relation to that matter, and

- (c) requiring each party to consult with any other party before performing any functions in circumstances where the respective exercise by each party of the functions concerned involves the determination of issues of consumer protection and welfare that are identical to one another or are within the same category of such an issue, being a category specified in the co-operation agreement. 5

(4) A co-operation agreement may be varied by the parties concerned. 10

(5) The Minister and, where relevant, the Minister or Ministers of the Government with responsibility for the prescribed body concerned shall each be furnished by the Agency with a copy of every co-operation agreement (including any variation of the agreement) that has been made within 1 month after the agreement (or the variation of it) has been made. 15

(6) A co-operation agreement, or any variation made to it, shall be in writing and, as soon as practicable after the agreement or variation has been made and furnished to the Minister or Ministers of the Government with responsibility for the prescribed body concerned, notice of its making, shall be published by the parties in such manner as they think fit. 20

(7) Such a notice shall state that a copy of the agreement concerned (including the agreement as varied) may be inspected at such place, or by such means as is specified in the notice and that a copy of the agreement may be purchased from the parties in such manner as is so specified (and a copy of the agreement shall, accordingly, be made available for such inspection and be made available for such purchase (at a cost not exceeding the reasonable cost of making a copy or, where appropriate, such cost and the amount of any postage involved)). 25 30

(8) Without prejudice to *subsection (9)*, nothing in any enactment shall be read as preventing the provisions of a co-operation agreement from having effect in accordance with their terms. 35

(9) If information is furnished by one party to another party pursuant to a provision of a co-operation agreement of the kind referred to in *subsection (3)(a)*, the provisions of any enactment concerning the disclosure of that information by the first-mentioned party shall apply to the second-mentioned party with respect to that information. 40

(10) A failure by the Agency or a prescribed body to comply with a provision of a co-operation agreement shall not invalidate the exercise by it of any power.

(11) (a) In this section “prescribed body” means a body prescribed by the Minister. 45

(b) Before prescribing a body for which another Minister of the Government has responsibility, the Minister shall consult with that other Minister of the Government.

(c) In prescribing a body for the purposes of this section the Minister shall have regard to its functions and activities in 50

so far as those functions and activities relate to consumer protection and welfare.

5 (12) In this section “party” means a party to a co-operation agreement and a reference to another party (whether that expression or the expression “the other party” is used) shall, where there are 2 or more other parties to the agreement, be construed as a reference to one or more of those other parties or each of them, as appropriate.

10 **22.—**(1) The Agency shall, as soon as practicable, but not later than 6 months, after the end of each financial year make a report in writing to the Minister (in this section referred to as the “annual report”) of its activities during that year, and, before the annual report is published, the Minister shall as soon as practicable after receipt by him or her of the annual report cause copies of the annual report to be laid before each House of the Oireachtas. Reports and information to Minister.

15 (2) An annual report shall include information in such form and regarding such matters as the Minister may direct.

(3) The Agency may, from time to time, make such other reports to the Minister relating to its functions as it considers appropriate or as the Minister may require.

20 (4) In addition to the information provided by the Agency in its annual report and in reports made pursuant to *subsection (3)*, the Agency shall provide the Minister with such information in relation to the performance of its functions, or with advice on any matter relating to those functions, or both as the Minister may from time to time request. Accounts and audits.

25 **23.—**(1) The Agency shall submit estimates of income and expenditure to the Minister in such form, in respect of such periods and at such times as may be required by the Minister and shall furnish to the Minister any information which the Minister may require in relation to those estimates, including proposals and future plans relating to the performance by the Agency of its functions over a specified period of years.

30 (2) The Agency shall keep in such form as may be approved by the Minister with the consent of the Minister for Finance all proper and usual books or other records of account of—

(a) all monies received or expended by the Agency, and

(b) all property, assets and liabilities of the Agency,

35 including an income and expenditure account and a balance sheet and, in particular, shall keep such special accounts (if any) as the Minister may from time to time direct.

40 (3) The chief executive and the other officers of the Agency shall, whenever so requested by the Minister, permit any person appointed by the Minister to examine the books or other records of account of the Agency in respect of any financial year or other period and shall facilitate any such examination, and the Agency shall pay such fee as may be fixed by the Minister.

(4) Accounts kept in pursuance of this section, signed by the chief executive, shall be submitted by the Agency to the Comptroller and Auditor General for audit as soon as practicable, but not later than

3 months, after the end of the financial year to which the accounts relate.

(5) When so audited, a copy of the accounts together with a copy of the report of the Comptroller and Auditor General thereon shall be presented by the Agency to the Minister who shall, as soon as practicable but not later than 3 months thereafter, cause copies of them to be laid before each House of the Oireachtas. 5

Advances by
Minister to Agency.

24.—The Minister may from time to time advance to the Agency out of monies provided by the Oireachtas such amount or amounts as the Minister may, with the consent of the Minister for Finance, determine for the purposes of expenditure by the Agency in the performance of its functions under any of the relevant statutory provisions. 10

Disclosure of
interests.

25.—(1) Where the chief executive, a member of the Agency or of a committee, a member of the staff of the Agency, an authorised officer or a consultant, adviser or other person engaged by the Agency has a pecuniary interest or other beneficial interest in, or material to, any matter which is to be considered by the Agency, he or she shall— 15

(a) disclose to the Agency the nature of the interest in advance of any consideration of the matter, 20

(b) neither influence nor seek to influence a decision relating to the matter,

(c) take no part in any consideration of the matter,

(d) if he or she is the chief executive or a member of the Agency or of a committee or a member of the staff of the Agency, withdraw from the meeting for so long as the matter is being discussed or considered and neither vote nor otherwise act as such chief executive or member in relation to the matter. 25
30

(2) For the purposes of this section, but without prejudice to the generality of *subsection (1)*, a person shall be regarded as having a beneficial interest if in each of the following cases:

(a) the person, any connected relative of the person or a nominee of either of them is a member of a company or any other body which has a beneficial interest in, or material to, any matter referred to in that subsection; 35

(b) the person or any connected relative of the person is in partnership with or is in the employment of a person who has a beneficial interest in, or material to, any such matter; 40

(c) the person or any connected relative of the person is a party to any arrangement or agreement (whether or not enforceable) concerning land to which any such matter relates; 45

(d) any connected relative has a beneficial interest in, or material to, any such matter.

5 (3) For the purposes of this section a person shall not be regarded as having a beneficial interest in, or material to, any matter by reason only that he or she or any company or other person or any other body mentioned in *subsection (2)* has an interest which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering or discussing, or in voting on, any question in respect of the matter or in performing any function in relation to that matter.

10 (4) The Agency shall determine any question as to whether a course of conduct, if pursued by a person, would be a failure by him or her to comply with *subsection (1)*, and particulars of the determination shall be recorded in the minutes of the meeting at which the determination is made.

15 (5) If a disclosure is made under *subsection (1)* at a meeting of the Agency, particulars of the disclosure shall be recorded in the minutes of the meeting concerned, and for so long as the matter to which the disclosure relates is being dealt with by the meeting, the person by whom the disclosure is made shall not be counted in the quorum for the meeting.

20 (6) Where the Minister is satisfied that a member of the Agency has contravened *subsection (1)*, the Minister may, if he or she thinks fit, remove that member from office and, where a person is removed from office pursuant to this subsection, the person shall thenceforth be disqualified from being a member of the Agency.

25 (7) Where a person other than a person to whom *subsection (6)* applies contravenes *subsection (1)*, the Agency, in consultation with the Minister, shall decide the appropriate action to be taken in relation to the person, including the termination of a contract of service or a contract for services with the person.

30 (8) In this section “connected relative”, in relation to a person, means a spouse, partner, parent, brother, sister, child or the spouse of a child of the person.

35 **26.**—The Agency may from time to time as it considers necessary for the performance of its functions for such period and subject to such terms and conditions as the Agency considers appropriate—

Power to enter into contracts and to engage consultants and advisers.

(a) enter into contracts with persons, and

(b) engage consultants or advisers,

40 and any sums thereby payable by the Agency to such persons, consultants or advisers shall be paid by the Agency out of monies at its disposal.

27.—The Agency may, for the purposes of providing premises necessary for the performance of its functions, lease, equip and maintain offices and premises subject to the consent of the Minister and the Minister for Finance.

Premises of Agency.

45 **28.**—(1) The Agency shall, as soon as may be after the establishment day, provide itself with a seal.

Seal of Agency.

(2) The seal of the Agency shall be authenticated by the signature of—

(a) the chairperson of the Agency or another member of the Agency authorised in that behalf by it, or

(b) the chief executive or any other member of the staff of the Agency authorised in that behalf by it.

(3) Judicial notice shall be taken of the seal of the Agency and an instrument purporting to be an instrument made by the Agency and to be sealed with its seal (purporting to be authenticated in accordance with *subsection (2)*) shall be received in evidence and shall be deemed to be such instrument without further proof unless the contrary is shown.

(4) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Agency by any person generally or specially authorised in that behalf by the Agency.

Power to borrow.

29.—The Agency may borrow money (including money in a currency other than the currency of the State) for the purpose of performing any of the functions of the Agency, subject to the consent of the Minister and the Minister for Finance and any conditions they may determine.

Authorised officers of Agency.

30.—(1) The Agency may appoint in writing such and so many persons, including members of the staff of the Agency, to be authorised officers for the purposes of all or any of the relevant statutory provisions and such appointment may be specified to be for a fixed period.

(2) An authorised officer under section 16 of the Consumer Information Act 1978 holding office immediately before the commencement of *section 37* shall continue in office as if authorised under *subsection (1)*.

(3) Every authorised officer appointed under this section shall be furnished with a warrant of appointment and shall, when exercising any power conferred on him or her by this section, if requested by a person affected, produce the warrant of appointment or copy of it to that person.

(4) An appointment under this section as an authorised officer shall cease—

(a) if the Agency revokes the appointment,

(b) if the appointment is for a fixed period, on the expiry of that period, or

(c) if the person appointed ceases to be a member of staff of the Agency.

(5) An authorised officer may, for the purpose of obtaining any information which may be required in relation to a matter under investigation under any of the relevant statutory provisions—

(a) at all reasonable times enter any premises, place or vehicle, on, at or in which there are reasonable grounds to believe that any trade or business or any activity in connection with a trade or business is being, or has been,

carried on, or that records in relation to that trade, business or activity are kept, and search and inspect the premises, place or vehicle and any records that are on, at or in that premises, place or vehicle,

5 (b) secure for later inspection any, or any part of any, premises or place or vehicle on, at or in which such records are kept or there are reasonable grounds for believing that such records are kept,

10 (c) require any person who carries on such trade, business or activity or any person employed in respect of such trade, business or activity to produce to the authorised officer such records and where such records are kept in a non-legible form to reproduce them in a legible form or to give to him or her any information as the authorised officer may reasonably require in relation to such records,

15 (d) inspect and take copies of or extracts from any such records on, at or in the premises, place or vehicle, including in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form,

20 (e) remove and retain such records for such periods as may be reasonable for further examination, subject to a warrant being issued for that purpose by a judge of the District Court,

25 (f) require any such person to give to the authorised officer any information which the authorised officer may reasonably require in regard to such trade, business or activity or in respect of the persons carrying on such trade, business or activity or employed in connection with such trade, business or activity,

30 (g) require any such person to give to the authorised officer any other information which the authorised officer may reasonably require in respect of such trade, business or activity,

35 (h) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the authorised officer all reasonable assistance in relation to it and assist in the retrieval of information connected with the operation of such data equipment, apparatus or material,

40 (i) summon, at any reasonable time, any other person employed in connection with such trade, business or activity to give to the authorised officer any information which the authorised officer may reasonably require in relation to such trade, business or activity and to produce to the authorised officer any records which are in the control of that other person.

45 (6) An authorised officer may, for the purpose of obtaining any information which may be required in relation to a matter under investigation under the relevant statutory provisions, at all reasonable times enter any premises, at which there are reasonable grounds

to believe that any trade or business or any activity in connection with a trade or business is, or has been, carried on and inspect any goods on the premises and may—

(a) on paying or making tender of payment therefor, take any of the goods, or 5

(b) confirm by such other method as appropriate the price at which the goods are on offer or any other information relating to the goods for the purpose of an investigation.

(7) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under *subsection (10)* authorising such entry. 10

(8) Where an authorised officer in the exercise of his or her powers under this section is prevented from entering any premises an application may be made under *subsection (10)* authorising such entry. 15

(9) An authorised officer appointed under this section, when exercising any powers conferred on an authorised officer by this Act, may be accompanied by such other authorised officers or members of the Garda Síochána or both as he or she considers necessary. 20

(10) Without prejudice to the powers conferred on an authorised officer by or under any provision of this section, if a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that there is information required by an authorised officer under this section held on or at any, or any part of any, premises or place or in any vehicle, the judge may issue a warrant authorising an authorised officer (accompanied by such other authorised officers or members of the Garda Síochána or both as provided for in *subsection (9)*) at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter the premises, place or vehicle, using reasonable force where necessary, and exercise all or any of the powers conferred on an authorised officer under this section. 25 30

(11) A person who falsely represents himself or herself as an authorised officer commits an offence and is liable on summary conviction to the fines and penalties provided in *Chapter 4 of Part 5*. 35

(12) A person who—

(a) obstructs or impedes an authorised officer in the exercise of a power under this section, 40

(b) without reasonable excuse, does not comply with a request or requirement of an authorised officer under this section, or

(c) in purported compliance with such a requirement gives information that is false or misleading in a material respect, 45

commits an offence and is liable on summary conviction to the fines and penalties provided in *Chapter 4 of Part 5*.

(13) Any books, documents or records which are seized or obtained under this section may be retained for a period of 6 months, 50

or such longer period as may be permitted by a judge of the District Court, or if within that period there are commenced any proceedings to which those books, documents or records are relevant, until the conclusion of those proceedings.

5 (14) Where the Agency or an authorised officer proposes to
retain, pursuant to *subsection (13)*, books, documents or records for
a period longer than 14 days after the date on which they were seized
or obtained by the authorised officer, the Agency or that officer
10 shall, before the expiry of that period of 14 days, or such longer
period with the consent of the person hereafter mentioned, furnish,
on request, a copy of the books, documents or records to the person
who it appears to the Agency or officer is, but for the exercise of the
powers under this section, entitled to possession of them.

15 (15) Where an advertisement in relation to the supply or pro-
vision of any product is published and does not include the name
and address of the person who procured such publication or his or
her agent, the publisher of the advertisement shall, if the Agency or
an authorised officer so requests within 12 months of the publication
20 of the advertisement, give to the Agency or the authorised officer,
the name and address of such person or his or her agent.

(16) A person who fails to comply with a request under *subsection*
(15) or, in purported compliance with such a request, gives infor-
mation that is false or misleading in a material respect, commits an
offence and is liable on summary conviction to the fines and penalties
25 provided in *Chapter 4 of Part 5*.

(17) In this section—

“premises” includes any building, dwelling, temporary construction,
ship, aircraft or other vehicle;

“records” includes, in addition to a record in writing—

30 (a) discs, tapes, sound-tracks or other devices, including elec-
tronic devices, in which information, sounds or signals are
embodied so as to be capable (with or without the aid of
some other instrument) of being reproduced in legible or
audible form,

35 (b) films, tapes or other devices, including electronic devices,
in which visual images are embodied so as to be capable
(with or without the aid of some other instrument) of
being reproduced in visual form,

(c) photographs,

40 and a reference to copies of records includes—

(i) in the case of records falling within *paragraph (a)* only,
transcripts of the sounds or signals embodied in them,

(ii) in the case of records falling within *paragraph (b)* only,
still reproductions of the images embodied in them, and

45 (iii) in the case of records falling within both *paragraphs (a)*
and *(b)*, such transcripts together with such still repro-
ductions.

Disclosure of information relating to offences.

31.—(1) Notwithstanding any other law, information which, in the opinion of—

- (a) the Competition Authority,
- (b) a member of the Garda Síochána,
- (c) the Director of Corporate Enforcement, 5
- (d) an officer of the Revenue Commissioners, or
- (e) such other person as may be prescribed after consultation by the Minister with any other Minister of the Government appearing to the Minister to be concerned,

may relate to the commission of an offence under any of the relevant statutory provisions may be disclosed by the body or other person referred to in any of *paragraphs (a) to (e)* to the Agency, a member of the Agency or a member of staff of the Agency or an authorised officer. 10

(2) Notwithstanding *section 32*, information, which in the opinion of the chief executive may relate to the commission of an offence which is not an offence under the relevant statutory provisions, may be disclosed to— 15

- (a) the Competition Authority,
- (b) a member of the Garda Síochána, 20
- (c) the Director of Corporate Enforcement,
- (d) an officer of the Revenue Commissioners, or
- (e) such other person as may be prescribed after consultation by the Minister with any other Minister of the Government appearing to the Minister to be concerned. 25

Prohibition on unauthorised disclosure of information.

32.—(1) A person shall not, unless authorised by the Agency or by a member of the staff of the Agency duly authorised in that behalf so to do, or required by law, disclose confidential information obtained by him or her in his or her capacity, or while performing duties as— 30

- (a) a member of the Agency or of a committee,
- (b) the chief executive,
- (c) a member of the staff of the Agency,
- (d) a consultant or adviser engaged by the Agency or an employee of such a consultant or adviser, 35
- (e) an authorised officer, or
- (f) a person engaged by the Agency in any other capacity.

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

- (a) a communication made by a member of the Agency or of a committee, the chief executive, a member of staff of the Agency or an authorised officer, in the performance of 40

any of his or her functions under this Act, being a communication the making of which was necessary for the performance by the member, chief executive, member of staff of the Agency or authorised officer of any such function, or

5

(b) the disclosure by a member of the Agency or of a committee, the chief executive, a member of staff of the Agency or an authorised officer to any member of the Garda Síochána of information which, in the opinion of the member or chief executive or member of staff of the Agency or authorised officer, may relate to the commission of an offence (whether an offence under this Act or not).

10

(3) A person who contravenes *subsection (1)* commits an offence and is liable on summary conviction to the fines and penalties provided in *Chapter 4 of Part 5*.

15

(4) Nothing in *subsection (1)* shall prevent the disclosure of information by means of a report made—

(a) to the Agency or a committee, as the case may be, or

20

(b) by or on behalf of the Agency or a committee to the Minister.

(5) A person who suffers loss or harm as a result of a contravention of *subsection (1)* shall be entitled to bring proceedings against the person referred to in *subsection (6)* in any court of competent jurisdiction seeking one, or more than one as appropriate, of the following reliefs in respect of that loss or harm:

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(a) relief by way of injunction or declaration;

(b) damages.

(6) The person mentioned in *subsection (5)* is—

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(a) if the person who contravened *subsection (1)* is other than a member of the Agency or a member of staff of the Agency or an authorised officer, that person,

35

(b) if the person who contravened *subsection (1)* is a member of the Agency or a member of staff of the Agency or an authorised officer and the relief sought, or to the extent that the relief sought, in the proceedings is—

(i) relief referred to in *subsection (5)(a)*, that person,

(ii) relief referred to in *subsection (5)(b)*, the Agency.

(7) An action under *subsection (5)* shall be regarded as an action founded on tort.

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(8) In this section “confidential information” includes information that is expressed by the Agency or a committee, as the case may be, to be confidential either as regards particular information or as regards information of a particular class or description.

33.—On the establishment day, the Freedom of Information Act 1997 is amended by inserting—

- (a) in paragraph 1(2) of the First Schedule, “the National Consumer Agency,” and
- (b) in Part I of the Third Schedule at the end thereof—
 - (i) in column (2), “*Consumer Protection Act 2007*”, and
 - (ii) in column (3), “*Section 32*” opposite the mention in column (2) of the *Consumer Protection Act 2007*.

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CHAPTER 2

Staff of Agency

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Staffing.

34.—(1) Subject to *section 35*, the Agency may, with the approval of the Minister given with the consent of the Minister for Finance—

- (a) appoint such and so many persons to be members of the staff of the Agency as it may from time to time determine, and
- (b) determine the grades of such staff of the Agency and the number of staff in each grade.

15

(2) Subject to *section 35*, the terms and conditions of service, including terms and conditions relating to remuneration and allowances for expenses (which shall be paid by the Agency out of monies at its disposal), of the members of the staff of the Agency shall be such as the Agency may from time to time, with the approval of the Minister given with the consent of the Minister for Finance, determine.

20

Transfer of
employment of
certain persons to
Agency.

35.—(1) On the request of the chief executive made within 24 months after the establishment day, the Minister may, by direction in writing, transfer to the Agency the employment of a person who is employed in a Department of State or by a public body, but only if the person has agreed to have that employment transferred to the Agency.

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30

(2) The chief executive may make such a request only with the concurrence of the Agency.

(3) The conditions of employment of a person whose employment is transferred under this section are to be no less favourable than those applicable to the person immediately before the transfer, except in so far as a collective agreement negotiated with a recognised trade union or staff association of which the person is a member expressly provides otherwise.

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(4) If any dispute arises between a person whose employment is transferred under this section and the Agency as to the conditions of employment applicable to the person immediately before the transfer, the Minister shall determine the dispute.

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(5) If a person’s employment is transferred under this section, the person’s previous service with a Department of State or public body is to be counted as service for the purposes of the following Acts of the Oireachtas:

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- (a) the Redundancy Payments Acts 1967 to 2003;
- (b) the Protection of Employees (Part-Time Work) Act 2001;
- (c) the Protection of Employees (Fixed-Term Work) Act 2003;
- 5 (d) the Minimum Notice and Terms of Employment Acts 1973 to 2005;
- (e) the Unfair Dismissals Acts 1977 to 2005;
- (f) the Terms of Employment (Information) Acts 1994 and 2001;
- 10 (g) the Organisation of Working Time Act 1997;
- (h) the Parental Leave Acts 1998 and 2006;
- (i) the Carer's Leave Act 2001.

(6) In this section “recognised trade union or staff association” means a trade union or staff association recognised by the Agency for the purposes of negotiations which are concerned with the remuneration or conditions of employment or the working conditions of employees.

36.—(1) The Agency may, with the approval of the Minister given with the consent of the Minister for Finance, make such provision as it considers appropriate in relation to the superannuation of persons appointed under *section 34* or transferred to the Agency under *section 35*. Superannuation.

(2) The Agency may, with the approval of the Minister given with the consent of the Minister for Finance, make a scheme or schemes for the granting of superannuation benefits to or in respect of the members of staff of the Agency as the Agency thinks fit, and shall carry out such a scheme in accordance with its terms.

(3) A superannuation scheme shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

(4) The Agency may, with the approval of the Minister given with the consent of the Minister for Finance, make a scheme amending or revoking a superannuation scheme, and shall carry out such a scheme in accordance with its terms.

(5) Superannuation benefits granted under this section to persons transferred to the Agency under *section 35*, and the terms and conditions relating to those benefits, shall not be less favourable to those persons than those to which they were entitled immediately before they were transferred under the said *section 35*.

(6) Superannuation benefits shall not be granted by the Agency to or in respect of any member of the staff of the Agency, nor shall any other arrangement be entered into by the Agency for the provision of such benefits to such person, except in accordance with a superannuation scheme or, if the Agency, with the approval of the Minister given with the consent of the Minister for Finance, sanctions the granting of such benefits, in accordance with that sanction.

(7) A superannuation scheme shall provide for an appeal from a decision relating to superannuation benefits payable under the scheme.

(8) Where at any time during the period between his or her transfer under *section 35* and the coming into operation of a scheme under this section, a superannuation benefit falls due for payment to or in respect of a person who was transferred under *section 35*, the benefit shall be calculated and paid by the Agency in accordance with the scheme or such provisions in relation to superannuation as applied to the person immediately before his or her transfer under the said *section 35*, and for that purpose that person's pensionable service with the Agency and previous pensionable service shall be aggregated.

(9) The Minister shall cause a superannuation scheme to be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly but without prejudice to the validity of anything previously done under the scheme.

(10) In this section—

“superannuation benefits” means pensions, gratuities and other allowances payable to or in respect of a person on ceasing to be a member of the staff of the Agency;

“superannuation scheme” means a superannuation scheme made under *subsection (2)* or *(4)*.

CHAPTER 3

Transfer of Functions, etc.

Transfer of functions to Agency.

37.—(1) The administration and business in connection with the exercise, performance or execution of any of the functions transferred by *subsection (2)* are transferred to the Agency on the establishment day.

(2) The functions vested in the Director by or under the existing enactments are transferred to the Agency on the establishment day.

(3) References to the Director and the office of the Director contained in any Act (within the meaning of the Interpretation Act 2005) or instrument (including a licence or certificate granted, nomination made or consent or authorisation given thereunder) relating to any functions transferred by *subsection (2)* shall, on and after the establishment day, be read as references to the Agency.

(4) Anything commenced before the establishment day by or under the authority of the Director may, in so far as it relates to functions transferred by *subsection (2)* to the Agency, be carried on or completed on or after that day by the Agency.

(5) Where immediately before the establishment day, any legal proceedings are pending to which the Director is a party or the prosecutor and the proceedings have reference to any functions transferred to the Agency by *subsection (2)*, the name of the Agency shall, in so far as the proceedings relate to functions transferred by *subsection (2)*, be substituted in those proceedings for that of the Director

or added in those proceedings and those proceedings shall not abate by reason of such substitution.

5 **38.—**(1) Every bond, guarantee or other security of a continuing nature made or given by the Director to any person or by any person to the Director that is in force immediately before the establishment day, and every contract or agreement in writing made between the Director and any person that is in force but is not fully executed and completed immediately before the establishment day shall continue in force on and after that day and shall be construed and have effect as if the name of the Agency was substituted therein for the Director. 10

Preservation of existing contracts.

15 (2) Every document (including any certificate, licence, nomination, consent or authorisation) granted or made by the Director in the exercise of a function transferred by *section 37* that is in force immediately before the establishment day shall continue in force on and after that day as if it had been granted or made by the Agency and shall be construed and have effect accordingly.

39.—(1) With effect from the establishment day the following are transferred to the Agency: 20

Transfer of assets and liabilities.

(a) all rights and property and rights relating to such property held or enjoyed immediately before that day by the Director; and

(b) all liabilities incurred before that day by the Director which had not been discharged before that day;

25 and, accordingly, without any further conveyance, transfer or assignment—

30 (i) the said property, real and personal, shall, on that day, vest in the Agency for all the estate, term or interest for which, immediately before that day, it was vested in the Director, but subject to all trusts and equities affecting the property and capable of being performed,

(ii) those rights shall, on and from that day, be enjoyed by the Agency, and

(iii) those liabilities shall, on and from that day, be liabilities of the Agency.

35 (2) All monies, stocks, shares and securities transferred to the Agency by this section which, immediately before the establishment day, are in the name of the Director, shall, upon the request of the Agency, be transferred into its name.

40 (3) Every right and liability transferred to the Agency by this section may, on or after the establishment day, be sued on, recovered or enforced by or against the Agency in its own name and it shall not be necessary for the Agency to give notice of the transfer to the person whose right or liability is transferred by this section.

45 (4) The Agency shall not, without the consent of the Minister, dispose of any part of any land or any interest therein transferred to or vested in the Agency under this section.

References in certain other enactments to Director or Office of Director.

40.—(1) The Acts of the Oireachtas specified in *Part 1 of Schedule 3* are amended as indicated in that Schedule.

(2) The instruments specified in *Part 2 of Schedule 3* are amended as indicated in that Schedule.

PART 3 5

COMMERCIAL PRACTICES

CHAPTER 1

Unfair Commercial Practices

General prohibition on unfair commercial practices.

41.—(1) A trader shall not engage in an unfair commercial practice. 10

(2) A commercial practice is unfair if it—

(a) is contrary to one or both of the following (the requirements of professional diligence):

(i) the general principle of good faith in the trader's field of activity; 15

(ii) the standard of skill and care that the trader may reasonably be expected to exercise in respect of consumers, and

(b) would be likely to—

(i) cause appreciable impairment of the average consumer's ability to make an informed choice in relation to the product concerned, and 20

(ii) cause the average consumer to make a transactional decision that the average consumer would not otherwise make. 25

(3) In determining whether a commercial practice is unfair under *subsection (2)*, the commercial practice shall be considered in its factual context, taking account of all of its features and the circumstances.

CHAPTER 2 30

Misleading Commercial Practices

General prohibition on misleading commercial practices.

42.—(1) A trader shall not engage in a misleading commercial practice.

(2) Without prejudice to the amendments of the Hallmarking Act 1981 made by *section 96, sections 43 to 46* specify the various circumstances in which a commercial practice is misleading. 35

Misleading: false, misleading or deceptive information.

43.—(1) A commercial practice is misleading if it includes the provision of false information in relation to any matter set out in *subsection (3)* and that information would be likely to cause the average

consumer to make a transactional decision that the average consumer would not otherwise make.

5 (2) A commercial practice is misleading if it would be likely to cause the average consumer to be deceived or misled in relation to any matter set out in *subsection (3)* and to make a transactional decision that the average consumer would not otherwise make.

(3) The following matters are set out for the purposes of *subsections (1)* and *(2)*:

- (a) the existence or nature of a product;
- 10 (b) the main characteristics of a product, including, without limitation, any of the following:
 - (i) its geographical origin or commercial origin;
 - (ii) its availability, including, without limitation, its availability at a particular time or place or at a particular price;
 - 15 (iii) its quantity, weight or volume;
 - (iv) its benefits or fitness for purpose;
 - (v) the results to be expected from it;
 - (vi) the risks it presents to consumers;
 - 20 (vii) its usage or prior history;
 - (viii) its composition, ingredients, components or accessories;
 - (ix) the specifications of the product, including, without limitation, the grade, standard, style, status or model of the product;
 - 25 (x) the after-supply customer assistance available to consumers in relation to the product;
 - (xi) the handling of consumer complaints in relation to the product;
 - 30 (xii) the method or date of—
 - (I) the product's delivery, supply or provision, or
 - (II) in the case of goods, the product's manufacture;
 - (xiii) the results and material features of tests or checks carried out on the product;
 - 35 (xiv) in relation to a service, its execution or performance;
- (c) the price of the product, the manner in which that price is calculated or the existence or nature of a specific price advantage;
- 40 (d) the need for any part, replacement, servicing or repair in relation to the product;

- (e) the existence, extent or nature of any approval or sponsorship (direct or indirect) of the product by others;
 - (f) the nature, attributes or rights of the trader, including, without limitation, the following:
 - (i) the trader's identity, qualifications, assets or status; 5
 - (ii) the trader's affiliation or connection with others;
 - (iii) the existence, extent or nature of—
 - (I) any industrial, commercial or intellectual property rights the trader may have, or
 - (II) any award, distinction, approval or sponsorship (direct or indirect) the trader has or has received; 10
 - (g) the extent of the trader's commitments;
 - (h) the trader's motives for the commercial practice;
 - (i) the nature of the trader's supply process; 15
 - (j) the legal rights of a consumer (whether contractual or otherwise) or matters respecting when, how or in what circumstances those rights may be exercised.
- (4) If the commercial practice in *subsection (2)* involves the provision of information, it is not a defence in any proceeding to show that the information is factually correct. 20
- (5) In determining whether a commercial practice under *subsection (1)* or *(2)* is misleading, the commercial practice shall be considered in its factual context, taking account of all of its features and the circumstances. 25
- (6) Without limiting *subsection (5)*—
- (a) if the commercial practice involves a representation or creates an impression (whether in advertising, marketing or otherwise) that a product was previously offered at a different price or at a particular price, consideration shall be given to whether the product was previously offered openly and in good faith at that price and at the same place for a reasonable period of time before the representation was made, and 30
 - (b) if the commercial practice involves a representation or creates an impression (whether in advertising, marketing or otherwise) that a product is being offered by a trader at or below a price recommended by the manufacturer, producer or supplier of the product (other than the trader), consideration shall be given to whether that recommended price was one recommended in good faith by that manufacturer, producer or supplier. 35 40
- (7) In determining the geographical origin of goods the manufacture or production of which involves more than one country, consideration shall be given to where the goods underwent their last substantial and economically justified processing or working (in a place equipped for that purpose), resulting in the manufacture of 45

new goods or representing an important stage of the manufacture or production.

5 **44.—(1)** A commercial practice involving marketing or advertising is misleading if it would be likely to cause the average consumer—

Misleading: competitor or product confusion in marketing or advertising.

(a) to confuse—

(i) a competitor’s product with the trader’s product, or

10 (ii) a competitor’s trade name, trade mark or some other distinguishing feature or mark with that of the trader,

and

(b) to make a transactional decision that the average consumer would not otherwise make.

15 (2) In determining whether a commercial practice is misleading under *subsection (1)*, the commercial practice shall be considered in its factual context, taking account of all of its features and the circumstances.

45.—(1) A commercial practice is misleading if—

Misleading: non-compliance with agreed code of practice.

20 (a) it involves a representation that the trader abides, or is bound, by a code of practice,

(b) the representation referred to in *paragraph (a)* would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make, and

25 (c) the trader fails to comply with a firm commitment in that code of practice.

30 (2) In determining whether a commercial practice is misleading under *subsection (1)*, the commercial practice shall be considered in its factual context, taking account of all of its features and the circumstances.

(3) For the purposes of this section, a firm commitment in a code of practice is one that is not merely aspirational but is capable of being verified.

35 **46.—(1)** A commercial practice is misleading if the trader omits or conceals material information that the average consumer would need, in the context, to make an informed transactional decision (“material information”) and such practice would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make.

Misleading: withholding, omitting or concealing material information.

40 (2) A commercial practice is misleading if—

(a) the trader—

- (i) provides material information referred to in *subsection (1)* in a manner that is unclear, unintelligible, ambiguous or untimely, or
 - (ii) fails to identify the commercial intent of the practice (if such intent is not already apparent from the context), and 5
- (b) such practice would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make.
- (3) If a commercial practice is or includes an invitation to purchase, each of the following constitutes material information for the purposes of this section, unless already apparent to the consumer in the context of the commercial practice: 10
- (a) the main characteristics of the product, to an extent appropriate to the medium and the product; 15
 - (b) the geographical address of the trader, the identity of the trader (such as his or her trading name) and, if the trader is acting in a consumer transaction as an agent of another trader, the geographical address and the identity of that other trader; 20
 - (c) the price of the product (inclusive of taxes) or, if the nature of the product is such that the price cannot reasonably be calculated in advance, the manner in which the price is calculated;
 - (d) any freight, delivery or postal charges that apply in relation to the product or, if such charges cannot reasonably be calculated in advance, a statement of the fact that such charges will apply and be payable by the consumer; 25
 - (e) the handling of consumer complaints in relation to the product or the arrangement for payment, delivery or performance, if such handling or arrangement does not meet or accord with— 30
 - (i) the standard of skill and care that the trader may reasonably be expected to exercise in respect of consumers, or 35
 - (ii) the general principle of good faith in the trader's field of activity;
 - (f) if applicable, the legal rights of a consumer (whether contractual or otherwise) to withdraw from or cancel the consumer transaction. 40
- (4) The material information set out in *subsection (3)* is in addition to and not instead of any other information that the trader is required by law to provide to a consumer, including, without limitation, any information required to be provided by regulations under this Act. 45
- (5) In determining whether a commercial practice is misleading under this section, the commercial practice shall be considered in its factual context, taking account of all of its features and the circumstances, including—

- (a) the space or time available in any communications medium used, and
- (b) any measures taken by the trader to make the material information available to consumers by other means.

5 **47.**—A trader who engages in any misleading commercial practice described in *section 43(1) or (2)* commits an offence and is liable on conviction on indictment or on summary conviction, as the case may be, to the fines and penalties provided in *Chapter 4 of Part 5*. Offences: misleading commercial practices.

10 **48.**—(1) Subject to *subsection (5)*, if the Minister considers it to be in the interest of consumers to have a product, or a class or type of product, marked with or accompanied by any information (or both), the Minister may make regulations— Consumer information regulations.

- (a) prescribing the product or class or type of product,
- (b) prescribing—

15 (i) any stamps, marks, tags and labels for use on those products and the manner of their use, or

 (ii) any information to accompany those products when they are supplied to consumers by traders, or

20 (iii) the matters referred to in both of the foregoing subparagraphs,

- (c) requiring traders who supply a prescribed product, or a product of a prescribed class or type, to—

 (i) stamp, mark, tag or label them in accordance with regulations made under *paragraph (b)(i)*, or

25 (ii) have prescribed information under *paragraph (b)(ii)* accompany those products in the manner and form specified in the regulations, or

 (iii) do the things referred to in both of the foregoing subparagraphs,

30 and

- (d) regulating or prohibiting the supply of a prescribed product, or a product of a prescribed class or type, if any regulation under *paragraph (b) or (c)* is not complied with.

35 (2) Subject to *subsection (5)*, if the Minister considers it to be in the interest of consumers that advertisements for a product, or a class or type of product, contain or refer to any information relating to those products (or do both those things), the Minister may make regulations—

40 (a) prescribing the product, or class or type of product, and that information, and

- (b) requiring traders who market or advertise those products to do either or both of the following, as the Minister considers necessary or appropriate:

(i) include that information in their advertisements and to do so in the manner and form specified in the regulations;

(ii) specify in their advertisements the means by which that information may be obtained by a consumer. 5

(3) The Minister may make different regulations under this section for—

(a) different classes or types of products or traders,

(b) different classes or types of advertisements,

(c) different circumstances, and 10

(d) different geographical areas of the State.

(4) A regulation made under this section may apply to the whole State or to a specified geographical area of the State.

(5) The Minister may not make a regulation under this section unless the Minister is satisfied that in the context— 15

(a) the average consumer would need the stamp, mark, tag, label or information in order to make an informed transactional decision (“material information”), and

(b) if such material information was withheld, omitted or concealed, it would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make. 20

(6) *Subsection (5)* does not apply in respect of regulations that may be made under *subsection (1)* relating to indications of the standard of fineness of articles of precious metal. 25

Offences:
contravening
consumer
information
regulations.

49.—(1) A trader who supplies a product in contravention of a regulation under *section 48(1)* commits an offence.

(2) If an advertisement fails to comply with any requirement of a regulation under *section 48(2)*, any trader who publishes the advertisement or causes it to be published commits an offence. 30

(3) A trader who commits an offence under *subsection (1)* or (2) is liable on summary conviction to the fines and penalties provided in *Chapter 4 of Part 5*.

CHAPTER 3

Aggressive Commercial Practices 35

General prohibition
on aggressive
commercial
practices.

50.—A trader shall not engage in an aggressive commercial practice.

Aggressive
commercial
practices.

51.—(1) A commercial practice is aggressive if by harassment, coercion or undue influence it would be likely to—

(a) cause significant impairment of the average consumer's freedom of choice or conduct in relation to the product concerned, and

5 (b) cause the average consumer to make a transactional decision that the average consumer would not otherwise make.

(2) In determining whether a commercial practice is aggressive under *subsection (1)*, the commercial practice shall be considered in its factual context, taking account of all of its features and the circumstances.

(3) Without limiting *subsection (2)*, in determining whether the commercial practice employs harassment, coercion or undue influence, the following shall be taken into account:

15 (a) the timing, location, nature or persistence of the commercial practice;

(b) the use of threatening or abusive language or behaviour by the trader;

20 (c) the exploitation of a consumer's misfortune or circumstance when the trader is aware that the consumer's judgment is impaired as a result of the gravity of the misfortune or circumstance, in order to influence the consumer's transactional decision;

25 (d) the imposition of onerous or disproportionate non-contractual barriers by the trader when the consumer wishes to terminate the contract, exercise a contractual right or switch to another product or trader;

(e) the use of threats by the trader to—

30 (i) take action or initiate proceedings against the consumer when the trader has no legal basis for taking such action or initiating such proceedings, or

(ii) do something unlawful.

35 (4) In this section, "undue influence" means exploiting a position of power in relation to a consumer so as to apply pressure (without necessarily using or threatening to use physical force) in a way that significantly limits the consumer's ability to make an informed choice in relation to the trader's product.

40 **52.**—A trader who engages in any aggressive commercial practice described in *section 51(1)* commits an offence and is liable on conviction on indictment or on summary conviction, as the case may be, to the fines and penalties provided in *Chapter 4* of *Part 5*. Offences: aggressive commercial practices.

CHAPTER 4

Prohibited Commercial Practices

53.—(1) A trader shall not engage in any of the following commercial practices: Prohibited commercial practices.

- (a) a representation that the trader has an approval, authorisation or endorsement that the trader does not have, or making such a representation when the trader is not in compliance with that approval, authorisation or endorsement; 5
- (b) a representation that the trader is signatory to a code of practice, if the trader is not;
- (c) a representation that the trader is about to cease trading or move premises, if the trader is not;
- (d) a representation that a product has an approval, authorisation or endorsement that it does not have, or making such a representation when the trader is not in compliance with that approval, authorisation or endorsement; 10
- (e) a representation that a product is able to facilitate winning in games of chance; 15
- (f) a representation that supply of a product is legal, if it is not, or creating such an impression;
- (g) a representation that a product is able to cure an illness, dysfunction or malformation, if it cannot;
- (h) a representation that describes a product as “gratis”, “free”, “without charge” or anything similar, if a consumer has to pay anything other than the necessary and reasonable cost of— 20
 - (i) responding to the representation, and
 - (ii) collecting the product or having it delivered; 25
- (i) a representation that a commercial practice of the trader has an approval, authorisation or endorsement that it does not have, or making such a representation when the trader is not in compliance with the approval, authorisation or endorsement; 30
- (j) a representation that a code of practice has an approval or other endorsement that it does not have;
- (k) displaying a quality, standard or trust mark or symbol, or some equivalent type of mark or symbol, without having obtained necessary authorisation to do so; 35
- (l) making an invitation to purchase a product without disclosing the existence of any reasonable grounds the trader may have for believing that the trader will not be able to supply, or procure another trader to supply, the product or an equivalent product at the price specified in the invitation, or to do so for a reasonable period of time or in reasonable quantities, having regard to the scale of any marketing or advertising of the product and the price specified (bait advertising); 40
- (m) making an invitation to purchase a product, then— 45
 - (i) demonstrating a defective sample of the product, or
 - (ii) refusing to—

- (I) show or display the product to the consumer,
- (II) take an order from the consumer for the product, or
- (III) deliver the product to the consumer within a reasonable period of time,

with the intention of promoting a different product (bait and switch);

(n) making a false representation that a product is available only for a limited time, or on particular terms for a limited time, in order to elicit an immediate decision from a consumer, depriving the consumer of sufficient opportunity or time to make an informed choice in relation to the trader's product;

(o) subject to *subsection (2)*, providing after-supply service to a consumer in a language that is not an official language of the relevant State in which the trader is located, nor is it the language in which the trader and consumer communicated prior to the agreement to supply;

(p) making a representation or creating an impression that a right given to consumers under an enactment is a distinctive feature of the trader's promotion or supply;

(q) using editorial content in the media to promote a product (if a trader has paid for that promotion) if it is not made clear that the promotion is a paid promotion, whether in the content itself or in any oral, written, visual or descriptive representation in the promotion;

(r) making a representation to a consumer that is materially inaccurate in respect of the nature and extent of risk to the consumer's personal security, or that of other members of the consumer's household, if the consumer does not purchase the trader's product;

(s) promoting a product (similar to that of another manufacturer) in such a manner as to deliberately mislead or deceive a consumer into thinking that the product is manufactured by that manufacturer, when it is not;

(t) making a representation to a consumer that is inaccurate to a material degree in respect of market conditions, or in respect of the possibility of finding a product, with the intention of inducing the consumer to purchase a product at conditions less favourable than normal market conditions;

(u) operating, running or promoting a competition or prize promotion without awarding the prizes described or reasonable equivalents;

(v) making a representation or creating an impression that a consumer has won or will win a prize or other equivalent benefit, if—

- (i) there is no prize or equivalent benefit, or

- (ii) in claiming the prize, the consumer has to make a payment or incur a loss;
 - (w) including in marketing material an invoice or any similar document seeking payment from a consumer for a product that the consumer has not ordered; 5
 - (x) making a representation or creating an impression that the trader—
 - (i) is not acting for purposes related to the trader’s trade, business or profession, when the trader is so acting, or 10
 - (ii) is acting as a consumer, when the trader is not;
 - (y) making a representation or creating an impression that after-supply service in relation to a product is available in a relevant State other than the one in which the product is supplied, when it is not so available. 15
- (2) *Subsection (1)(o)* does not apply in either of the following cases:
- (a) prior to the agreement to supply, the trader clearly discloses to the consumer the language or languages in which the after-supply service is available; 20
 - (b) the primary language in which the trader and consumer communicated prior to the agreement to supply is the official language of the relevant State in which the trader is located but is not the official language of the relevant State of the consumer. 25
- (3) A trader shall not engage in any of the following commercial practices:
- (a) making a representation or creating an impression that a consumer cannot leave the premises until a contract is formed; 30
 - (b) failing to comply with a consumer’s request to leave the consumer’s residence or to not return (except in circumstances and to the extent justified or permitted by or under law in order to enforce a contractual obligation);
 - (c) persistently failing to comply with a consumer’s request to cease— 35
 - (i) communicating or initiating unwanted or unsolicited contact with, or
 - (ii) making or sending unwanted or unsolicited representations to, 40
 - the consumer by telephone, fax, email or any other electronic means or remote media (except in circumstances and to the extent justified or permitted by or under law in order to enforce a contractual obligation);
 - (d) in relation to a consumer’s claim on an insurance policy, doing either or both of the following; 45

- (i) requiring the consumer to produce documents irrelevant to the validity of the claim;
 - (ii) persistently failing to respond to the consumer's correspondence on the matter, in order to dissuade the consumer from exercising contractual rights in respect of that claim;
- (e) including in an advertisement a direct exhortation to children to—
- (i) purchase a product, or
 - (ii) persuade a parent or adult to purchase the product for them;
- (f) in relation to any product that a consumer does not solicit, demanding that the consumer—
- (i) make immediate or deferred payment for the product, or
 - (ii) return or keep the product safe;
- (g) explicitly informing a consumer that if the consumer does not purchase a product, the trader's job or livelihood will be in jeopardy.

20 (4) *Subsection (3)(f)* does not apply in respect of a product provided by a trader in accordance with Regulation 9(3) of the European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations 2001 (S.I. No. 207 of 2001).

25 **54.**—A trader who contravenes *section 53(1)* or (3) commits an offence and is liable on conviction on indictment or on summary conviction, as the case may be, to the fines and penalties provided in *Chapter 4* of *Part 5*. Offences: prohibited commercial practices.

30 **55.**—(1) If the Minister considers it to be in the interest of consumers, the Minister may make regulations requiring traders who supply a product, or a class or type of product, to display the price or charge to consumers of or for those products in any manner or form specified in the regulations. Price display regulations.

35 (2) Without limiting *subsection (1)*, a regulation under this section may—

- (a) require prices or charges, or any combination of prices and charges, to be displayed in a single amount and inclusive of any charges, fees or taxes payable,
- (b) require the price or charge display, or combined price and charge display, to state the range of prices or charges for the products, and
- (c) prohibit the supply of the products to consumers at any price greater than the price or charge so displayed.

45 (3) The Minister may make different regulations under this section for different classes or types of products or traders.

(4) A regulation made under this section may apply to the whole State or to a prescribed geographical area of the State.

Offences: price display contraventions.

56.—A trader who contravenes a regulation under *section 55* commits an offence and is liable on summary conviction to the fines and penalties provided in *Chapter 4 of Part 5*.

5

Offence: weighing facilities in grocery retail.

57.—(1) In this section, “grocery retailer” means a trader who is a retailer within the meaning of section 15A of the Competition Act 2002.

(2) A grocery retailer who offers food for sale to consumers by weight (other than food packed for sale by its manufacturer or producer or by the person who supplied it for sale) shall—

(a) provide a weighing scale, or weighing machine, that—

(i) is in a public and prominent position on the premises where that food is sold, and

(ii) subject to health and food safety considerations, is as near as reasonably possible to where that food is on display for sale,

and

(b) allow any person purchasing, or about to purchase, such food to weigh it or observe its weighing on the weighing scale or weighing machine.

(3) A grocery retailer who contravenes *subsection (2)(a)* or *(b)* commits an offence and is liable on summary conviction to the fines and penalties provided in *Chapter 4 of Part 5*.

Offence: preventing the reading of prices.

58.—(1) A trader shall not, without reasonable cause, prevent a person from, or obstruct or interfere with that person in—

(a) reading the prices displayed on or in relation to products supplied by the trader, or

(b) entering premises for purposes described in *paragraph (a)*, if those premises are where the trader supplies those products.

(2) A trader who contravenes *subsection (1)(a)* or *(b)* commits an offence and is liable on summary conviction to the fines and penalties provided in *Chapter 4 of Part 5*.

State of emergency affecting supply of a product.

59.—(1) If the Government is of the opinion that abnormal circumstances prevail or are likely to prevail in relation to the supply of a product, the Government may by order (“emergency order”) declare that a state of emergency affecting the supply of that product exists.

(2) An emergency order may relate to one or more products and may define the products in such manner as the Government thinks fit.

(3) Unless the term of an emergency order is extended under *subsection (4)* or *(5)* or the order is revoked, an emergency order—

5 (a) remains in force for such term (not exceeding 6 months from the date that the order is made) that the Government thinks proper and specifies in the order, and

(b) expires at the end of the last day of the term specified.

10 (4) Subject to *subsection (5)*, if an emergency order is in force (“principal order”) and the Government is of the opinion that abnormal circumstances continue to prevail in relation to the supply of a product to which the order relates, the Government may make one order (“extension order”) in relation to that product extending the term of the principal order as it relates to that product for a period not exceeding 6 months from the date that the extension order is made.

15 (5) If during the extended term under *subsection (4)*, the Government is of the opinion that abnormal circumstances continue to prevail in relation to the supply of the product to which the extension order relates, the Government may make only one more order (“final extension order”) in relation to that product extending the
20 term of the principal order as it relates to that product for a period not exceeding 6 months from the date that the final extension order is made.

25 **60.—(1)** If an emergency order is in force in respect of a product under *section 59*, the Government may by order fix the maximum price at which that product may be supplied by a trader to consumers. Power to fix maximum prices during state of emergency.

(2) An order under *subsection (1)* may—

(a) limit the application of the order to a class or type of the product,

30 (b) specify conditions by reference to which a maximum price is fixed and may fix different maximum prices in relation to different conditions,

35 (c) apply to the whole State, to a particular geographical area in the State, or to the supply of the product by a particular class or type of trader,

(d) fix a maximum price by specifying it or by specifying the manner in which it is to be calculated, and

40 (e) provide for any incidental or ancillary matter (including a requirement that the product to which the order relates shall be sold only in specified units of weight, measure or volume) that the Government considers necessary or expedient to give full effect to any provision of the order or to secure compliance with it.

45 (3) Unless previously revoked, an order made under this section expires on the expiration of the emergency order in respect of which it is made.

Offence:
contravening
maximum price
orders.

61.—A trader who contravenes an order made under *section 60* commits an offence and is liable on conviction on indictment or on summary conviction, as the case may be, to the fines and penalties provided in *Chapter 4 of Part 5*.

PART 4

5

PYRAMID PROMOTIONAL SCHEMES

Definition (*Part 4*).

62.—(1) In this Part, “pyramid promotional scheme” means a scheme by which a person gives consideration in money or money’s worth, or gives a gift in money or money’s worth, for an opportunity to receive compensation derived primarily from the introduction of other persons into the scheme rather than from the supply or consumption of a product. 10

(2) The following apply in respect of *subsection (1)*:

(a) the opportunity to receive compensation need not be limited to the person’s introduction of other persons into the scheme but may include their introduction by other persons; 15

(b) the scheme may but need not involve the supply of a product.

Indictable offence:
participating in,
establishing,
operating or
promoting pyramid
promotional
schemes.

63.—(1) A person shall not— 20

(a) establish, operate or promote a pyramid promotional scheme,

(b) knowingly participate in such a scheme, or

(c) induce or attempt to induce another person to participate in such a scheme. 25

(2) A person who contravenes *subsection (1)* commits an offence.

(3) In proceedings for an offence under this section or for a prohibition order under *section 69*, it shall not be necessary for the prosecution or the applicant, as the case may be, to prove—

(a) that the opportunity to receive compensation was a legally enforceable right, 30

(b) that the consideration or gift given, as the case may be, was given within the State,

(c) that giving consideration or a gift was the only requirement a person had to satisfy in order to— 35

(i) participate or be eligible to participate in the scheme, or

(ii) be eligible or have opportunity to receive compensation under the scheme,

(d) that any compensation received was received within the State, 40

(e) that any opportunity to receive compensation was to be a receipt of such compensation within the State, or

(f) that any arrangements under the scheme were recorded in writing.

5 (4) If, in proceedings for an offence under this section or for a prohibition order under *section 69*, the alleged pyramid promotional scheme involves the supply of a product, then the following may be considered (among other things) in determining whether the opportunity to receive compensation is derived primarily from the introduction of other persons into the scheme:

(a) in respect of a promotion of the scheme, the emphasis given to a participant's entitlement to the product, as compared to the emphasis given to compensation derived from the introduction of other persons into the scheme;

15 (b) the extent to which the consideration given bears a reasonable relationship to the product, by reference to the price of the same or a comparable product available elsewhere.

(5) A person guilty of an offence under this section is liable on conviction on indictment to the fines and penalties provided in *Chapter 4 of Part 5*.

25 **64.—**(1) An agreement between a scheme promoter and another person is, to the extent it requires or provides for payment of money or money's worth in respect of a pyramid promotional scheme, void and has no effect, and no action lies in any court for the recovery of such money or money's worth under or pursuant to such agreement.

Pyramid promotional scheme agreements void.

(2) For the purposes of *subsection (1)*, a "scheme promoter" means a person who establishes, operates or promotes a pyramid promotional scheme or who induces or attempts to induce others to participate in such a scheme, and includes any person acting on a scheme promoter's behalf.

PART 5

PROCEEDINGS, REMEDIES AND PENALTIES

CHAPTER 1

Interpretation and General Matters related to Proceedings

35 **65.—**In this Part "prohibited act or practice" means any of the following: Definition (*Part 5*).

(a) any unfair, misleading or aggressive commercial practice under *Part 3*;

(b) any contravention of *section 53(1)* or (3), *57(2)* or *58(1)*;

40 (c) any contravention of *section 63(1)*;

(d) any contravention of a regulation under *section 48* or *55* or an order referred to in *section 90*;

(e) any contravention of an order under *section 60(1)*,

but subject to the exclusion of one or more of the foregoing provisions provided for in *section 69, 71, 72 or 73*.

Presumption respecting representations.

66.—If, in any proceedings under this Act, the truth of a factual claim in a representation is an issue and the trader who made the representation does not establish on the balance of probabilities that it is true, then the representation shall be presumed to be untrue. 5

Advertisers.

67.—(1) In this section:

“advertiser” means a person who publishes advertisements;

“contravening advertisement” means—

(a) an unfair, misleading or aggressive commercial practice in the form of an advertisement, or 10

(b) an advertisement that is—

(i) a prohibited commercial practice under *section 53(1) or (3)*, or

(ii) in contravention of a regulation under *section 48(2)*. 15

(2) An advertiser who publishes a contravening advertisement on behalf of a trader does not commit an offence under *section 47, 49(2) or 54* and is not liable under *section 72* (respecting consumer’s right of action for damages) if the advertiser proves that the advertiser did not know and had no reason to suspect that its publication would be in contravention of *section 41(1), 42, 48(2), 49(2), 50, 52, 53(1) or (3) or 54*. 20

(3) An advertiser who accepts or agrees to publish an advertisement for a trader shall—

(a) make a record of the name and address of that trader, and 25

(b) keep that record for not less than 2 years from the last day on which the advertisement is published.

(4) An advertiser who contravenes *subsection (3)* commits an offence and is liable on summary conviction to the fines and penalties provided in *Chapter 4*. 30

Offence of trader due to act or default of another person.

68.—(1) If, in relation to a commercial practice of a trader, the trader commits an offence under this Act and its commission is due to the act or default of another person, that other person shall also be guilty of the offence and may be charged with and convicted of it whether or not proceedings for an offence are brought against the trader. 35

(2) A person guilty of an offence under *subsection (1)* is liable on conviction to the same range of fines and penalties set out in *Chapter 4* that the trader referred to in *subsection (1)* is or would be liable in respect of that offence. 40

Civil Proceedings

5 69.—(1) In this section “prohibited act or practice” does not include a contravention of *section 57(2)* (respecting weighing facilities in grocery retail) or *section 58(1)* (respecting preventing the reading of prices). Civil relief by way of prohibition orders.

10 (2) Any person, including the Agency or any other public body that is prescribed for the purposes of this subsection, may apply to the Circuit Court or High Court for an order prohibiting a trader or person from committing or engaging in a prohibited act or practice.

(3) An application under *subsection (2)* shall be on notice to—

(a) the trader or person against whom the order is sought, and

(b) the Agency, if the applicant is not the Agency.

15 (4) In determining an application under this section, the court shall consider all interests involved and, in particular, the public interest.

(5) If the applicant for an order under this section is not the Agency, the court may not make the order unless the Agency has been afforded an opportunity to be heard and adduce evidence.

20 (6) If the court considers it necessary or appropriate in the circumstances, taking into account all interests involved and, in particular, the public interest, the court may make an order under this section without proof of any actual loss or damage or of any intention or negligence on the part of the trader.

25 (7) In making an order under this section, the court may impose terms or conditions in the order that the court considers appropriate, including a requirement that the trader or person publish a corrective statement, at the trader’s or person’s own expense and in any manner the court considers appropriate, in respect of the matters the subject
30 of the order.

(8) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the prohibited act or practice concerned is being committed or engaged in.

35 (9) The Circuit Court shall have jurisdiction to hear and determine an application under this section which it is satisfied it is appropriate for it to deal with as a court of local and limited jurisdiction and, for the purpose of the court’s satisfying itself of that matter, the matters to which it shall have regard include—

40 (a) the nature and extent of the prohibited act or practice concerned, and

(b) the estimated cost of complying with the order to which the application relates.

45 (10) If, in relation to an application under this section to the Circuit Court, that court becomes of the opinion, during the hearing of the application, that it is not appropriate for the Circuit Court to

deal with the application, it may, if it so thinks fit, transfer the application to the High Court.

(11) *Subsection (10)* is without prejudice to the jurisdiction of the Circuit Court to determine an application under this section which, at the time of the making of the application, it was satisfied it had jurisdiction to deal with. 5

(12) Where an application is transferred under *subsection (10)* to the High Court, the High Court shall be deemed to have made any order of a procedural nature that was made by the court from which it is so transferred in the proceedings in relation to the application. 10

(13) A trader commits an offence who, without reasonable excuse, fails to comply with an order under this section and is liable on conviction on indictment or on summary conviction, as the case may be, to the fines and penalties provided in *Chapter 4*.

Prohibition orders
against code
owners.

70.—(1) In this section, “code owner” means, in relation to a code of practice, any person responsible for formulating or revising the code or for monitoring compliance by those traders who agree, commit or undertake to abide or be bound by it. 15

(2) If a code of practice or its code owner promotes any prohibited act or practice, the Agency may apply to the Circuit Court or High Court for an order prohibiting the code owner from such promotion or requiring the code owner to withdraw the code or amend it as the court considers necessary to prevent such promotion. 20

(3) An application under *subsection (2)* shall be on notice to the code owner. 25

(4) In determining an application under this section, the court shall consider all interests involved and, in particular, the public interest.

(5) In making an order under *subsection (2)*, the court may impose terms or conditions in the order that the court considers appropriate. 30

(6) *Subsections (8) to (12)* of *section 69* apply to an application under this section as they apply to an application under that section with the following modifications—

(a) the substitution in *subsection (8)* of “in which the code owner is promoting the prohibited act or practice concerned or in which the code owner resides or carries on any business or profession” for “in which the prohibited act or practice concerned is being committed or engaged in”, and 35
40

(b) the substitution in *subsection (9)* of the following paragraph for *paragraph (a)*:

“(a) the nature and extent of the prohibited act or practice being promoted by the code or practice concerned of its code owner,”. 45

(7) A code owner commits an offence who, without reasonable excuse, fails to comply with an order under this section and is liable on conviction on indictment or on summary conviction, as the case may be, to the fines and penalties provided in *Chapter 4*.

71.—(1) In this section “prohibited act or practice” does not include a contravention of *section 57(2)* (respecting weighing facilities in grocery retail) or *section 58(1)* (respecting preventing the reading of prices). Undertakings with the Agency.

- 5 (2) If the Agency has reason to believe that a trader—
- (a) is committing or engaging in a prohibited act or practice,
 - (b) is about to commit or engage in a prohibited act or practice, or
 - (c) has committed or engaged in a prohibited act or practice,

10 the Agency may accept from the trader a written undertaking that is signed by the trader in the form and which contains the terms and conditions the Agency determines are appropriate in the circumstances.

15 (3) If the Agency accepts an undertaking from a trader under this section, the Agency shall publish the undertaking, or cause it to be published, in any form or manner the Agency considers appropriate.

(4) Without limiting *subsection (2)*, the undertaking may include one or more of the following terms and conditions:

- 20 (a) an undertaking to comply with the provision or provisions concerned of this Act or regulations under this Act;
- (b) an undertaking to refrain from committing or engaging in any act or practice;
- 25 (c) an undertaking to compensate consumers or a class of consumers, including reimbursing any money or returning any other property or thing received from consumers in connection with a consumer transaction;
- (d) an undertaking to publish or cause to be published, at the trader’s expense, an advertisement containing a corrective statement relating to the prohibited act or practice.

30 (5) If the trader under *subsection (2)* is a body corporate, the undertaking shall be signed by a director, manager, secretary or other officer of the trader.

(6) The Agency may terminate proceeding against a trader under *section 69* (respecting civil relief by way of prohibition orders) on the acceptance of an undertaking from the trader.

(7) Despite *subsection (6)*, the Agency may apply for an order against a trader under *section 69* if the trader fails to comply with the terms and conditions of an undertaking under this section.

40 (8) *Subsections (2) to (5)* shall, with the following modifications and any other necessary modifications, apply in respect of any trader the Agency has reason to believe is contravening, is about to contravene or has contravened an enactment specified in *Schedule 4*, namely, the modifications that—

- (a) references in those subsections to a prohibited act or practice shall be read as references to a contravention of an enactment specified in that Schedule, and
- (b) the reference in *subsection (4)(a)* to the provision or provisions concerned of this Act or regulations under this Act shall be read as a reference to the provision or provisions concerned of that enactment.

(9) If compensation is paid to a consumer pursuant to an undertaking referred to in *subsection (4)(c)* and the consumer subsequently commences an action under *section 72* and is awarded damages by the court in respect of the same prohibited act or practice, the compensation paid under the undertaking is deemed to be in satisfaction of so much of the awarded damages as is equal to the amount paid to the consumer under that undertaking.

Consumer's right of action for damages.

72.—(1) In this section, “prohibited act or practice” does not include—

- (a) a misleading commercial practice described in *section 45*, or
- (b) a contravention of *section 63(1)* (respecting pyramid promotional schemes).

(2) A consumer who is aggrieved by a prohibited act or practice shall have a right of action for relief by way of damages, including exemplary damages, against the following:

- (a) any trader who commits or engages in the prohibited act or practice;
- (b) if such trader is a body corporate, any director, manager, secretary or other officer of the trader, or a person who purported to act in any such capacity, who authorised or consented to the doing of the act or the engaging in of the practice.

(3) Subject to *subsection (4)*, an action under this section may be brought in the District Court, the Circuit Court or the High Court and such a court may, in that action, award such damages as the court considers appropriate, including exemplary damages.

(4) If the action is brought in the District Court or the Circuit Court, any relief by way of damages, including exemplary damages, shall not, except by consent of the necessary parties in such form as may be provided for by rules of court, be in excess of the limit of jurisdiction of the District Court or the Circuit Court, as the case may be, in an action founded on tort.

(5) Where in an action under this section it is proved that the act or practice complained of was done or engaged in by a body corporate it shall be presumed, until the contrary is proved, that each (if any) director of the body and person employed by it whose duties included making decisions that, to a significant extent, could have affected the management of the body, and any other person who purported to act in any such capacity at the material time, consented to the doing of that act or the engaging in of that practice.

Compliance Notices

73.—(1) In this section “prohibited act or practice” does not include a contravention of a regulation under *section 55* (respecting price display regulations). Compliance notices.

(2) An authorised officer who is of the opinion that a person is committing or engaging in, or has committed or engaged in, a prohibited act or practice or is contravening or has contravened an enactment specified in *Schedule 5* may serve, personally or by post, a written notice on that person (a “compliance notice”).

(3) A compliance notice shall be signed and dated by the authorised officer and shall—

(a) contain a statement of the alleged contravention (identifying the relevant enactment), the opinion referred to in *subsection (2)* and the reasons for that opinion,

(b) direct the person to remedy the contravention or the matters occasioning that notice, including any other requirement that the authorised officer considers appropriate in order to remedy the contravention or matter (the “compliance direction and requirements”),

(c) specify the date by which the person is to comply with the compliance direction and requirements,

(d) contain a statement that the person may appeal the notice to the District Court within 14 days after service of the notice, including information specifying—

(i) the form and manner of such an appeal, and

(ii) the service address of the Agency for purposes of notifying the Agency under *subsection (6)*,

and

(e) contain a statement that, if an appeal is not made in accordance with this section and within the time specified in *paragraph (d)*, then—

(i) the notice will be treated as not disputed,

(ii) the person will be deemed to have accepted the notice and have agreed to comply with the compliance direction and requirements, and

(iii) any failure or refusal to so comply is an offence and, on summary conviction, the person will be liable to the fine and penalties set out in *Chapter 4*.

(4) The date specified under *subsection (3)(c)* shall not be earlier than the end of the period within which an appeal may be made under *subsection (5)*.

(5) If the person on whom the compliance notice is served wishes to dispute the notice, the person may, no later than 14 days after the

notice is served and in accordance with this section and in the form and manner specified in the notice, appeal the notice to a judge of the District Court in the district court district in which the notice was served.

(6) A person who appeals under *subsection (5)* shall at the same time notify the Agency of the appeal and the grounds for the appeal and the Agency shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal. 5

(7) In determining an appeal under this section, the judge may confirm, vary or cancel the compliance notice, if satisfied that it is reasonable to do so. 10

(8) If on appeal the compliance notice is not cancelled, the notice takes effect on the later of the following:

(a) the day after the day on which the notice is confirmed or varied on appeal; 15

(b) if the appeal is withdrawn by the appellant, the day after the day it is withdrawn;

(c) the day specified in the notice.

(9) If there is no appeal under *subsection (5)*, the compliance notice takes effect on the later of the following: 20

(a) 14 days after the notice is served on the person;

(b) the day specified in the notice.

(10) An authorised officer may—

(a) withdraw a compliance notice at any time, or

(b) if no appeal is made or pending under *subsection (5)*, extend the date specified in the notice under *subsection (3)(c)*. 25

(11) A person commits an offence who, without reasonable excuse, fails to comply with a compliance direction or requirement specified in a compliance notice and, on summary conviction, is liable to the fines and penalties set out in *Chapter 4*. 30

(12) Withdrawal of a compliance notice under *subsection (10)* does not prevent the service of another compliance notice, whether in respect of the same matter or a different matter.

(13) If a compliance notice takes effect in accordance with this section, the Agency shall publish the compliance notice, or cause it to be published, in any form or manner the Agency considers appropriate. 35

(14) Nothing in this section prevents the commencement of proceedings for an offence. 40

Criminal Proceedings

5 **74.**—Notwithstanding any provision in any enactment specifying the period within which proceedings may be commenced, a prosecution for an offence under this Act may be brought at any time within 2 years after the date of the alleged commission of the offence.

Time limit for instituting proceedings.

10 **75.**—(1) If an offence under this Act is committed by a body corporate and is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any neglect on the part of any person being a director, manager, secretary or any other officer of the body corporate or a person purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished as if that person were guilty of the first-mentioned offence.

Liability for offences by bodies corporate.

15 (2) If, in a prosecution for an offence against the person referred to in *subsection (1)*, it is proved that, at the material time, the person was a director of the body corporate or an employee of it whose duties included making decisions that, to a significant extent, could have affected the management of the body corporate, or a person
20 who purported to act in any such capacity, it shall be presumed, until the contrary is shown, that the person consented to the doing of the acts or defaults that constitute the offence.

25 (3) *Subsection (2)* shall be read as placing on the person referred to in that subsection an evidential burden only with respect to the matter or matters concerned.

(4) If the affairs of a body corporate are managed by its members, *subsections (1) and (2)* apply in relation to the acts or defaults of a member in connection with the member's functions of management as if that member were a director or manager of the body corporate.

30 (5) If a body corporate commits an offence under this Act, an employee, officer, director or agent of the body corporate who authorises, permits or acquiesces in the commission of the offence also commits an offence, whether or not the body corporate is prosecuted for the offence.

35 (6) In a prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee, officer, director or agent of the defendant, whether or not the employee, officer, director or agent is identified or has been prosecuted for the offence.

40 (7) *Subsection (6)* does not apply if the defendant establishes that the defendant exercised due diligence to prevent the commission of the offence.

45 **76.**—(1) In proceedings for an offence under this Act, other than an offence under *section 63(2)*, it is a defence for the accused to prove both of the following:

Defence of due diligence.

(a) commission of the offence was due to a mistake or the reliance on information supplied to the accused or to the

act or default of another person, an accident or some other cause beyond the accused's control;

- (b) the accused exercised due diligence and took all reasonable precautions to avoid commission of the offence.

(2) If the defence provided by *subsection (1)* involves the allegation that the commission of the offence was due to reliance on information supplied by another person or to the act or default of another person, the accused shall not, without leave of the court, be entitled to rely on that defence unless, not less than 7 working days before the hearing, the accused has served on the prosecutor written notice providing information identifying or assisting in the identification of that other person.

Fines and penalties.

77.—(1) A person guilty of an offence under this Act (other than an offence under *section 63(2)*) is liable on summary conviction to the following fines and penalties:

- (a) on a first summary conviction for any such offence, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both;
- (b) on any subsequent summary conviction for the same offence or any other offence under this Act (other than an offence under *section 63(2)*), to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

(2) If, after being convicted of an offence, the person referred to in *subsection (1)* continues to contravene the requirement or prohibition to which the offence relates, the person is guilty of a further offence on each day that the contravention continues and for each such offence is liable on summary conviction to a fine not exceeding €500.

(3) A person guilty of an offence under this Act (other than an offence under any of the excluded sections) is liable on conviction on indictment to the following fines and penalties:

- (a) on a first conviction on indictment for any such offence, to a fine not exceeding €60,000 or imprisonment for a term not exceeding 18 months or both;
- (b) on any subsequent conviction on indictment for the same offence or any other offence under this Act (other than an offence under any of the excluded sections), to a fine not exceeding €100,000 or imprisonment for a term not exceeding 24 months or both.

(4) In *subsection (3)* “excluded sections” means *sections 30(11), (12) and (16), 32(3), 49(1) and (2), 56, 57(3), 58(2), 63(2), 67(4) and 73(11)*.

(5) If, after being convicted of an offence, the person referred to in *subsection (3)* continues to contravene the requirement or prohibition to which the offence relates, the person is guilty of a further offence on each day that the contravention continues and for each such offence is liable—

- (a) on summary conviction, to a fine not exceeding €500, and

(b) on conviction on indictment, to a fine not exceeding €10,000.

5 (6) A person guilty of an offence under *section 63(2)* is liable on conviction on indictment to a fine not exceeding €150,000 or imprisonment for a term not exceeding 5 years or both.

10 (7) If, after being convicted of an offence under *section 63(2)*, a person continues to contravene *section 63(1)*, the person is guilty of a further offence on each day that the contravention continues and for each such offence is liable on conviction on indictment to a fine not exceeding €10,000.

15 (8) In considering an appropriate penalty under this section for a trader convicted of an offence under *section 47, 49(2) or 54*, the court may take into consideration any advertisement published by or on behalf of the trader containing corrective statements to remedy the prohibited act or practice in respect of which the trader is convicted.

(9) Section 13 of the Criminal Procedure Act 1967 applies in relation to an offence under this Act except that the following range of fines and penalties are to be substituted for those provided in section 13(3)(a) of the Criminal Procedure Act 1967:

20 (a) if it is a first conviction for an offence under this Act, the accused is liable to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both;

25 (b) if it is not a first conviction for an offence under this Act, the accused is liable to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

30 **78.—**(1) On convicting a person of an offence under this Act, the court shall, unless satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Agency the costs and expenses, measured by the court, incurred by the Agency in relation to the investigation, detection and prosecution of the offence. Convicted traders liable for costs and expenses of proceedings and investigation.

35 (2) An order for costs and expenses under *subsection (1)* is in addition to and not instead of any fine or penalty the court may impose.

40 **79.—**(1) If a trader is convicted of an offence under this Act (other than an offence under *section 63(2)*), the Agency may, on behalf of an aggrieved consumer who consents to the application, apply to the court for an order (a “compensation order”) requiring the trader (the “trader concerned”) to pay an amount of money the court considers appropriate compensation in respect of any loss or damage to that consumer resulting from that offence. Convicted traders liable to compensate consumers for loss or damage.

(2) A compensation order may be instead of or in addition to any fine or penalty the court may impose on the trader concerned.

45 (3) The compensation payable under a compensation order—

(a) shall be of such amount as the court considers appropriate (though not exceeding the amount set by law as the limit of the court’s jurisdiction in tort), having regard to any evidence and to any submissions made by or on behalf of

the trader concerned, the aggrieved consumer, the Agency or the prosecutor, and

- (b) shall not exceed the amount of the damages that, in the opinion of the court, the aggrieved consumer would be entitled to recover in an action under *section 72* (respecting a consumer's right of action for damages) in respect of the same prohibited act or practice. 5

(4) An application shall not be made under *subsection (1)* if the aggrieved consumer has brought an action under *section 72* against the trader concerned and the action is in respect of the same prohibited act or practice for which the trader concerned is convicted. 10

(5) If the amount of compensation payable under a compensation order is paid to the aggrieved consumer under this section and the consumer subsequently commences an action under *section 72* and is awarded damages by the court in respect of the same prohibited act or practice, the compensation order is deemed to be in satisfaction of so much of the awarded damages as is equal to the first-mentioned amount. 15

(6) If the trader concerned does not comply with a compensation order— 20

- (a) within the time ordered by the court, or
(b) within 30 days after the order is made, if no time is specified in the order,

the aggrieved consumer may enter judgment in the District Court or, as appropriate, the Circuit Court by filing the order with that court in the District Court district or, as appropriate, the circuit where the conviction was entered. 25

(7) A judgment entered in the District Court or the Circuit Court under *subsection (6)* is enforceable against the trader concerned in the same manner as if it were a judgment rendered in that court in civil proceedings. 30

Court may order convicted person to publish corrective statement.

80.—(1) This section applies to a person—

- (a) convicted of an offence under *section 47* (respecting misleading commercial practices), *54* (respecting prohibited commercial practices) or *63(2)* (respecting pyramid promotional schemes), or 35
(b) convicted of such an offence pursuant to *section 68(1)* (respecting offences of traders due to act or default of another person).

(2) On conviction of the person to whom this section applies and on application of the Agency, the court may, in addition to any fine or penalty imposed, order the person to publish, at the person's expense and in any manner the court considers appropriate, the facts relating to the commission of the offence and a corrective statement in respect of those facts. 40
45

(3) The court may, based on the submissions of the Agency in the application and as the court considers appropriate, specify the form and content of the corrective statement or give any directions in respect of the publication of that statement.

81.—(1) If a person is indicted for an offence under this Act, the District Court may try the person summarily if—

Summary trial of persons indicted.

(a) the court is of opinion that the facts proved or alleged constitute a minor offence fit to be tried summarily,

5 (b) the accused, on being informed by the court of his or her right to be tried with a jury, does not object to being tried summarily, and

(c) the Director of Public Prosecutions consents to the accused being tried summarily for the offence.

10 (2) On conviction by the court for an offence under *section 63(2)* that is tried summarily under *subsection (1)*, the following apply:

(a) the accused is liable to the following fines and penalties:

15 (i) if it is a first conviction for an offence under this Act, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both;

(ii) if it is not a first conviction for an offence under this Act, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both;

20 (b) *section 78* (respecting liability for costs and expenses of proceedings and investigation);

(c) *section 80* (publication of a corrective statement).

(3) However, if after conviction referred to in *subsection (2)*, the accused continues to contravene *section 63(1)*, the accused is guilty of a further offence on each day that the contravention continues and for each such offence is liable—

(a) on summary conviction, to a fine not exceeding €500, and

(b) on conviction on indictment, to a fine not exceeding €10,000.

30 (4) On conviction by the court for any offence that is tried summarily under *subsection (1)* other than an offence under *section 63(2)*, the following apply:

(a) the accused is liable to the fines and penalties described in *section 77(1)* (respecting fines and penalties);

35 (b) *section 78* (respecting liability for costs and expenses of proceedings and investigation);

(c) *section 80* (publication of a corrective statement).

82.—Summary proceedings for an offence under this Act, except an offence under *section 63(2)*, may be brought and prosecuted by the Agency.

Agency may institute summary proceedings for offences.

Fixed Payment Notices

Fixed payment notices for price display and product pricing offences.

- 83.—**(1) This section applies in respect of any offence under the following enactments (in this section referred to as a “relevant offence”): 5
- (a) *section 56* (respecting price display regulations);
 - (b) *section 22(a)* or *(b)* of the Prices Act 1958 (respecting price display orders);
 - (c) Regulation 4(3), 5(5), 6(3) or 7(2) of the European Communities (Requirements to Indicate Product Prices) Regulations 2002 (S.I. No. 639 of 2002). 10
- (2) An authorised officer who has reasonable grounds for believing that a person is committing, or has committed, a relevant offence may serve, personally or by post, the notice referred to in *subsection (3)* on the person. 15
- (3) The notice (“fixed payment notice”) shall be in the prescribed form and state—
- (a) that the person on whom it is served is alleged to have committed the relevant offence concerned,
 - (b) when and where it is alleged to have been committed, 20
 - (c) that a prosecution for it will not be instituted if, during the period of 28 days beginning on the date of the notice, the person pays the amount of €300 to the Agency (at the address stated in the notice) and submits the original or a copy of the fixed payment notice together with that payment, and 25
 - (d) that in default of such payment, the person will be prosecuted for the alleged relevant offence.
- (4) A payment referred to in *subsection (3)* shall be accompanied by the original or a copy of the fixed payment notice concerned. 30
- (5) If a fixed payment notice is served on a person—
- (a) the person may make a payment in accordance with *subsection (3)(c)*,
 - (b) the Agency shall receive and retain the payment (subject to *subsection (7)*) and issue a receipt for it, 35
 - (c) any payment received shall not be recoverable by the person who made it, and
 - (d) a prosecution in respect of the alleged relevant offence to which the notice relates shall not be instituted during the period specified in *subsection (3)(c)* or, if a payment is made in accordance with *subsections (3)(c)* and *(4)*, at all. 40

(6) In proceedings against a person for a relevant offence it shall be presumed, until the contrary is shown, that the person did not make payment in accordance with *subsections (3)(c) and (4)*.

5 (7) Payments received by the Agency under this section shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance directs.

CHAPTER 6

Publication of Trader Names (Consumer Protection List)

10 **84.—(1)** The Agency shall keep and maintain a list (the “consumer protection list”) of names and addresses of the following persons, together with a description of their trade, business or profession and the particulars described in *subsection (2)*: Agency may publish information respecting certain traders.

15 (a) any person on whom a fine or other penalty was imposed by a court under the relevant statutory provisions or who was required, by an order under *section 79*, to pay an amount of money to a consumer;

(b) any person against whom an order is made under *section 69* (respecting civil relief by way of prohibition orders);

20 (c) any person who gives an undertaking to the Agency under *section 71*;

(d) any person against whom a compliance notice takes effect under *section 73(7) or (8)* (respecting compliance notices);

25 (e) any person who makes payment to the Agency pursuant to a fixed payment notice under *section 83*.

(2) The consumer protection list shall specify, in relation to each person named in the list, any particulars the Agency considers appropriate in respect of the following:

30 (a) the matter occasioning any fine or penalty imposed on the person by the court and the amount or nature of that fine or penalty;

(b) the matter occasioning any order made by the court against the person and the nature of that order;

35 (c) the matter occasioning any undertaking given to the Agency by the person under this Act;

(d) the matter occasioning any compliance notice served on the person under this Act;

(e) the matter occasioning any fixed payment notice under this Act.

40 (3) The Agency may, at any time and in any form or manner the Agency considers appropriate, publish or cause to be published all or any part of the consumer protection list.

PART 6

MISCELLANEOUS

Protections for persons reporting breaches.

85.—(1) A person who, apart from this section, would be so liable shall not be liable in damages in respect of the communication, whether in writing or otherwise, by the person to the Agency of the person's opinion that— 5

- (a) an offence under any of the relevant statutory provisions has been or is being committed, or
- (b) any of the relevant provisions that prohibits a person from doing a particular thing or things has not been or is not being complied with, 10

unless it is proved that the person has not acted reasonably and in good faith in forming that opinion and communicating it to the Agency.

(2) The reference in *subsection (1)* to liability in damages shall be construed as including a reference to liability to be the subject of an order providing for any other form of relief. 15

(3) An employer shall not penalise an employee for having formed an opinion of the kind referred to in *subsection (1)* and communicated it, whether in writing or otherwise, to the Agency if the employee has acted reasonably and in good faith in forming that opinion and communicating it to the Agency. 20

(4) *Schedule 6* shall have effect for the purposes of *subsection (3)*.

(5) A person who states to the Agency that a person—

- (a) has committed or is committing an offence under any of the relevant statutory provisions, or 25
- (b) has failed or is failing to comply with any of the relevant statutory provisions,

knowing that statement to be false commits an offence and is liable on conviction on indictment or on summary conviction, as the case may be, to the fines and penalties provided in *Chapter 4* of *Part 5*. 30

(6) *Subsection (1)* is in addition to, and not in substitution for, any privilege or defence available in legal proceedings, by virtue of any enactment or rule of law in force immediately before the commencement of this section, in respect of the communication by a person to another (whether that other person is the Agency or not) of an opinion of the kind referred to in *paragraph (a) or (b) of subsection (1)*. 35

Voluntary submission of codes for Agency review and approval.

86.—(1) Subject to this section, a person representing one or more traders may submit a code of practice to the Agency for its review or approval. 40

(2) The code of practice shall be submitted in the form and manner specified by the Agency.

(3) The person submitting a code of practice for approval under this section shall provide the Agency with any information the 45

Agency considers necessary or appropriate for the purposes of *subsection (4)*.

5 (4) If satisfied that the code of practice protects consumer interests and is not inconsistent with this Act or any other enactment, the Agency may approve the code of practice.

(5) A code of practice approved by the Agency may not be amended without approval of the proposed amendments by the Agency and, for this purpose, *subsections (3) and (4)* apply with the necessary modifications.

10 (6) The approval by the Agency of a code of practice or any amendments to such code shall be in writing.

15 (7) The Agency may withdraw any approval under this section if the Agency is of the opinion that, in the implementation or operation of all or part of an approved code of practice or amendment to it, such code, part or amendment fails to protect consumer interests or is in any manner inconsistent with this Act or any other enactment.

(8) If—

20 (a) it is alleged that a trader who is a signatory to a code of practice with the approval of the Agency under this section has contravened this Act or a complaint is made to the Agency in relation to a commercial practice of that trader, and

25 (b) the approved code of practice referred to in *paragraph (a)* provides for procedures or a means of handling or considering such contraventions or complaints,

30 then the Agency may defer consideration of the complaint or the court may defer hearing an application for a prohibition order under *section 69* (respecting prohibition orders) or an action for damages under *section 72* (respecting a consumer's right of action for damages) until the means or procedures referred to in *paragraph (b)* have been exhausted.

35 **87.**—In any proceedings before a court, a code of practice (whether approved under *section 86* or not) is admissible in evidence and, if any provision of the code is relevant to a question arising in those proceedings, the provision may be taken into account in determining that question. Admissibility of codes of practice in proceedings.

88.—(1) Subject to this section, the Agency may prepare, issue and publish guidelines applicable to traders, or persons representing traders, concerning any of the following. Agency guidelines.

40 (a) a matter of consumer welfare or protection;

(b) a matter of practical guidance to traders in relation to commercial practices, whether generally or in a particular trade, business or professional sector;

45 (c) the form and manner of submitting codes of practice to the Agency for approval under *section 86*.

(2) Before issuing and publishing guidelines under this section, the Agency may prepare draft guidelines and consult with any person, as the Agency considers appropriate.

(3) If satisfied that proposed or draft guidelines protect consumer interests, the Agency may issue the guidelines and shall cause them to be published in the manner the Agency considers appropriate for the purpose. 5

(4) Without limiting the generality of *subsection (3)*, the Agency may publish a copy of guidelines issued by it under this section on the internet. 10

(5) In any proceedings before a court, guidelines issued and published under this section are admissible in evidence and, if any provision of the guidelines is relevant to a question arising in those proceedings, the provision may be taken into account in determining that question. 15

(6) A failure on the part of any person to observe any provision of guidelines issued and published under this section shall not, of itself, render that person liable to any proceedings.

Saving for certain contracts.

89.—Subject to *section 64(1)*, a contract for the supply of any goods or the provision of any services shall not be void or unenforceable by reason only of a contravention of any provision of this Act. 20

Saving of current price display orders.

90.—(1) Notwithstanding *section 4* but subject to *subsection (2)*, the following enactments made under section 19 of the Prices Act 1958 (before its repeal under this Act) remain in force for the purposes of this Act and any provision (in particular, sections 2, 18, 19 and 22 to 28) of the Prices Act 1958 that is relevant to the enforcement of those orders remain in force: 25

(a) Prices and Charges (Tax-inclusive Statements) Order 1973 (S.I. No. 9 of 1973);

(b) Charges (Hairdressing Display) Order 1976 (S.I. No. 156 of 1976); 30

(c) Retail Price (Food in Catering Establishments) Display Order 1984 (S.I. No. 213 of 1984);

(d) Retail Price (Diesel and Petrol) Display Order 1997 (S.I. No. 178 of 1997); 35

(e) Retail Price (Beverages in Licensed Premises) Display Order 1999 (S.I. No. 263 of 1999).

(2) The Minister may by regulation amend or revoke any order referred to in *subsection (1)*.

Transitional.

91.—(1) Despite *section 4*, the following enactments made under section 11 of the Consumer Information Act 1978 (before its repeal by this Act) remain in force and are deemed to have been made as regulations by the Minister under *section 48(2)* until any such enactment is revoked, substituted by regulation of the Minister under *section 48(2)* or otherwise ceases to have effect: 40 45

(a) Consumer Information (Advertisements) (Disclosure of Business Interests) Order 1984 (S.I. No. 168 of 1984);

(b) Consumer Information (Advertisements for Concert or Theatre Performances) Order 1997 (S.I. No. 103 of 1997);

5 (c) Consumer Information (Advertisements for Airfares) Order 2000 (S.I. No. 468 of 2000).

(2) Section 3(2) does not apply to the enactments referred to in subsection (1)(a) to (c).

10 (3) For certainty, section 26 of the Interpretation Act 2005 applies in respect of the repeal of section 11 of the Consumer Information Act 1978 and its substitution by the provisions of section 48 and, for this purpose, the enactments specified in subsection (1) are conclusively deemed to be consistent with and validly enacted under section 48.

15 (4) For certainty, the references in sections 49(2) and 67(1) (in paragraph (b)(ii) of the definition of “contravening advertisement”) to a regulation under section 48(2) include any enactment referred to in subsection (1)(a) to (c).

20 **92.**—Section 6 of the Sale of Goods and Supply of Services Act 1980 is amended by substituting the following subsections for subsection (2): Amendment of Sale of Goods and Supply of Services Act 1980.

25 “(2) If an offence under this Act is committed by a body corporate and is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any neglect on the part of any person being a director, manager, secretary or any other officer of the body corporate or a person purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished as if that person were guilty of the first-mentioned offence.

30 (3) If, in a prosecution for an offence against the person referred to in subsection (2), it is proved that, at the material time, the person was a director of the body corporate or an employee of it whose duties included making decisions that, to a significant extent, could have affected the management of the body corporate, or a person who purported to act in any such capacity, it shall be presumed, until the contrary is shown, that the person consented to the doing of the acts or defaults that constitute the offence.

40 (4) Subsection (3) shall be read as placing on the person referred to in that subsection an evidential burden only with respect to the matter or matters concerned.

45 (5) If the affairs of a body corporate are managed by its members, subsections (2) and (3) apply in relation to the acts or defaults of a member in connection with the member’s functions of management as if that member were a director or manager of the body corporate.”.

93.—This Act shall not affect any rights which a person may have under any other enactment or under any rule of law. Saving for other rights person may have.

Amendment of Industrial Development Act 1993.

94.—The following section is inserted after section 9 of the Industrial Development Act 1993:

“Validation of assignment of powers and functions.

9A.—(1) In this section ‘relevant assignment’ means the assignment by Forfás with the approval of the Minister on 26 May 2006 under section 9(2) to the Industrial Development Agency (Ireland), Enterprise Ireland and Shannon Free Airport Development Company Limited of the power to make employment grants under section 25 of the Industrial Development Act 1986.

(2) The relevant assignment shall be deemed to have come into operation on 25 July 2003.

(3) Nothing in this section shall affect any proceedings commenced in any court concerning the making of an employment grant under section 25 of the Industrial Development Act 1986 where those proceedings were commenced before 1 February 2007.”.

Amendment of Casual Trading Act 1995.

95.—The following section is inserted after section 6 of the Casual Trading Act 1995:

“Guidelines with respect to performance of functions under section 6.

6A.—(1) The Minister may prepare and issue to local authorities guidelines, in writing, regarding the performance by them of their functions under section 6 in relation to bye-laws.

(2) Without prejudice to the generality of subsection (1), guidelines under this section may include guidelines as to the particular provision that a local authority should make by bye-laws under section 6 in relation to each of the matters mentioned in subsection (2) of that section.

(3) Local authorities shall have regard to guidelines for the time being in force under this section in performing their functions under section 6 in relation to bye-laws.

(4) The Minister may amend or revoke, in writing, guidelines issued under this section.

(5) The Minister shall cause a copy of any guidelines issued under this section and of any amendment or revocation of them to be laid before each House of the Oireachtas.”.

Amendment of Hallmarking Act 1981.

96.—The following sections are substituted for sections 5 and 6 of the Hallmarking Act 1981:

“False representations in relation to certain articles.

5.—(1) Subject to section 6 of this Act, a commercial practice that involves a representation that an article which is not of precious metal is made wholly or partly of gold, silver or platinum is a misleading commercial practice under section 43(1) and (2) of the *Consumer Protection Act 2007*.

(2) A trader who engages in any misleading commercial practice described in subsection (1) is guilty of an offence under *section 47* of the *Consumer Protection Act 2007*.

5 Permissible representations in relation to certain articles. 6.—(1) Section 5 of this Act does not apply to a representation which is permissible under this Act.
(2) A representation is permissible under this Act if it complies with the following conditions:

10 (a) it is confined either expressly or by implication to the colour of the article;

(b) if it consists of or includes the word ‘gold’, that word is qualified by the word ‘plated’ or the word ‘rolled’;

15 (c) if it consists of or includes the word ‘silver’ or the word ‘platinum’, whichever of those words is used is qualified by the word ‘plated’;

20 (d) where the representation is in writing and the word ‘plated’ or ‘rolled’ is used, that word is at least as large as the rest of the representation.

25 (3) Subsection (2) of this section does not apply if the representation is false or is applied to an article for which the representation is inappropriate.

Construction of certain expressions in sections 5 and 6. 6A.—In sections 5 and 6 of this Act, ‘commercial practice’, ‘representation’ and ‘trader’ have the same meaning as they have in the *Consumer Protection Act 2007*.”.

30 97.—For the purpose of facilitating the performance by the Agency of any functions conferred on it by any of the relevant statutory provisions relating to the safety of products, an officer of customs and excise, when authorised to do so by the Revenue Commissioners following a written request in that behalf by the Agency, may
35 detain any goods being imported for such period as is reasonably necessary for the Agency to examine the goods, or arrange to have the goods examined, which period shall not in any case exceed 72 hours from the time when the goods concerned are detained.

Power of officer of customs and excise to detain unsafe goods.

40 98.—(1) A certificate in writing purporting to be signed by a person employed in a relevant laboratory and stating the results of one or more tests carried out in that laboratory with respect to a product of a specified type shall, without proof of the signature of that person or that he or she is employed in the relevant laboratory, be admissible as evidence of the results of the test or tests in the following
45 proceedings taken in relation to that type of product.

Admissibility of certain laboratory tests.

(2) Those proceedings are proceedings under any of the statutory instruments specified in *Schedule 7*.

(3) In this section ‘relevant laboratory’ means a laboratory the competence of which to carry out tests in relation to products is

recognised by an authority performing functions under the laws, regulations or administrative provisions adopted by a Member State for the purposes of any of the Directives specified in *Schedule 8*.

(4) Where a certificate referred to in *subsection (1)* is produced in proceedings referred to in *subsection (2)*, it shall be presumed, until the contrary is shown, that the laboratory referred to in the certificate as a relevant laboratory is such a laboratory. 5

Section 2.

SCHEDULE 1

EXISTING ENACTMENTS

PART 1 10

ENACTMENTS — ACTS OF THE OIREACTHAS

Number and Year (1)	Short Title (2)	
No. 31 of 1964	Pawnbrokers Act 1964	
No. 10 of 1970	Merchandise Marks Act 1970	15
No. 35 of 1979	Occasional Trading Act 1979	
No. 16 of 1980	Sale of Goods and Supply of Services Act 1980	
No. 23 of 1980	Trading Stamps Act 1980	
No. 28 of 1991	Liability for Defective Products Act 1991	
No. 17 of 1995	Package Holidays and Travel Trade Act 1995	20
No. 24 of 1995	Consumer Credit Act 1995	
No. 28 of 1996	National Standards Authority of Ireland Act 1996	
No. 29 of 1998	Food Safety Authority of Ireland Act 1998	

PART 2

ENACTMENTS MADE UNDER THE EUROPEAN COMMUNITIES ACT 1972 WHICH ARE EXISTING ENACTMENTS 25

Number and Year (1)	Citation (2)	
S.I. No. 134 of 1988	European Communities (Misleading Advertising) Regulations 1988	30
S.I. No. 224 of 1989	European Communities (Cancellation of Contracts Negotiated away from Business Premises) Regulations 1989	
S.I. No. 32 of 1990 S.I. No. 458 of 1994	European Communities (Safety of Toys) Regulations 1990 and 1994	35
S.I. No. 265 of 1991	European Communities (Food Imitations) (Safety) Order 1991	
S.I. No. 101 of 1992 S.I. No. 150 of 1995	European Communities (Appliances Burning Gaseous Fuels) Regulations 1992 and 1995	40

Number and Year (1)	Citation (2)
5 S.I. No. 428 of 1992 S.I. No. 307 of 1994	European Communities (Low Voltage Electrical Equipment) Regulations 1992 and 1994
10 S.I. No. 272 of 1993 S.I. No. 13 of 1994 S.I. No. 457 of 1994 S.I. No. 81 of 1997	European Communities (Personal Protective Equipment) Regulations 1993 to 1997
15 S.I. No. 27 of 1995 S.I. No. 307 of 2000	European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000
20 S.I. No. 63 of 1996	European Communities (Labelling of Footwear) Regulations 1996
	S.I. No. 204 of 1997
25 S.I. No. 144 of 2000	European Communities (Contracts for Time Sharing of Immovable Property – Protection of Purchasers) (Amendment) Regulations 2000
	S.I. No. 245 of 1998
30 S.I. No. 254 of 1998	European Communities (Definition, Description and Presentation of Aromatized Wines, Aromatized Wine-Based Drinks and Aromatized Wine-Product Cocktails) Regulations 1998
	S.I. No. 262 of 1998
35 S.I. No. 401 of 2000	European Communities (Liability for Defective Products) Regulations 2000
	S.I. No. 207 of 2001
40 S.I. No. 449 of 2001	European Communities (Protection of Consumers in Respect of Contracts made by Means of Distance Communication) Regulations 2001
	S.I. No. 483 of 2002 S.I. No. 257 of 2003 S.I. No. 451 of 2003 S.I. No. 528 of 2003
45 S.I. No. 228 of 2005 S.I. No. 514 of 2005	European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations 2002 to 2005
50 S.I. No. 647 of 2005	
55 S.I. No. 639 of 2002	European Communities (Requirements to Indicate Product Prices) Regulations 2002
	S.I. No. 11 of 2003
60 S.I. No. 68 of 2003	European Communities (Sale of Consumer Goods and Associated Guarantees) Regulations 2003
	S.I. No. 490 of 2004
	European Communities (Amendment of S.I. No. 68 of 2003) Regulations 2004

Number and Year (1)	Citation (2)	
S.I. No. 236 of 2003	European Communities (Marketing of Cocoa and Chocolate Products) Regulations 2003	
S.I. No. 240 of 2003	European Communities (Marketing of Fruit Juices and Certain Similar Products) Regulations 2003	
S.I. No. 289 of 2003	European Communities (Marketing of Sugar Products) Regulations 2003	5
S.I. No. 294 of 2003	European Communities (Marketing of Fruit Jams, Jellies, Marmalades and Sweetened Chestnut Purée) Regulations 2003	
S.I. No. 298 of 2003	European Communities (Dehydrated Preserved Milk) Regulations 2003	10
S.I. No. 307 of 2003	European Communities (Electronic Communications, Networks and Services) (Framework) Regulations 2003	
S.I. No. 308 of 2003	European Communities (Electronic Communications, Networks and Services) (Universal Services and Users' Rights) Regulations 2003	15
S.I. No. 367 of 2003	European Communities (Marketing of Honey) Regulations 2003	
S.I. No. 199 of 2004	European Communities (General Product Safety) Regulations 2004	20
S.I. No. 397 of 2004	European Communities (Marketing Standards for Olive Oil) Regulations 2004	
S.I. No. 853 of 2004	European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004	
S.I. No. 290 of 2006	European Communities (co-operation between National Authorities Responsible for the Enforcement of Consumer Protection Laws) Regulations 2006	25

Section 4.

SCHEDULE 2

REPEALS

Session and Chapter or Number and Year (1)	Short Title (2)	Extent of Repeal (3)	
50 & 51 Vic., c. 28	Merchandise Marks Act 1887	The whole Act	30
54 & 55 Vic., c. 15	Merchandise Marks Act 1891	The whole Act	
1 & 2 Geo. 5., c. 31	Merchandise Marks Act 1911	The whole Act	
5 & 6 Geo. 5., c. 1	Anglo-Portuguese Commercial Treaty Act 1914	The whole Act	35
6 & 7 Geo. 5., c. 39	Anglo-Portuguese Commercial Treaty Act 1916	The whole Act	
No. 10 of 1930	Agricultural Produce (Fresh Meat) Act 1930	Section 27(4) and (5)	40
No. 35 of 1930	Portuguese Treaty Act 1930	The whole Act	
No. 26 of 1931	Agricultural Produce (Potatoes) Act 1931	Section 19(4) and (5)	
No. 48 of 1931	Merchandise Marks Act 1931	The whole Act	
No. 6 of 1936	Spanish Trade Agreement Act 1936	The whole Act	45
No. 14 of 1955	Seed Production Act 1955	Section 22(3)	

	Session and Chapter or Number and Year (1)	Short Title (2)	Extent of Repeal (3)
5	No. 4 of 1958	Prices Act 1958	The whole Act, except to the extent specified in <i>section 89</i>
	No. 25 of 1968	Road Traffic Act 1968	Section 14(1), (2) and (3)
	No. 20 of 1972	Prices (Amendment) Act 1972	The whole Act
10	No. 1 of 1978	Consumer Information Act 1978	The whole Act
	No. 11 of 1980	Packaged Goods (Quantity Control) Act 1980	Section 12(1)
	No. 27 of 1980	Pyramid Selling Act 1980	The whole Act
15	No. 31 of 1987	Restrictive Practices (Amendment) Act 1987	The whole Act
	No. 28 of 1996	National Standards Authority of Ireland Act 1996	Section 19(3) and 21(7)

SCHEDULE 3

Section 40.

20 REFERENCES IN CERTAIN ACTS AND INSTRUMENTS TO DIRECTOR OR OFFICE OF DIRECTOR

PART 1

REFERENCES IN CERTAIN ACTS TO DIRECTOR OF CONSUMER AFFAIRS OR OFFICE OF THE DIRECTOR OF CONSUMER AFFAIRS

	Short Title, Number and Year (1)	Provision affected (2)	Amendment (3)
25	Ombudsman Act 1980 (No. 26 of 1980)	First Schedule	In Part II, delete “the Director of Consumer Affairs”.
30		Second Schedule	Insert “National Consumer Agency”.
35	National Archives Act 1986 (No. 11 of 1986)	Schedule	Substitute “National Consumer Agency” for “Office of the Director of Consumer Affairs”.
40	Prompt Payment of Accounts Act 1997 (No. 31 of 1997)	Schedule	Substitute “National Consumer Agency” for “the Office of the Director of Consumer Affairs”.
45	Taxes Consolidation Act 1997 (No. 39 of 1997)	Schedule 13	Substitute the following for paragraph 112 (inserted by section 14 of the Finance Act 2001): “112. National Consumer Agency.”.
50	Electronic Commerce Act 2000 (No. 27 of 2000)	Section 15	Substitute “role of the National Consumer Agency” for “role of the Director of Consumer Affairs”.

Short Title, Number and Year (1)	Provision affected (2)	Amendment (3)	
Competition Act 2002 (No. 14 of 2002)	Schedule 1 (as amended by the Competition Act 2002 (Section 34(11) (Director of Consumer Affairs) Order 2003 (S.I. No. 130 of 2003)	In column (1), substitute “National Consumer Agency” for “Director of Consumer Affairs”.	
Ombudsman for Children Act 2002 (No. 22 of 2002)	Schedule 1	In Part 2, substitute “National Consumer Agency” for “Director of Consumer Affairs”.	5
Personal Injuries Assessment Board Act 2003 (No. 46 of 2003)	Section 56(6)	Substitute “the chief executive of the National Consumer Agency” for “the Director of Consumer Affairs”.	10
Official Languages Act 2003 (No. 32 of 2003)	First Schedule	In paragraph 1— (a) in subparagraph (1), delete “Office of the Director of Consumer Affairs”, and (b) in subparagraph (2), insert “National Consumer Agency”.	15
Veterinary Practice Act 2005 (No. 22 of 2005)	Section 16(1)	Substitute the following for paragraph (g): “(g) one person who is nominated for such appointment by the National Consumer Agency;”.	20 25

PART 2

REFERENCES IN CERTAIN INSTRUMENTS TO DIRECTOR OF CONSUMER AFFAIRS OR OFFICE OF THE DIRECTOR OF CONSUMER AFFAIRS

Citation, Number and Year (1)	Provision affected (2)	Amendment (3)	
Air Quality Standards Regulations 2002 (S.I. No. 271 of 2002)	Schedule 14	Substitute the following for paragraph (6): “(6) National Consumer Agency”.	30 35
Genetically Modified Organisms (Deliberate Release) Regulations 2003 (S.I. No. 500 of 2003)	Regulation 62(1)	(a) Substitute the following for paragraph (g): “(g) the National Consumer Agency;”. (b) In paragraph (j), substitute “the National Consumer Agency” for “the Office of the Director of Consumer Affairs”.	40 45

	Citation, Number and Year (1)	Provision affected (2)	Amendment (3)
5	Ozone in Ambient Air Regulations 2004 (S.I. No. 53 of 2004)	Schedule 10	Substitute the following for paragraph (6): “(6) National Consumer Agency”.
10	Investor Compensation Act 1998 (Section 18(4)) (Prescription of Bodies and Individuals) Regulations 2004 (S.I. No. 570 of 2004)	Regulation 2	Substitute the following for paragraph (b): “(b) the National Consumer Agency;”.
15	Finance Act 1993 (Section 60) Regulations 2005 (S.I. No. 846 of 2005)	Schedule	Substitute “National Consumer Agency” for “Office of the Director of Consumer Affairs”.

SCHEDULE 4

Section 71.

ENACTMENTS FOR THE PURPOSE OF *section 71* (UNDERTAKINGS WITH THE AGENCY)

	Number and Year (1)	Short Title or Citation (2)
20	No. 16 of 1980	Sale of Goods and Supply of Services Act 1980
	No. 17 of 1995	Package Holidays and Travel Trade Act 1995
25	S.I. No. 224 of 1989	European Communities (Cancellation of Contracts Negotiated away from Business Premises) Regulations 1989
	S.I. No. 27 of 1995 S.I. No. 307 of 2000	European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000
30	S.I. No. 204 of 1997	European Communities (Contracts for Time Sharing of Immovable Property – Protection of Purchasers) Regulations 1997
	S.I. No. 144 of 2000	European Communities (Contracts for Time Sharing of Immovable Property – Protection of Purchasers) (Amendment) Regulations 2000
35	S.I. No. 207 of 2001	European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations 2001
	S.I. No. 639 of 2002	European Communities (Requirements to Indicate Product Prices) Regulations 2002
40	S.I. No. 11 of 2003	European Communities (Sale of Consumer Goods and Associated Guarantees) Regulations 2003
	S.I. No. 68 of 2003	European Communities (Directive 2000/31/EC) Regulations 2003
45	S.I. No. 490 of 2004	European Communities (Amendment of S.I. No. 68 of 2003) Regulations 2004

SCHEDULE 5

ENACTMENTS FOR THE PURPOSE OF *section 73* (COMPLIANCE NOTICES)

Number and Year (1)	Short Title or Citation (2)	
No. 16 of 1980	Sale of Goods and Supply of Services Act 1980	5
No. 17 of 1995	Package Holidays and Travel Trade Act 1995	
S.I. No. 168 of 1984	Consumer Information (Advertisements) (Disclosure of Business Interest) Order 1984	
S.I. No. 224 of 1989	European Communities (Cancellation of Contracts Negotiated away from Business Premises) Regulations 1989	10
S.I. No. 103 of 1997	Consumer Information (Advertisements for Concert or Theatre Performances) Order 1997	
S.I. No. 204 of 1997	European Communities (Contracts for Time Sharing of Immovable Property – Protection of Purchasers) Regulations 1997	15
S. I. No. 144 of 2000	European Communities (Contracts for Time Sharing of Immovable Property – Protection of Purchasers) (Amendment) Regulations 2000	
S.I. No. 468 of 2000	Consumer Information (Advertisements for Airfares) Order 2000	20
S.I. No. 207 of 2001	European Communities (Protection of Consumers in Respect of Contracts made by Means of Distance Communication) Regulations 2001	
S.I. No. 68 of 2003	European Communities (Directive 2000/31/EC) Regulations 2003	25
S.I. No. 490 of 2004	European Communities (Amendment of S.I. No. 68 of 2003) Regulations 2003	

SCHEDULE 6

REDRESS FOR CONTRAVENTION OF *section 85* 30

1. In this Schedule—

“Act of 1994” means the Terms of Employment (Information) Act 1994;

“employee” and “employer” have the same meaning as they have in the Act of 1994. 35

2. (1) An employee may present a complaint to a rights commissioner that the employer has contravened *section 85(3)* in relation to the employee and, if the employee does so, the commissioner shall give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint, shall give a decision in writing in relation to it and shall communicate the decision to the parties. 40

(2) A decision of a rights commissioner under *subparagraph (1)* shall do one or more of the following:

(a) declare that the complaint was or, as the case may be, was not well founded; 45

(b) require the employer to comply with *section 85(3)* and, for that purpose, require the employer to take specified steps;

5 (c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 104 weeks remuneration in respect of the employee's employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977;

10 and the references in the foregoing clauses to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to such ownership.

15 3. For the purposes of this Schedule—

(a) subsections (3) to (6) and subsection (7)(a) of section 7 of the Act of 1994 shall apply in relation to a complaint presented under this Schedule as they apply in relation to a complaint presented under subsection (1) of that section 7, with the following modifications, namely:

20 (i) the deletion in that subsection (3) of all the words from “if it is presented” to the end of that subsection and the substitution of “unless it is presented to him within the period of 12 months beginning on the date of the contravention to which the complaint relates or (in a case where the rights commissioner is satisfied that exceptional circumstances prevented the presentation of the complaint within the period aforesaid) such further period, not exceeding 6 months from the expiration of the said period of 12 months, as the rights commissioner considers reasonable”;

(ii) the substitution in that subsection (6) of a reference to a decision for the reference to a recommendation;

35 and any other necessary modifications,

(b) sections 8 to 10 of the Act of 1994 shall apply as they apply for the purposes of that Act, with the following modifications, namely:

40 (i) the substitution in those provisions of references to a decision for references to a recommendation;

(ii) the addition to section 8 of the following subsection:

“(7) Proceedings under this section before the Tribunal shall be heard otherwise than in public.”;

(iii) the substitution in section 9 of—

45 (I) references to the Circuit Court for references to the District Court, and

(II) the following subsection for subsection (3):

“(3) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer concerned ordinarily resides or carries on any profession, trade or business.”;

5

and any other necessary modifications.

4. (1) In proceedings under this Schedule before a rights commissioner or the Employment Appeals Tribunal in relation to a complaint that *section 85(3)* has been contravened, it shall be presumed, until the contrary is proved, that the employee concerned acted reasonably and in good faith in forming the opinion and making the communication concerned.

10

(2) If a penalisation of an employee, in contravention of *section 85(3)*, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2005, relief may not be granted to the employee in respect of that penalisation both under this Schedule and under those Acts.

15

Section 98.

SCHEDULE 7

STATUTORY INSTRUMENTS FOR THE PURPOSES OF *Section 98* (Admissibility of Laboratory Tests) 20

Number and Year	Citation	
S.I. No.32 of 1990	European Communities (Safety of Toys) Regulations 1990	
S.I. No.101 of 1992	European Communities (Appliances Burning Gaseous Fuels) Regulations 1992	25
S.I. No.482 of 1992	European Communities (Low Voltage Electrical Equipment) Regulations 1992	
S.I. No.272 of 1993	European Communities (Personal Protective Equipment) Regulations 1993	30
S.I. No.199 of 2004	European Communities (General Product Safety) Regulations 2004	

Section 98.

SCHEDULE 8 35

DIRECTIVES FOR THE PURPOSE OF *Section 98* (Admissibility of Laboratory Tests)

Council Directive 73/23/EEC of 19 February 1973 on the harmonization of the laws of Member States relating to electrical equipment designed for use within certain voltage limits 40

Council Directive 88/378/EEC of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys

Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment 45

Council Directive 90/396/EEC of 29 June 1990 on the approximation of the laws of the Member States relating to appliances burning gaseous fuels

5 Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on the approximation of the laws of the Member States relating to general product safety.