

# Agricultural and Food Supply Chain Bill 2022

Bill No. 120 of 2022

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18 January 2023

## Abstract

The main purpose of the Bill is to establish a new independent statutory authority called An Rialálaí Agraibhia (The Agri-Food Regulator) to promote the principles of fairness and transparency in the agricultural and food supply chain, including through a role in analysing and reporting on price and market data in Ireland. The new office will also assume responsibility for enforcement of the 2019/633 EU Unfair Trading Practices (UTP) Directive in relation to rules on unfair trading practices in business-to-business relationships in the agricultural and food supply chain.



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**This L&RS Bill Digest may be cited as:**

Oireachtas Library & Research Service, 2023, *L&RS Bill Digest: Agricultural and Food Supply Chain Bill 2022. Bill No. 120 of 2022.*

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## Summary

- The [Agricultural and Food Supply Chain Bill 2022](#) (the 'Bill') was published on Friday 16 December 2022 and is scheduled for second stage debate on Thursday 19 January 2023 in the Dáil.
- The Bill comprises of 4 Parts, which in turn include 86 sections:
  - Part 1 (sections 1-6) - Preliminary and General
  - Part 2 (sections 7-54) - The Regulator
  - Part 3 (sections 55-70) - Unfair Trading Practices
  - Part 4 (sections 71-86) - Enforcement
- The primary purpose of the legislation is to establish a new independent statutory authority to be known as An Rialálaí Agraibhia (The Agri-Food Regulator).
- The objective of this new office will be to promote the principles of fairness and transparency in the agricultural and food supply chain, primarily through its price and market analysis and reporting function, and its role in promoting public awareness about agri-food unfair trading law. It will also assume responsibility for enforcement of the EU [Unfair Trading Practices in Business-to-Business Relationships in the Agricultural and Food Supply Chain Directive 2019/633 \(the 'UTP Directive'\)](#).
- The Bill focuses on business-to-business relationships in the agricultural and food supply chain. It does not deal with business-to-consumer relationships.
- The agri-food sector makes a significant contribution to the economy in Ireland, including via exports and employment in the sector, and its estimated contribution to Gross Value Added and Modified Gross National Income. Some key data related to the sector includes<sup>1</sup>:
  - Irish food and drink exports were worth €16.7 billion in 2022 (up 22% from the previous year).
  - There were €18.7 billion total agri-food sector exports (including non-edible products not included in some data sources) in 2022 (a 21% increase year-on-year (YOY)).
  - Analysis of exports by category for the food, drink and horticulture sectors in 2021, shows that dairy is the largest group followed by meat and livestock.
  - In 2021, employment in the agri-food sector accounts for approximately 170,400 jobs or 7.1% of the total workforce on the island across 135,000 farms, 2,000 fishing vessels and aquaculture sites, and some 2,000 food production and beverage enterprises.
  - The agri-food sector accounted for almost 4% of Gross Value Added at factor cost in each year from 2019 to 2021.
  - Preliminary estimates suggest the sector accounted for 6.6% of Modified Gross National Income in 2021.

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<sup>1</sup> Based on most recent data available at the time of writing (January 2023).

## Introduction

The [Agricultural and Food Supply Chain Bill 2022](#)<sup>2</sup> (the 'Bill') was published on the Oireachtas website on Friday 16 December 2022. In a press release announcing that the Cabinet had approved the Bill for presentation to Dáil Éireann, the Minister for Agriculture, Food and the Marine, Charlie McConalogue TD (the 'Minister') stated:

"The Agri-Food Regulator will be office with real teeth that will be a strong advocate for farmers, fishers and all food producers.

It will shine a light on the sector to help improve the position of the primary producer and it will also bring greater transparency and fairness. The Regulator will promote and enforce the principles of fairness and transparency for agri-food suppliers."<sup>3</sup>

The proposed legislation is intended to establish a new independent statutory authority to be known as An Rialálaí Agraibhia (The Agri-Food Regulator or the 'Regulator').<sup>4</sup> The objective of this new office will be to promote the principles of fairness and transparency in the agricultural and food supply chain. It is intended that it will principally do this in the following ways (emphasis added by author):

1. **by performing a price and market analysis and reporting function.** The Regulator will bring greater transparency to the agricultural and food supply chain by carrying out analysis and regularly publishing reports on price and market data.
2. **by enhancing understanding and enforcement of agri-food unfair trading law, including being designated as the national Enforcement Authority for the EU [Unfair Trading Practices in Business-to-Business Relationships in the Agricultural and Food Supply Chain Directive 2019/633 \(the 'UTP Directive'\)](#).** The Regulator will have the powers to investigate suspected breaches; promote alternative dispute resolution procedures between suppliers and buyers; bring proceedings for offences under the Bill; and refer cases to the Director of Public Prosecutions where the Regulator believes that an indictable offence has been committed. The Bill provides for the imposition of fines for indictable offences concerning non-compliance with the rules of up to a maximum of €10 million or 10% of aggregate turnover, whichever is the greater.
3. **by promoting public awareness** about agri-food unfair trading law and related matters, including through public information campaigns.<sup>5</sup>

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<sup>2</sup> The Bill was previously titled the Office of the Food Ombudsman / Adjudicator Bill.

<sup>3</sup> Department of Agriculture, Food and the Marine press release, *Minister McConalogue welcomes Cabinet approval for the Agricultural and Food Supply Chain Bill 2022*. 29 November 2022. Available at <https://www.gov.ie/en/press-release/776fb-minister-mcconalogue-welcomes-cabinet-approval-for-the-agricultural-and-food-supply-chain-bill-2022/>.

<sup>4</sup> Referred to as the Office for Fairness and Transparency in the Agri-Food Supply Chain in the [General Scheme of the Agricultural and Food Supply Chain Bill 2022](#).

<sup>5</sup> Department of Agriculture, Food and the Marine press release, *Minister McConalogue welcomes Cabinet approval for the Agricultural and Food Supply Chain Bill 2022*, 29 November 2022.

It has been anticipated that the new office would assume responsibility for enforcement of the [UTP Directive](#). This function is currently performed by an interim UTP Enforcement Authority (UTPEA<sup>6</sup>) within the Department of Agriculture, Food and the Marine (DAFM).

The focus of both the Bill, and the [General Scheme of the Agricultural and Food Supply Chain Bill 2022](#) which preceded it, are on business-to-business relationships in the agricultural and food supply chain. The proposed legislation does not deal with business-to-consumer relationships.

This Digest provides background, policy context and a summary of the provisions of the Bill. A Bill Briefing page is available [here](#) [internal access only].

## Cost implications

The [Regulatory Impact Assessment \(RIA\)](#) identifies potential establishment costs for the new office of the Regulator (the 'office') related to staffing, accommodation, IT, and HR / payroll. It states that the staffing structure of the office is under consideration, with the RIA expecting that a staff of 17 – 20 would be necessary to meet the full requirements of the office. It will be headed by a CEO and the RIA explains that should the CEO be recruited at PO level, and with other staff at AP to CO level, the staffing costs are predicted to be in the region of €955,512 per annum.<sup>78</sup>

While options for accommodation are described as being “under consideration”, housing the new office in an existing public office is considered preferable as this is expected to reduce costs given the likelihood that services (such as broadband) would already be available. The office will be able to share DAFM IT services, which should result in savings on both cost and time to establish the office. The RIA notes that a small on-site contingent may be required or some additional resources for existing IT services and there will also be costs associated with access to eDocs (“€150 per person out of the agencies own budget”). The status of office staff will be civil servants as per the RIA. Staff having the status of civil servants should mean that it will be possible to facilitate use of the civil service shared HR and Payroll services. While some HR function will be required, it is expected that the majority of HR and payroll work will be undertaken by the shared services, which should reduce costs for the new office.<sup>9</sup>

Chapter 9 of Part 2 of the Bill (sections 45-50) concerns the financial aspects of the establishment of the Regulator. For example, section 46(1) provides that the Minister, subject to the consent of the Minister for Public Expenditure and Reform, may direct the Regulator to pay surplus funds (where gross income received by the Office in a financial year exceeds the gross expenditure incurred in the administration of the Office in that year) to the Central Fund or the growing produce thereof.

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<sup>6</sup> Also abbreviated by some sources as the EA (Enforcement Authority).

<sup>7</sup> Information on the Civil Service Grade Structure is available [here](#).

<sup>8</sup> Department of Agriculture, Food and the Marine (2022) *Regulatory Impact Assessment (RIA)*. Available at <https://assets.gov.ie/239491/a211b4a1-3420-4dec-86e2-787f02e0ae31.pdf>

<sup>9</sup> Information in this paragraph is sourced from Department of Agriculture, Food and the Marine (2022) [Regulatory Impact Assessment \(RIA\)](#).

In addition, and as noted above, establishment of the new office is expected to give rise to establishment costs related to staffing, accommodation, IT, and HR / payroll. Section 5 provides for expenses incurred by the Minister in the administration of the Bill, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, to be paid out of moneys provided by the Oireachtas.

## Pre-legislative scrutiny (PLS)

The Bill has been subject to the pre-legislative scrutiny (PLS) process<sup>10</sup>. The General Scheme of the Agricultural and Food Supply Chain Bill 2022 was published by the [Department of Agriculture, Food and the Marine](#) on 22 March 2022.<sup>11</sup> The Minister for Agriculture, Food and Marine, Charlie McConalogue TD, submitted the General Scheme to the Joint Oireachtas Committee on Agriculture, Food and the Marine for PLS, and noted:

“This is a key priority for me as Minister and I want to see the Office established as quickly as possible to help support our farm families and all primary producers in the country”.<sup>12</sup>

The Joint Committee on Agriculture, Food and the Marine agreed to undertake pre-legislative scrutiny of the General Scheme following the request from the Minister. The Committee held three PLS meetings on the General Scheme (on 29 June 2022, 6 July 2022 and 13 July 2022).<sup>13</sup> In addition, it sought written submissions from a range of different stakeholders. The Joint Committee published its PLS report in October 2022, which is available [here](#).

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<sup>10</sup> See Library & Research Service (2017) *The legislative review loop of Government legislation [infographic]* for more information on the legislative process – available at [https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2017/2017-04-10\\_the-legislative-review-loop-of-government-legislation\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2017/2017-04-10_the-legislative-review-loop-of-government-legislation_en.pdf)

<sup>11</sup> The [General Scheme](#) was published to outline the heads of the Bill in March 2022. In addition, the DAFM also published a [Summary Outline of the General Scheme Head of the Bill](#) and a [Regulatory Impact Assessment](#).

<sup>12</sup> “Written answers - Departmental Priorities”. Minister for Agriculture, Food and Marine. Dáil Éireann debate. 26 May 2022. Available at <https://www.oireachtas.ie/en/debates/question/2022-05-26/139/>

<sup>13</sup> The L&RS prepared a [pre-hearing briefing paper](#) synthesising the policy context and highlighting some key issues around the General Scheme. The L&RS draws upon that PLS scrutiny paper for the Committee in sections of this Bill Digest, where applicable.

## Table of provisions

The Bill contains four Parts and 86 sections, as summarised below in table 1.

**Table 1: Table of provisions of the Agricultural and Food Supply Chain Bill 2022**

Section	Title	Effect
<b>Part 1- Preliminary and General (Heads 1-6)</b>		
1.	Short title	Section 1 provides that this Act may be cited as the <a href="#">Agricultural and Food Supply Chain Act 2022</a> .
2.	Commencement	Section 2 contains the commencement arrangements. The 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 provisions.
3.	Definitions	Section 3 provides the definitions used in the Bill, with those for “buyer” and “supplier” based on the definitions for same in the <a href="#">UTP Directive</a> . The Bill defines “agricultural and food supply chain” as the supply chain relating to agricultural and food products. “Agricultural and food products” has the meaning given to it by section 6 and “regulator” has the meaning given to it under section 8 of the Bill (see below).
4.	Regulations and orders	Section 4 provides that the Minister may make regulations regarding issues relating to the Bill. Each order and regulation made under the Act, once adopted, is to be laid before each House of the Oireachtas, with some exceptions (as outlined in section 4(4)).
5.	Expenses	Section 5 provides for expenses incurred by the Minister in the administration of the Bill to be paid out of moneys provided by the Oireachtas, subject to the sanction of the Minister for Public Expenditure and Reform.
6.	Application of Act	Section 6 provides for the scope of the Bill. It provides that the Bill applies to “agricultural and food products”, which are defined so as to include products within the scope of the <a href="#">UTP Directive (Article 2)</a> and such other products as may be specified by the Minister under regulations.
<b>Part 2 – The Regulator (Heads 7-54)</b>		
7.	Establishment day	Section 7 provides that the Minister may determine the establishment date for the new regulator.



Section	Title	Effect
8.	Establishment	Section 8 provides for the establishment of a new body to be known as An Rialálaí Agraibhia (referred to as the “regulator” in the Bill).
9.	Status	Section 9 provides for the independence of the regulator in the performance of its functions.
10.	Corporate capacity	Section 10 provides that the regulator shall be a body corporate with its own legal personality, an official seal and the power to sue and be sued in its corporate name.
11.	Fairness and transparency in supply chain	Section 11 specifies that the regulator shall promote fairness and transparency in the agricultural and food supply chain, having regard to the circumstances and needs of the agricultural and food sector (particularly farmers, fishers and small food businesses).
12.	Information and engagement	Section 12 sets out the regulator’s functions regarding information and engagement, including the publication and analysis of price and market data relating to the agricultural and food supply chain. The Minister may request the regulator to study or analyse, and report on, any specified matter relating to the agricultural and food supply chain. The regulator can, on its own initiative, conduct or commission a study or analysis of matters relating to the agricultural and food supply chain, and publish findings and recommendations.
13.	Compliance with unfair trading law	Section 13 tasks the regulator with responsibility for enhancing understanding of and compliance with agri-food unfair trading law.
14.	Enforcement of unfair trading law	Section 14 deals with the enforcement function of the regulator. It provides that the regulator will assume responsibility for enforcing agri-food unfair trading law, including carrying out inspections of buyers and suppliers, investigating suspected breaches of agri-food unfair trading law, bringing proceedings for offences under the Bill, and referring cases involving suspected indictable offences to the Director of Public Prosecutions. It also provides that the regulator will promote, where appropriate, the use of alternative dispute resolution (ADR) procedures as a means of resolving disputes between buyers and suppliers. The regulator will be empowered under section 14 to use its powers under the Bill to require a buyer to cease a prohibited contravention in cases of a contravention of a provision of any Agri-Food Unfair Trading Regulations made by the Minister pursuant to Chapter 2 of Part 3 of the Bill.

Section	Title	Effect
15.	Guidelines	Section 15 provides that the regulator may issue guidelines for buyers on supplier protection and on trading practices, and may consult on draft guidelines as appropriate.
16.	Review of codes	Section 16 provides for the voluntary submission of a code of practice to the regulator, for its review, by a person representing one or more buyers. It also provides that codes of practice will be admissible in court proceedings.
17.	Information and advice	Section 17 makes the regulator responsible for providing information and advice to the Minister about (a) the agricultural and food sector, and (b) agri-food unfair trading law. The Minister may seek advice on matters which the Minister considers are likely to affect: (a) fairness and transparency in the agricultural and food supply chain, (b) the agricultural and food sector, or (c) any other matter relating to the functions of the regulator.
18.	Consideration of legislation	Section 18 provides that the Minister may consult with the regulator regarding legislative proposals concerning aspects of fairness and transparency in the agricultural and food supply chain. The regulator shall keep the regulations under the Bill and other relevant statutory provisions under review. The regulator shall make recommendations to the Minister, or another responsible Minister, for changing those regulations and provisions, following consultation with those that it, or the Minister, considers appropriate.
19.	Transfer of functions to regulator	Section 19 transfers the functions of the UTPEA under the UTP Directive to the regulator and contains related provisions.
20.	Ancillary powers	Section 20 outlines the ancillary powers of the regulator. These include entering into contracts, establishing committees and anything the regulator considers necessary or appropriate for the purposes of, or in connection with, its functions.
21.	Membership	Section 21 provides that the regulator will have a board comprising a Chairperson and 7 ordinary members (at least 2 of which are to be primary producers) appointed by the Minister.
22.	Remuneration and terms of appointment	Section 22 provides for the remuneration and terms of appointment of members of the board.

Section	Title	Effect
23.	Term of office	Section 23 provides that the term of office for a member of the board of the regulator will be 5 years (except for the first board) and will be limited to two terms.
24.	Members of regulator: disqualification, resignation and removal	Section 24 outlines the procedures for disqualification, resignation, and removal from the board.
25.	Vacancies	Section 25 provides that the validity of proceedings or actions of the regulator is not affected by any vacancy or irregularity in its membership. It also provides that the Minister shall fill any vacancy arising as soon as is reasonably practicable.
26.	Chairperson	Section 26 contains standard provisions for the Chairperson, whose term of office will be 5 years. It also sets out the functions of the Chairperson and provides for procedures for their resignation and for their removal by the Minister.
27.	Meetings of regulator	Section 27 provides for procedures and meetings of the regulator (a quorum of 5 applies and decisions are by majority vote).
28.	Committees	Section 28 provides the regulator with the power to establish committees and sets out how they will operate.
29.	Delegation of functions	Section 29 provides that the regulator may delegate its functions (except an enforcement function) to any member of the regulator, any member of staff of the regulator or any committee. It provides that enforcement functions may be delegated to the chief executive of the regulator whom in turn may sub-delegate enforcement functions to a member of staff of the regulator. The regulator must ensure that any member of staff, including the chief executive, to whom an enforcement function under section 29 is delegated is independent in the performance of that function.
30.	Disclosure of interests	Section 30 provides for the disclosure of any interest in connection with any regulator matter by relevant persons, including (a) a member of the regulator, (b) a member of a committee of the regulator, (c) the chief executive, (d) another member of staff of the regulator, and (e) any person engaged by the regulator.
31.	Conflict of interest	Section 31 provides that the regulator must aim to avoid giving rise to any perceptions of any conflict of interest when performing its functions.

Section	Title	Effect
32.	Indemnity	Section 32 provides that the regulator may indemnify individuals against actions and claims in respect of their performance, in good faith, of their functions as: members of the regulator, members of staff of the regulator (including the chief executive), members of committees, providers of services to the regulator, or authorised officers (as defined under section 71, see below).
33.	Appointment	Section 33 provides for the appointment of a chief executive officer (the “chief executive”) by the regulator, subject to the approval of the Minister. It provides that the chief executive shall be a civil servant. It outlines the relevant appointment and removal processes, and outlines certain terms and conditions that attach to the role.
34.	Functions and status	Section 34 sets out the functions of the chief executive, including managing the staff and business of the regulator, and advising and making proposals to the regulator about its functions. It provides that the chief executive shall comply with directions of the board regarding the carrying out of the chief executive’s functions.
35.	Attendance before Public Accounts Committee	Section 35 provides for the attendance of the chief executive before the Committee of Public Accounts (PAC) to give evidence regarding certain financial matters outlined in the section.
36.	Attendance before other Oireachtas Committees	Section 36 provides for the attendance of the chief executive or chairperson before other Oireachtas Committees (Select or Joint) to discuss the general administration of the regulator unless the matter concerned is, or is likely to be, the subject of proceedings before a court or tribunal in the State.
37.	Appointment of staff	Section 37 provides that the regulator may appoint staff (who will be civil servants) and determine their numbers, grades and terms and conditions, subject to the relevant Ministerial approval.
38.	Transfer of staff to regulator	Section 38 provides for the transfer of employment of certain persons, from a Department of State or by a public authority, to the regulator, subject to the transferred person’s agreement. It also provides for safeguards for the interests of such persons (most notably previous service will be counted as service for the purposes of a number of related Acts).

Section	Title	Effect
39.	Strategy statement	Section 39 provides for the submission of a 3-year strategy statement by the regulator to the Minister, who should then lay this before the Houses of the Oireachtas. The strategy statement should specify the key objectives, outputs and related strategies of the regulator, the manner in which the regulator shall assess its performance, a review of the outcomes of the previous strategy statement, and any other matters directed by the Minister.
40.	Work programme	The regulator must submit an annual work programme on the discharge of its functions to the Minister, including details of priorities and objectives for that year (and strategies to achieve those objectives), and details concerning any other matters that the Minister may require.
41.	Annual report	Section 41 provides that the regulator shall submit an annual report to the Minister, who should then lay this before the Houses of the Oireachtas. It also specifies that the report should include recommendations to the Minister for legislation relating to any aspect of fairness and transparency in the agricultural and food supply chain, information regarding the remuneration of the chief executive, and any other such information as the Minister may direct.
42.	Complaints and investigations report	Section 42 provides that the regulator shall publish a report annually outlining the number of complaints received and the number of investigations opened and closed each financial year.
43.	Decisions reports	Section 43 provides that the regulator may publish details of its decisions regarding: (a) prohibiting unfair trading practices, (b) requiring a buyer to cease a prohibited trading practice, or (c) imposing, or initiating proceedings for the imposition of fines, other penalties and interim measures.
44.	Other reports and information	Section 44 provides that the regulator may make other reports to the Minister about its functions and comply with requests for other reports by the Minister.
45.	Advances by Minister	Section 45 provides for the provision of funds to the regulator by the Minister, with the consent of the Minister for Public Expenditure and Reform, (in the form of advances from funds provided by the Oireachtas) for the regulator to use in the performance of its functions.

Section	Title	Effect
46.	Payments into Central Fund, disposal of fines	Section 46 provides that the Minister may, with the consent of the Minister for Public Expenditure and Reform, direct the regulator to pay surplus funds (where gross income received by the regulator in a financial year exceeds the gross expenditure incurred in its administration in that year) to the Central Fund or the growing produce thereof. It also provides for the disposal of fines paid to, or recovered by, the regulator in such manner as the Minister for Public Expenditure, with the consent of the Minister for Finance, directs.
47.	Accounts and audits	Section 47 provides that the regulator shall submit estimates of income and expenditure to the Minister and any related information requested by the Minister. It also provides that the regular will submit annual accounts, signed by the chief executive, for audit to the Comptroller and Auditor General within 3 months of the financial year end. A copy of the annual accounts and the Comptroller and Auditor General's report shall be laid before both Houses of the Oireachtas by the Minister within 3 months of receipt thereof.
48.	Annual estimate	Section 48 provides for an annual estimate of the anticipated expenditure of the regulator for the coming year to be submitted by the regulator to the Minister and the Minister for Public Expenditure and Reform at least one month in advance of each financial year.
49.	Power to impose levies	Section 49 empowers the regulator, with relevant Ministerial consent, to make regulations prescribing levies to be paid by buyers who are subject to obligations under Agri-Food Unfair Trading Regulations made by the Minister pursuant to the Bill. Under section 49(5), where the regulator proposes to make regulations under this section, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations may not be made until a resolution approving of the draft has been passed by each House.
50.	Surpluses and deficiencies	Section 50 provides for circumstances where either a surplus or deficiency in certain income of the regulator occurs during a financial year. Section 50 provides that, if during any financial year, the total sum received from levies imposed under section 49 exceeds/falls short of the regulator's expenditure on discharging its functions concerning unfair trading practices, the regulator shall carry the surplus forward/make good the deficit, and reduce/adapt the levies imposed for the following

Section	Title	Effect
		financial year accordingly. The regulator may adjust levies accordingly. The section also provides that the regulator's annual report and annual accounts will include statements of the amount of levies collected and how those amounts were expended.
51.	Prohibited disclosures	Section 51 prohibits an unauthorised disclosure by a person of confidential information, as defined under the section, which was obtained by that person in their capacity, or in the course of acting, as: a member of the regulator, a member of staff of the regulator (including the chief executive), a member of a committee, a person engaged by the regulator (e.g. as a consultant), a person working for a person engaged by the regulator, or an authorised officer (as defined under section 71, see below). Section 51 provides for certain exceptions. Section 51 (7) provides that contraventions of the section constitute a criminal offence.
52.	Members of regulator	Section 52 is a standard provision precluding a person from becoming a member/maintaining membership of the regulator if they are elected as a member of either House of the Oireachtas or of the European Parliament, or are elected/co-opted as a member of a local authority, or are nominated as a member of the Seanad.
53.	Chief executive	Section 53 is a provision precluding a person from being appointed to/retaining the role of chief executive if they are elected as a member of either House of the Oireachtas or of the European Parliament, or are elected/co-opted as a member of a local authority, or are nominated as a member of the Seanad.
54.	Staff of regulator	Section 54 provides that staff of the regulator shall be deemed to be on secondment and not paid by the regulator if they are elected to public office. It also provides that a person may not be appointed as a member of staff while serving as a member of either House of the Oireachtas, the European Parliament, or a local authority.
<b>Part 3 - Unfair Trading Practices (Sections 55-70)</b>		
55.	Scope of Part	Section 55 specifies that Part 3 provides for the prohibition of certain unfair trading practices and the enforcement of same.
56.	Application of Part	Section 56 provides that Part 3 shall apply to "anything done in relation to agricultural and food products in the course of a business-to-business relationship in the



Section	Title	Effect
		agricultural and food supply chain. It authorises the Minister to prescribe by regulations the matters that are to be treated as: a “business-to-business relationship” or “relating to the agricultural and food supply chain”
<b>57.</b>	Power to make regulations	Section 57 is an enabling provision that allows the Minister to make regulations about business-to-business relationships in the agricultural and food supply chain under the Bill and specifies what factors the Minister must take under consideration and have due regard to before issuing such regulations (“the Agri-Food Unfair Trading Regulations”).
<b>58.</b>	Agri-Food Unfair Trading Regulations: prohibited payments	Section 58 provides for the creation of Agri-Food Unfair Trading Regulations specifically relating to prohibited payments, including late payments, payments not related to the sale of the agricultural and food products, charges for stocking, displaying or listing products, and charges for fitting out premises used for the sale by the buyer of the supplier’s products.
<b>59.</b>	Agri-Food Unfair Trading Regulations: changes of supply terms	Section 59 provides for the creation of Agri-Food Unfair Trading Regulations concerning the regulation of changes of supply terms, including regulations prohibiting short notice cancellations of orders of perishable products as defined under the section. Section 59 also provides that the Regulations may prohibit a unilateral change to certain terms of a supply agreement, as outlined in the section.
<b>60.</b>	Agri-Food Unfair Trading Regulations: contracts	Section 60 provides for the creation of Agri-Food Unfair Trading Regulations concerning contract arrangements, including but not limited to, the prohibition of a refusal to confirm in writing the terms of a supply agreement, and regulations concerning the forms of contract to be used.
<b>61.</b>	Agri-Food Unfair Trading Regulations: supply conditions	Section 61 provides for the creation of Agri-Food Unfair Trading Regulations concerning supply conditions, including regulations concerning the manner and timeframe in which payments are to be made, and a prohibition of the return of unsold products without payment for either the unsold products or their disposal.
<b>62.</b>	Agri-Food Unfair Trading Regulations: commercial malpractice	Section 62 provides for the creation of Agri-Food Unfair Trading Regulations concerning commercial malpractice, including regulations concerning misuse of trade secrets and acts of commercial retaliation against the supplier.



Section	Title	Effect
63.	Agri-Food Unfair Trading Regulations: compliance requirements	Section 63 provides for the creation of Agri-Food Unfair Trading Regulations concerning compliance requirements, including the submission of annual compliance reports by buyers and suppliers, and the maintenance of records by trading partners.
64.	Agri-Food Unfair Trading Regulations: exemptions	Section 64 provides that the Agri-Food Unfair Trading Regulations may provide for exemptions in specified circumstances or for specified classes of buyer or supplier, in particular by making reference to a) the public interest in, or benefit accruing from, the activities of a buyer, b) healthcare providers, or c) educational institutions participating in programmes promoting greater consumption of certain products.
65.	Agri-Food Unfair Trading Regulations: ancillary provisions	Section 65 provides for ancillary and transitional provisions that may be provided for in the Agri-Food Unfair Trading Regulations, including provisions specifying the turnover disparity between buyers and suppliers at which a trading practice becomes unfair.
66.	Offence of unfair trading practice and penalties	Section 66 provides that a person who contravenes or fails to comply with a provision of the Agri-Food Unfair Trading Regulations, which is specified in the Regulations to constitute a penal provision to which section 66 applies, commits an offence. Section 66 outlines the maximum penalties that apply on summary conviction and on conviction on indictment for an offence under the section.
67.	Complaints to regulator	Section 67 provides for the submission of complaints regarding alleged unfair trading practices to the regulator by a) a supplier, b) a supply trade organisation, and c) another not-for-profit organisation on behalf of suppliers whom it represents. A supplier may make a complaint if the supplier or the buyer is established in the State.
68.	Complaints: fees	Section 68 provides for the making of regulations imposing fees to be paid by a person making a complaint under the Bill.
69.	Investigations by regulator	Section 69 provides for the conduct of investigations of an alleged or suspected unfair trading practice initiated either in response to a complaint or of the regulator's own initiative.
70.	Alternative dispute resolution	Section 70 provides for the promotion of alternative dispute resolution mechanisms by the regulator for settling unfair trading disputes.

Section	Title	Effect
<b>Part 4 – Enforcement (Sections 71-86)</b>		
<b>71.</b>	Appointment	Section 71 provides for the appointment of authorised officers by the regulator and sets out the scope of, and legal basis, for their functions.
<b>72.</b>	Tenure	Section 72 outlines the circumstances for the cessation of the appointment of an authorised officer.
<b>73.</b>	Warrant	Section 73 provides for the provision of warrants of appointment to authorised officers, which may be produced for inspection upon request.
<b>74.</b>	Power to enter premises to inspect records	Section 74 provides that, for the purposes of performing a function, an authorised officer may “at any reasonable time” enter premises where the officer has reasonable grounds for believing that there are: (a) records relating to agricultural and food products, or (b) anything used in connection with agricultural and food products. There are specific requirements that must be satisfied before entering dwellings for the purpose of inspecting records.
<b>75.</b>	Power to enter premises to investigate offence	Section 75 provides that an authorised officer may enter premises if the officer has reasonable grounds for believing that: (a) an offence under this Bill has been, is being, or is about to be committed on the premises, or (b) evidence of an offence under the Bill is likely to be found on the premises (or in anything on the premises). It sets out the relevant powers of authorised officers to carry out such investigations pursuant to section 75.
<b>76.</b>	Inspection powers	Section 76 provides that an authorised officer may: examine, inspect and require the production of records or any other thing related to an agricultural and food product; and require the name and address of the owner or person in possession or control of such records or things. It also provides for related matters regarding receipt of copies of records, and of information regarding ownership of records and ownership and use of premises (as explained in the <a href="#">Explanatory Memorandum</a> ).
<b>77.</b>	Supplementary powers	Section 77 provides for persons to accompany and assist an authorised officer in exercising a function under Part 4 of the Bill. It provides that an authorised officer, or a person accompanying them, may bring any equipment or materials required. It provides for the seizure by an authorised officer of anything they have reasonable grounds for believing might be evidence of an offence under the Bill. It also provides for the use of reasonable force to enter premises by an authorised officer.

Section	Title	Effect
78.	Compliance notice	Section 78 provides that an authorised officer may serve a compliance notice on a buyer in certain circumstances. It sets out details regarding the serving of such a notice and provides that it is an offence to damage, deface or remove a compliance notice affixed to a premises within six months of the affixation unless there is a reasonable excuse. It also requires that a compliance notice include certain content. An appeal against a compliance notice can be made by the buyer in question to a judge of the relevant Circuit Court.
79.	Obstruction and false statements	Section 79 outlines a number of offences concerning false statements and the obstruction of authorised officers in the performance of their duties. For example, it makes it an offence to obstruct, interfere with or impede an authorised officer in the exercise of their functions under the Bill. It also makes it an offence to either knowingly or recklessly make statements to an authorised officer, concerning the exercise of the officer's functions, that are false or misleading in a material particular.
80.	Enforcement and supplementary regulations, offences and penalties	Section 80 provides that the Minister may make regulations concerning enforcement and supplementary matters, including regulations regarding the regulator's enforcement functions and powers, the complaints procedures provided for under the Bill, and the use of alternative dispute resolution mechanisms.  It also provides that a person who contravenes or fails to comply with a provision of regulations made under this section commits an offence, and it sets out the applicable penalties on summary conviction and on conviction on indictment.
81.	Time limit for instituting summary proceedings	Section 81 provides for a 3-year time limit for instituting summary proceeding under this Bill (from the date on which the offence was alleged to have been committed).
82.	Liability for offences by bodies corporate	Section 82 provides that certain officers of a company, or individuals purporting to act in such a capacity, may be held criminally responsible on an individual basis where the company commits an offence under the Bill with the relevant individual's consent, connivance or approval, or as a result of their neglect.
83.	Fines and penalties	Section 83 provides that a person who commits an offence under section 78(5) is liable, on summary conviction, to a class A fine. It also provides for the

Section	Title	Effect
		penalties that apply where a person commits an offence under any other provision of the Bill, save for an offence concerning unfair trading practices (section 66) or an offence created under regulations made under the Bill (section 80(5)).
<b>84.</b>	Convicted persons liable for costs	Section 84 provides that a court shall, unless there are special and substantial reasons for not so doing, order a guilty party to pay the regulator's costs and expenses in relation to the investigation, detection and prosecution of the offence, plus any fine or penalty the court may impose.
<b>85.</b>	Proceedings instituted by regulator	Section 85 provides that the regulator may institute summary proceedings in the District Court.
<b>86.</b>	Fixed payment notice	Section 86 provides for fixed payment notices, which a designated authorised officer may issue to persons who are believed, based on reasonable grounds, to be committing, or to have committed, an offence under section 66, section 78(5) or section 80, subject to certain conditions as outlined in section 86.

**Source:** L&RS analysis of the Bill.

## Background and policy context

This section outlines further background and policy context of relevance to the Bill. It provides an overview of current government policy and the contribution of the agri-food sector to the Irish economy (based on the most recent information at the time of writing).

### Current government policy

The main purpose of the Bill is to establish a new authority called An Rialálaí Agraibhia (The Agri-Food Regulator) to promote the principles of fairness and transparency in the agricultural and food supply chain. Establishing a new authority to enforce the UTP Directive (discussed below), with a specific role in analysing and reporting on price and market data in Ireland, is a commitment in the current [Programme for Government](#) (on page 65):

“Ensure fairness, equity, and transparency in the food chain by establishing a new authority called the National Food Ombudsman (NFO) to enforce the Unfair Trading Practices Directive. This new authority will enforce EU-wide rules on prohibited unfair trading practices in the food supply chain and will have powers to enforce this Directive, penalising those who breach regulations. The NFO will have a specific role in analysing and reporting on price and market data in Ireland”.<sup>14</sup>

In October 2020, it was reported that “a National Food Ombudsman office will be created under budget commitments for the Department of Agriculture next year”.<sup>15</sup> When announcing funding for Agriculture, Food and Fisheries in Budget 2021 (on 13 October 2020), Minister McConalogue referred to the establishment of a National Food Ombudsman, in accordance with the commitment in the Programme for Government, stating:

“Strengthening the position of farmers in the supply chain is a priority for me. My department will be drafting the legislation needed to establish a food ombudsman in 2021, and I am making an initial provision of €1 million to assist with start up costs. This is a very important initiative, and together with continued support for the establishment of producer organisations, can help to make a difference.”<sup>16</sup>

In addition, the government’s strategy for Ireland’s food and drinks sector, [Food Vision 2030](#) (launched in August 2021), seeks to ensure a more equitable distribution of value in the food system, with improving price transparency considered to be one method of possibly improving returns to primary producers. One of the goals of [Food Vision 2030](#) is to have competitive, productive primary producers with improved economic and social sustainability. This will be measured by a number of key indicators, including market transparency.

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<sup>14</sup> Government of Ireland (2020) Programme for Government – Our Shared Future. Available at <https://assets.gov.ie/130911/fe93e24e-dfe0-40ff-9934-def2b44b7b52.pdf>

<sup>15</sup> Irish Examiner (2020) *Budget to see creation of National Food Ombudsman office*. 14 October 2020. Available at <https://www.irishexaminer.com/news/arid-40064849.html>

<sup>16</sup> Department of Agriculture, Food and the Marine press release, *McConalogue announces 11% increase in funding for Agriculture, Food and Fisheries in Budget 2021*. 13 October 2020. Available at <https://www.gov.ie/en/press-release/68923-mcconalogue-announces-11-increase-in-funding-for-agriculture-food-and-fisheries-in-budget-2021/>

Government approval of the General Scheme and the publication of this Bill follows a [public consultation](#) process on the functions to be assigned to a new Office (National Food Ombudsman/Regulator)/Equivalent during 2021<sup>17</sup>, and two seminars in 2021 and 2022:

- [Information Seminar on UTP Regulations and Office of National Food Ombudsman](#) hosted by the Department of Agriculture, Food and the Marine (on 25 June 2021).
- Unfair Trading Practices Enforcement Authority Breakfast Seminar: [Ensuring Fair Trading in the Agri-Food Supply Chain](#) (on 5 May 2022).

In 2018, the previous Joint Committee on Agriculture, Food and the Marine produced a [political contribution](#) on the EU legislative proposal COM(2018)173 - Proposed Directive on Unfair Trading Practices in Business to Business Relationships in the Food Supply Chain. The previous Committee also had a [meeting on Unfair Trading Practices](#) (on 5 November 2019) with Christine Tacon, the former UK Groceries Code Adjudicator.

## Current enforcement authority for UTPs

The [Unfair Trading Practices Enforcement Authority](#) (UTPEA) in the Department of Agriculture, Food and the Marine currently has statutory responsibility for enforcing the UTP Regulations<sup>18</sup>, dealing with unfair trading practices in business-to-business relationships in the agricultural and food supply chain. These regulations deal with unfair trading practices in business-to-business relationships in the agricultural and food supply chain. The regulations are said to “protect weaker suppliers against unfair trading practices by stronger buyers in the agricultural and food supply chain”.<sup>19</sup>

The policy of enforcement of the UTP Regulations is based on promoting and on-going monitoring of compliance while also responding to any complaint received, and comprises work by the UTPEA in relation to the following:

1. Promotion and guidance
2. Implementation reports
3. Monitoring and assessing compliance
4. Complaints
5. Investigation
6. Compliance notice
7. Prosecutions and financial penalties

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<sup>17</sup> The consultation was open from 26 April 2021 to 11 June 2021.

<sup>18</sup> The UTP Regulations seek to give effect to the UTP Directive. The UTP Directive is transposed into Irish Law by the European Union (Unfair Trading Practices in the agricultural and food supply chain) Regulations 2021 (UTP Regulations).

<sup>19</sup> Unfair Trading Practices Enforcement Authority website. Available at <http://www.utp.gov.ie/>

## 8. Publishing of decisions.<sup>20</sup>

As such, this enforcement function could be considered to range from a soft enforcement function (such as promotion and guidance) to the UTPEA's ultimate enforcement deterrent to future UTP non-compliance (in the form of prosecutions and financial penalties). This function of the UTPEA has further been explained as follows:

"Enforcement covers all activities of the EA which are aimed at promoting and ensuring compliance with the UTP Regulations. The EA aims to foster the development of a culture of compliance with the Regulations in order to bring about beneficial change for all operators but, in particular, primary producers, along with other small, medium and mid-range sized suppliers of agricultural and food products.

In this context, EA activities include industry engagement, providing support, advice and guidance, data collection and analysis of industry compliance actions reported on a voluntary basis. However, EA activities may also include regulatory inspections, audits of reported actions and taking enforcement actions where necessary to address any non-compliance matters".<sup>21</sup>

The UTPEA in the DAFM was established on an interim basis pending the finalisation of this primary legislation for the new office. A press release accompanying publication of the [General Scheme of the Agricultural and Food Supply Chain Bill 2022](#) (on 22 March 2022) explains that the current UTP Regulations are to be repealed and that the UTP enforcement functions will transfer to the new office:

"With regard to the Unfair Trading Practices Directive, currently enforced by the interim UTP Enforcement Authority in the Department of Agriculture, Food and the Marine, Minister McConalogue's intention is to repeal the current UTP Regulations and to use the enabling provisions in the Bill to provide for the transfer of responsibility for UTP enforcement functions from his Department to the remit of the new Office. This is expected to occur at the time of commencement of the Act".<sup>22</sup>

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<sup>20</sup> Unfair Trading Practices Enforcement Authority (EA) / Department of Agriculture, Food and the Marine (2022) *Enforcement Policy of the Unfair Trading Practices Enforcement Authority*. Available at <http://www.utp.gov.ie/media/utp/UTP%20EA%20Enforcement%20Policy.pdf>

<sup>21</sup> Unfair Trading Practices Enforcement Authority (EA) / Department of Agriculture, Food and the Marine (2022) *Enforcement Policy of the Unfair Trading Practices Enforcement Authority*.

<sup>22</sup> Department of Agriculture, Food and the Marine (2022) *General Scheme of the Agricultural and Food Supply Chain Bill 2022*. Available at <https://www.gov.ie/en/publication/bd7d3-general-scheme-of-the-agricultural-and-food-supply-chain-bill-2022/>



## Overview of the sector

Ireland, as a small open economy, exports most of its agricultural products.<sup>23</sup> The agri-food sector is Ireland's oldest and largest indigenous sector.<sup>24</sup> The agri-food sector currently makes a significant contribution to the economy in Ireland, including in the form of **exports** and **employment** in the sector, and its estimated contribution to **Gross Value Added and Modified Gross National Income**. Some key data related to the sector includes:<sup>25</sup>

- According to a [Bord Bia report](#) (published in January 2023), Irish food and drink **exports** for 2022 were worth €16.7 billion - up 22% from the previous year. The value of Irish food and drink exports in 2022 was more than a quarter ahead of pre-pandemic levels.<sup>26</sup>
- There were €18.7 billion total agri-food sector<sup>27</sup> **exports** (including non-edible products not included in the [Bord Bia report](#)) in 2022<sup>28</sup>, a 21% increase year-on-year (YOY).<sup>29</sup>
- **Exports** by category for the food, drink and horticulture sectors, shows that dairy is the largest group (which was worth more than €6.8 billion in 2022) followed by meat and livestock (which generated €4 billion in export sales).<sup>30</sup>
- According to annual [data](#) (2021) from the DAFM (published in November 2022), **employment** in the agri-food sector accounts for approximately 170,400 jobs or 7.1% of the total workforce on the island across 135,000 farms, 2,000 fishing vessels and aquaculture sites and some 2,000 food production and beverage enterprises.<sup>31</sup> The sector typically accounts for significant employment in rural Ireland (previous DAFM annual data shows that the sector accounted for approximately 163,600 jobs or 7.1% of "total

<sup>23</sup> As discussed in the DAFM [Annual Review and Outlook for Agriculture, Food and the Marine 2022](#).

<sup>24</sup> Department of Agriculture, Food and the Marine (2021) *Annual Review and Outlook for Agriculture, Food and the Marine 2021*. Available at <https://assets.gov.ie/205578/26036bdf-d590-43b2-a361-327dd9ea2afb.pdf>

<sup>25</sup> Based on most recent sources available at the time of writing (January 2023).

<sup>26</sup> Bord Bia (2023) *Export Performance and Prospects Report 2022 — 2023*. Available at <https://www.bordbia.ie/globalassets/bordbia.ie/industry/2022---2023-export-performance-prospects-final.pdf> and related [press release \(11/01/2023\)](#).

<sup>27</sup> Agriculture is a part of the agri-food sector. Ireland's agri-food sector encompasses primary production (agriculture, fishing and forestry) as well as food, beverage and horticulture production and wood processing.

<sup>28</sup> The [Bord Bia report](#) explains that "in addition to exports of food and drink, the Irish agri food sector also exports non-edible items such as live horses, animal foodstuffs, forestry and amenity horticulture, and animal hides and skins. Exports of non-edible agri-food sector goods are estimated by DAFM at €2.0 billion in 2022". Adding this estimate to the Bord Bia figures to the food and drink sectors, which are the focus of the [Bord Bia report](#), indicates that total agri-food sector exports in 2022 amounted to €18.7 billion – a 21% increase year-on-year (YOY).

<sup>29</sup> Bord Bia (2023) *Export Performance and Prospects Report 2022 — 2023* and related [press release \(11/01/2023\)](#).

<sup>30</sup> Bord Bia (2022) *Export Performance and Prospects 2021–2022* and related [press release \(12/01/2022\)](#).

<sup>31</sup> Department of Agriculture, Food and the Marine (2022) *Annual Review and Outlook for Agriculture, Food and the Marine 2022*. Available at <https://assets.gov.ie/238928/75008324-6f05-4f30-a9d3-6a9259371771.pdf>



employment in Ireland; outside of Dublin and the mid-east region, the sector provides between 10% and 14% of employment”<sup>32</sup>).

- It is estimated that the agri-food sector, which is classified as primary production (agriculture, fishing and forestry) along with food and beverages and the wood processing sector, accounted for almost 4% of **Gross Value Added** at factor cost<sup>33</sup> in each year over the past three years (2019 to 2021).<sup>34</sup>
- Preliminary estimates suggest the sector accounted for over 6.6% of **Modified Gross National Income**<sup>35</sup> in 2021, the same as in 2020.<sup>36</sup>

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<sup>32</sup> Department of Agriculture, Food and the Marine (2021) [Annual Review and Outlook for Agriculture, Food and the Marine 2021](#).

<sup>33</sup> Gross Value Added at factor cost is the Gross Value Added at market prices less any indirect taxes plus any subsidies.

<sup>34</sup> Department of Agriculture, Food and the Marine (2022) [Annual Review and Outlook for Agriculture, Food and the Marine 2022](#).

<sup>35</sup> The [DAFM report](#) explains that Modified GNI or GNI\* is an indicator that was recommended by the Economic Statistics Review Group and is designed to exclude globalisation effects that are disproportionately impacting the measurement of the size of the Irish economy.

<sup>36</sup> Department of Agriculture, Food and the Marine (2022) [Annual Review and Outlook for Agriculture, Food and the Marine 2022](#).

## Pre-legislative scrutiny of the General Scheme of the Bill

The [General Scheme](#) of a Bill to establish a new independent statutory Authority to be known as the ‘Office for Fairness and Transparency in the Agri-Food Supply Chain’ was approved by Government on 22 March 2022.




The Joint Committee on Agriculture, Food and the Marine agreed to undertake PLS of the General Scheme following the request from the Minister. The Committee held three PLS meetings on the General Scheme (on 29 June 2022, 6 July 2022 and 13 July 2022).<sup>37</sup> In addition, it sought written submissions from a range of different stakeholders

The Joint Committee published its PLS findings in October 2022, in its [Report on the Pre-legislative Scrutiny of the Agricultural and Food Supply Chain Bill 2022](#).

The Joint Committee’s PLS report made a number of recommendations related to various parts of the General Scheme of the Bill. These are detailed in Table 3 overleaf.

As part of the Bill Digest process, the L&RS compares the recommendations made in the PLS report with their inclusion, partial or otherwise, in the subsequent Bill. We do this through liaison with the Department, in this case, DAFM, by asking the Department to outline the extent to which, in their view, each of recommendations of the Joint Committee influenced the drafting of the resulting Bill. Along with the Department’s input, the L&RS also assess the extent to which the PLS process impacted the drafting of the Bill. We do this, as set out in Table 2 below, by means of a ‘traffic light’ system, which for each recommendation allocates a green, orange or red light indicating respectively the extent to which it has been accepted in full, in part or is not reflected in the published Bill.



**Table 2: Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations**

L&RS categorisation of the Department’s response in the Bill to the Committee’s key issue	Traffic light dashboard used in Error! Reference source not found. to highlight impact of the Committee’s PLS conclusion
Key issue has clearly been accepted and is reflected in the Bill.	
The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue is unclear.	
Key issue has not been accepted or implemented in the Bill.	

<sup>37</sup> The L&RS prepared a [pre-hearing briefing paper](#) synthesising the policy context and highlighting some key issues around the General Scheme.




Table 3 below therefore shows for each recommendation the extent or otherwise it has been reflected in the Bill along with the commentary in each instance from the Department of Agriculture, Food and the Marine.




**Table 3: Traffic light dashboard comparing the Bill as published with Committee PLS recommendations**




Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill <sup>38</sup>	
In Part 1, the Committee notes that reference is made to business-to-business relationships, and believes that in order to fulfil its remit the Office would require knowledge of the full breadth of the supply chain. As such the scope should be broadened to include business-to-consumer relationships. It would be the Committee's preference that this would be achieved in the fullest manner through the transfer of competency from the Consumer Protection and Competition Commission of all functions relating to the sale of foodstuffs.		<p>Reference: Section 56 of the Bill</p> <p>The transfer of powers from the CCPC (Competition and Consumer Protection Commission) to the new Regulator is not considered appropriate as it would result in two competition and consumer protection authorities, with potential for duplication and overlap.</p> <p>As it stands the Bill provides for very strong powers of enforcement for the Agri Food Regulator regarding Unfair Trading Practices and will allow for additional UTPs to be introduced. The Regulator will liaise with the CCPC on relevant issues.</p> <p>It is open to the Regulator to bring to the attention of the CCPC any matters it considers to be relevant to competition law that arise in the course of its investigations or analysis.</p>
The Committee notes that in Head 7 the title of the Office is stated as 'the Office for Fairness and Transparency in Agri-Food Supply Chain'. The Committee further notes both that this title was not referenced in either the Programme for Government or during the consultation process and that stakeholders have expressed preference for a regulator. As such, the Committee believes that the title		<p>Reference: Section 8 of the Bill</p> <p>Taking into account the committee's recommendation, and given its regulatory functions, the name of the office has been changed to The Agri Food Regulator (An Rialálaí Agraibhia) in the published bill.</p>

<sup>38</sup> The response text in this column is taken directly from the Department of Agriculture, Food and the Marine's email communication to the L&RS on 10 January 2023. The responses were received from the Department following the routine request, as part of the preparation of Bill Digests, from the L&RS to Departments in respect of Bills that have undergone PLS and the extent to which the resulting Bill has adopted the recommendations made by the relevant Joint Committee.




Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill <sup>38</sup>
of the office as constituted should be titled the National Food Regulator.	
<p>The Committee welcomes the role and functions of the proposed Office listed under Head 8 and Head 9 of the General Scheme which includes investigation powers into suspected breaches of unfair trading practices and report regular analysis on price and market information with regards to the agricultural and food supply chain. However, the Committee notes that 9(1)(c) refers to the collection of publicly available price and market data in the agricultural and food supply chain. The Committee recommends that the proposed Office should also have the power to require market data that isn't publicly published. The Committee understands that market sensitive data does not need to be made publicly available however it must be available to the proposed Office if requested to ensure fairness in the food supply chain.</p> <p>The collection and analysis of such commercially sensitive information (or information that isn't publicly published) should be reinforced with a commitment that <i>'such information would be protected from public dissemination'</i>. This could help to foster confidence from the purchaser's and producer's side in the Office's work and make them more amenable to co-operating.</p>	<div data-bbox="767 421 831 488">—</div> <p>Reference: Section 12 of the Bill.</p> <p>Following the Committee's recommendation, a previous reference to publicly available information has been removed, meaning that the Regulator may request non-published information</p> <p>Section 12 of the Bill provides that the <i>"regulator shall publish analysis of information about price and market data relating to the agricultural and food supply chain in the State."</i></p> <p>In the context of investigating or enforcing complaints on prohibited unfair trading practices, the Office will be able to access all information relevant to the arrangements between the complainant and the purchaser, regardless of whether the information is publicly available or considered to be commercially sensitive, provided that it is linked to the investigation of a complaint (Section 76 refers).</p>
<p>The Committee recommends that under 'General functions and role of the Office' (Head 8) and 'Particular functions of Office' (Head 9) of the Bill, that the following is included:</p> <p><i>'conduct random inspections on suppliers and buyers to ensure continued compliance with the rules on unfair trading practices'.</i></p>	<div data-bbox="767 1662 831 1729">—</div> <p>Reference: Sections 14, 74 and 76 of the Bill.</p> <p>The Bill provides for inspections of premises and records without a requirement, when entering a premises, to suspect that a UTP is taking place.</p> <p>The Regulator will have the power to carry out inspections without having received a complaint or an allegation of an unfair trading practice.</p>

Commentary as per Committee report		Whether addressed (either in whole or in part) in the Bill <sup>38</sup>
<p>The Committee also believes that under Head 9 there is reason to oblige the Office to conduct and publish regular analysis and reports on comparable price and market information (where applicable) elsewhere in the EU, UK and among international trading partners. This could assist in comparing trends and determining whether domestic cartel-like behaviour could be taking place.</p>		<p>Reference: Section 12, paragraph 3 (c)</p> <p>Following the Committee's recommendation, the Bill now provides that:</p> <p><i>The Regulator may consider matters outside the State (including price and market data) in so far as they are or may be relevant to the situation in the State</i></p>
<p>In particular the Committee welcomes under Head 9 the Office's function of promoting awareness and conducting public information campaigns for the purpose of educating the public on unfair trading practices in this sector. It is crucial that the public understand where their food supply comes from and to understand the work of the primary producer in providing it through the supply chain.</p>		<p>Reference: Section 13 (2) (d) of the Bill provides that the Regulator will promote awareness.</p>
<p>Following discussions with stakeholders the Committee believes that the suggested composition of the board of 6 members listed under Head 10 of the General Scheme is too small to adequately represent different parts of the agri-food sector and supply chain. Other state bodies under the aegis of the Department of Agriculture, Food and the Marine such as Teagasc and Bord Bia have 11 members on their boards which includes representation from farming representative organisations. The Committee recommends that number of the proposed Office's board is expanded in line with the other state bodies and is made up of experienced representatives of participants involved throughout the agri-food food supply chain. The Committee would further recommend that an increased board size would warrant an increased quorum from the current 3.</p>		<p>Reference: Section 21 (1) and 27 (3) of the Bill</p> <p>Following the Committee's recommendation, the Board numbers have been increased from six (including Chairperson) to eight (including Chairperson) and the quorum was increased from three to five – section 21 (1) and Section 27 (3).</p> <p>The Bill provides that at least two members of the Board must be primary producers.</p>

Commentary as per Committee report		Whether addressed (either in whole or in part) in the Bill <sup>38</sup>
<p>Under Head 14 of the General Scheme with regards to the appointment of a Chief Executive to the proposed Office, the Committee recommends in line with Dáil Éireann Standing Orders 96(7) where the 'Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role' that the Chief Executive designate of the proposed Office must attend before the relevant Sectoral Committee to discuss their strategic priorities for the role. As stated by the General Scheme the purpose of this proposed Office is to provide fairness and transparency in the agricultural and food supply chain therefore it is vitally important that prior to the Chief Executive's appointment their strategic priorities for the role are discussed and considered with the Sectoral Committee. The Committee notes that under Head 11 the Minister has responsibility to designate a member of the Board as Chairperson. The Committee recommends that Oireachtas approval be required for such appointments through the Sectoral Committee.</p>		<p>Reference: Section 33, 35, 36 of the Bill</p> <p>The Bill provides for the CEO, <b>once appointed to the role</b>, to appear before Oireachtas Committees as required. It would not be appropriate for a CEO designate to appear before the Committee before taking up their role.</p> <p>The Board is responsible for the strategic direction of the Office, not the CEO, who reports to the Board and will operate under its direction.</p> <p><b>In accordance with Dáil standing order No. 96 (7), the Chairperson designate of the Office may be invited to appear before the relevant Oireachtas Committee.</b></p>
<p>The Committee recommends that under Head 17 of the General Scheme specific reference is made to the Sectoral Committee which shadows the Department of Agriculture, Food and the Marine of which this proposed Office will be under the aegis of. The Committee believes that the Bill should make it clear that the Chief Executive of the proposed Office will be required to attend before this Sectoral Committee when it is requested.</p>		<p>Reference: Section 36 (11) of the Bill.</p> <p>The Bill specifically names the select committee on Agriculture, Food and the Marine.</p>
<p>The Committee notes that the remuneration of the Chief Executive of proposed Office will be reported to the</p>		<p>Reference: Section 41 (2) (a) (ii) of the Bill</p> <p>Following the Committee's recommendation, the salary of the CEO is</p>



Commentary as per Committee report		Whether addressed (either in whole or in part) in the Bill <sup>38</sup>
Minister for Agriculture, Food and the Marine. However, the Committee recommends that reference is made in the Bill that the remuneration of the Chief Executive will be publicly published for transparency's sake and in line with other public service appointments.		specifically mentioned as an item that must be included in the Regulator's Annual report provided for in the Bill.
Under Head 38(4) of the General Scheme the proposed Office shall take necessary measures for the appropriate protection of the identity of the complainant where the complainant so requests. Following discussions with stakeholders the Committee recommends that this is amended to make it clear that the Office's default position should be to maintain confidentiality when dealing with the identity of a complainant or the information provided to it as part of the complaint, unless otherwise requested or consented to by the complainant.		Reference: Section 67 (4)(a) of the Bill. Following the Committee's recommendation, the reference to a request from the complainant has been removed from the Bill.
The Committee recommends that under Head 38 it be clarified that farmers organisations be allowed to make complaints to the Office of their own volition without the prerequisite that it be on the behalf of a supplier.		Reference: Section 67 (2) (b) of the Bill. Following the Committee's recommendation, the Bill now clearly provides for farming organisations to make complaints to the Office of their own volition.
The Committee recommends that 'in writing' is included to the text under Head 38(8) and 38(9) to read as:  <i>(8) Where the Office receives a complaint, it shall inform the complainant <b>in writing</b> within a reasonable period of time after the receipt of the complaint of how it intends to follow up on the complaint.</i>  <i>(9) Where the Office considers that there are insufficient grounds for acting on a complaint, it shall inform the complainant <b>in writing</b> of the reasons within a reasonable period of time after the receipt of the complaint.</i>		Reference: Section 67 (5) of the Bill. Following the Committee's recommendation, the term "In writing" has been added to the relevant sections of the Bill.



Commentary as per Committee report		Whether addressed (either in whole or in part) in the Bill <sup>38</sup>
<p>The Committee believes that clarity needs to be brought in respect of Head 41(4) <i>‘Where the parties to an independent alternative dispute resolution mechanism reach a full and final conclusion, the Office may consider the issue closed.’</i> The Bill does not follow up on what occurs when the alternative dispute mechanism fails to reach a full and final conclusion. The Committee recommends that a provision should be included that if the alternative dispute mechanism fails the Office will then resume consideration of the complaint.</p>		<p>Reference: Section 70 (4) of the Bill.</p> <p>Following the Committee’s recommendation, the Bill now states:</p> <p><i>“if the alternative dispute resolution concludes without reaching a full and final agreed outcome, the regulator shall resume the investigation or consideration of the complaint”</i></p>
<p>The Committee recommends that any proposals made by the Office under Head 43 to the Minister regarding proposals for legislation be disclosed in the Annual Report of the Office, and that the Minister be obliged to furnish the Oireachtas Sectoral Committee to such on an annual basis.</p>		<p>Reference: Section 41 (2) (a) (i) and Section 41 (4) of the Bill.</p> <p>Following the Committee’s recommendation, the Bill provides that the Regulator’s annual report must include <i>“the regulator’s recommendations to the Minister for legislation relating to any aspect of fairness and transparency in the agricultural and food supply chain”</i></p> <p>Additionally, paragraph 4 states that: <i>“As soon as practicable after receiving an annual report the Minister shall cause a copy to be laid before each House of the Oireachtas”</i></p>
<p>Under Head 50 of the General Scheme the time limit for prosecution for an offence under this Bill may be brought at any time 2 years after the date of the alleged commission of the offence. The Committee believes that this is a tight deadline as due to the nature of the business of the sector it may take some time before a complainant may be aware that they have experienced an unfair trading practice. The Committee recommends that this deadline is changed to at least 3 years after the date of the alleged offence to cater for a potential</p>		<p>Reference: Section 81 of the Bill</p> <p>Following the Committee’s recommendation the deadline for summary proceedings to be initiated has been changed to three years.</p>



Commentary as per Committee report		Whether addressed (either in whole or in part) in the Bill <sup>38</sup>
delay on the part of the complainant in bringing a complaint to the Office.		
The Committee recommends that the fine listed in Head 52(2)(b) of the General Scheme which is limited to €500,000 when a person commits an offence under sections 48(11) or 49(1) of the Bill is increased to €10 million or 10% of an operator's global turnover, whichever is greater, in order to act as a deterrent to larger operators in committing an offence under this Bill.	—	<p>Reference: Section 66 (b) (ii) and 80 (5) (b) of the Bill.</p> <p>Following the Committee's recommendation, the Bill increases fines to not exceeding the greater of €10,000,000 or 10 per cent of the aggregate turnover of the operator in the financial year in which the offence was committed.</p>
The Committee recommends that the new body shall be obliged to examine with a view to proposing mechanisms by which the purchase of food stuffs below the cost-of-production can be introduced.	—	<p>Reference: Sections 17 of the Bill.</p> <p>The Bill provides for <b>mechanisms</b> for the Office to examine and make recommendations on any aspect of the Agri food supply chain (which could include for example below cost selling, or selling below the cost of production).</p> <p><b>Section 17 (2)</b> in particular provides that the Minister may request the regulator to assess any matter likely to affect—</p> <ul style="list-style-type: none"> <li>(a) fairness and transparency in the agricultural and food supply chain,</li> <li>(b) the agricultural and food sector, or</li> <li>(c) any other matter relating to the functions of the regulator.</li> </ul> <p><b>Section 17 (3)</b> states that such a request from the Minister may require the regulator to—</p> <ul style="list-style-type: none"> <li>“(a) undertake or commission research and analysis, and</li> <li><b>(b) report and make recommendations in relation to policy matters or proposals for legislative change”</b></li> </ul> <p>and section 17 (4) states that</p> <p>“(4) the regulator may also advise the Minister, and do anything mentioned in <i>subsection</i></p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill <sup>38</sup>
	<p>(3), <b>on its own initiative.</b>"</p> <p>Section 17 (5) states that "In the performance of its functions under this section the regulator may identify and comment on constraints imposed by any enactment or administrative practice on the efficient operation of the agricultural and food supply chain in the economy of the State."</p>
<p>The Committee recommends full enforcement powers including confiscation of any evidence in a case where the Office believes or suspects a processor or processors are collaborating in price.</p>	<p></p> <p>Reference: Sections 14 and 80 of the Bill</p> <p>The Bill includes full enforcement powers for the Regulator to collect any information including financial information relating to any unfair trading practice that is under investigation.</p> <p>It is not possible to give sweeping powers to the regulator to confiscate evidence in respect of matters outside the legal scope of the Office. However, if in the course of an investigation of a UTP the Regulator suspects, for example, that there may be a non-compliance with competition law, the Regulator can and should provide that information to the Competition and Consumer Protection Commission.</p>
<p>The Committee recommends powers to be given to the Office to see all documentation of processor and retailer of prices achieved for product so as to ascertain the margins in all parts of market.</p>	<p></p> <p>Reference: Sections 12 and 80 of the Bill</p> <p>The price and market analysis and reporting function in the Bill will provide information on the market from which costs and margins should be capable of being estimated – e.g., following analysis of seller and buyer prices.</p> <p>In the context of an investigation of suspected or alleged UTP, the Regulator will have access to all papers and documentation relating to the suspected or alleged UTP, including contract arrangements with suppliers.</p>

**Source:** L&RS is grateful to the Department of Agriculture, Food and the Marine for providing their analysis of how the Committees recommendations have impacted on the Bill. The traffic light assessment represents the analysis of the L&RS.

## Principal provisions of the Bill

This section of the Bill Digest examines the main provisions of the Bill<sup>39</sup>, which contains 4 Parts and 86 sections. A thematic approach is taken in this section of the Digest to consider some of the key legislative proposals in terms of their policy background and relevant provisions in the Bill.

### Establishment of the regulator

The main purpose of the Bill is to establish a new independent statutory authority to promote the principles of fairness and transparency in the agricultural and food supply chain, including through a role in analysing and reporting on price and market data in Ireland. The new regulator will also assume responsibility for enforcement of the 2019 EU [Unfair Trading Practices \(UTP\) Directive](#) in relation to rules on unfair trading practices in business-to-business relationships in the agricultural and food supply chain.

### Policy background to establishing the regulator

Part 2 of the Bill provides for the establishment of An Rialálaí Agraibhia (The Agri-Food Regulator), including a chapter on the establishment of the new body. This reflects both a commitment in the current [Programme for Government](#) and an [EU policy](#) to strengthen the position of farmers position in the agricultural and food supply chain, improve market transparency in the agricultural and food supply chain, and tackle unfair trading practices.

Regarding the proposed regulatory model, the Bill provides for the establishment of a new state body. The Programme for Government had proposed a National Food Ombudsman (NFO) be established. There are a number of organisational forms that may be used when setting up any new state agency, including statutory corporations, executive agency (within ministerial department) etc.

Indeed, State agencies in Ireland take many different forms – they can be commercial or non-commercial, funded by the Exchequer or self-financed, at arm's length from the Minister or resembling a unit in a Department. Further, they serve many different functions, for example regulatory, advisory and/or service provision. The [Code of Practice for the Governance of State Bodies](#) (the 'Code') identifies three types of State bodies which it describes as follows:

1. **Commercial State bodies:** these are involved in commercial activities.
2. **Non-commercial State bodies:** these are bodies which have regulatory, developmental, service delivery or advisory roles.
3. **Regulatory bodies:** these have statutory recognition, and function in at least two of the following three areas of activity:
  - a. The formulation of goals, the making of rules, [and/or] the setting of standards;
  - b. Monitoring, gathering information, scrutiny, inspection, audit and evaluation; and
  - c. Enforcement, modifying behaviour, applying rewards and sanctions.

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<sup>39</sup> See Table 1 of this Bill Digest for a summary of each section of the Bill.

The Code further notes that State bodies typically have governing legislation which specifies, *inter alia*, how their Board and Chairperson are appointed.

Any new state body can be considered in the context of certain defining characteristics, including the body's legal form, function(s), funding, and accountability. In terms of function, organisations that have the authority, statutory or otherwise, to impose rules and sanctions on other public or private organisations are categorised as regulatory.<sup>40</sup> Agencies performing regulatory functions are often funded by levying charges on the bodies being regulated, though not in all cases.<sup>41</sup>

In this context, there has been some policy discussion around the optimal model to be applied to this new agri-food body. A [public consultation](#) on "the functions to be assigned to a new Office (National Food Ombudsman/Regulator)/Equivalent" during 2021 and an [Information Seminar on UTP Regulations and Office of National Food Ombudsman](#) (in June 2021) considered, *inter alia*, the model to be used for the new office. The [public consultation](#) focused on the proposed establishment of an independent Ombudsman, or a sectoral regulator, or equivalent independent authority, in line with the Programme for Government's commitment to establish a National Food Ombudsman. The 2021 [seminar](#) provided a [short preliminary overview of the submissions received in response to the public consultation on the establishment of the Office of National Food Ombudsman/Regulator](#). These proposed a number of different options for the new office:

"Submissions in the public consultation suggested that the enforcement authority would be the Competition and Consumer Protection Commission (CCPC), or an Ombudsman, or a new independent sectoral regulator".<sup>42</sup>

In addition, the [overview of the submissions to the consultation](#) noted that an ombudsman and a regulator perform their own specific functions and are not the same:

"An Ombudsman is someone who deals with complaints from members of the public about services they have engaged with. They are not regulators".<sup>43</sup>

Consideration of this issue has also featured in Dáil debates<sup>44</sup> and during PLS on the General Scheme to the Bill. Specifically, the Joint Committee on Agriculture, Food and the Marine [Report on the Pre-legislative Scrutiny of the Agricultural and Food Supply Chain Bill 2022](#) (October 2022) recommended that the title of the office as constituted should be the National Food Regulator.

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<sup>40</sup> [Irish State Administration Database, Codebook and Data description](#), June 2014.

<sup>41</sup> [Irish State Administration Database, Codebook and Data description](#), June 2014.

<sup>42</sup> Mason Hayes & Curran LLP (2021) Unfair Trading Practices in the Agricultural Sector - Proposed National Food Ombudsman or Regulator. Available at <https://www.mhc.ie/latest/insights/unfair-trading-practices-in-the-agricultural-sector-proposed-national-food-ombudsman-or-regulator>

<sup>43</sup> Department of Agriculture, Food and the Marine (2021) *Information Seminar on UTP Regulations and Office of National Food Ombudsman*. Available at <https://www.gov.ie/en/publication/information-seminar-on-utp-regulations-and-office-of-national-food-ombudsman/?referrer=http://www.gov.ie/en/publication/a1e6f-unfair-trading-practices-enforcement-authority/>

<sup>44</sup> See, for example, Dáil Éireann debate -Thursday, 12 May 2022. Vol. 1022 No. 1. Agriculture, Fisheries and Food Security: Statements. Available at <https://www.oireachtas.ie/en/debates/debate/dail/2022-05-12/30/>

## Relevant provisions in the Bill

There are a number of relevant provisions in the Bill regarding the establishment of the new regulator, particularly in relation to its purpose, proposed regulatory model, and accountability to the Oireachtas.

### Establishment of the regulator

Establishment of the regulator is provided for in sections 7 to 10 of the Bill. **Section 8** provides for the establishment of a new body to be known as An Rialálaí Agraibhia (referred to as the “regulator” in the Bill). This reflects many stakeholders’ views prior to publication of the Bill that the form of the new office should be strengthened, including the recommendation of the Joint Committee.

It would generally be considered important that regulatory bodies be independent in the performance of their functions. The independence of the regulator in the performance of its functions is enshrined in **section 9**. In addition, **section 10** provides that the regulator shall be a body corporate with its own legal personality, an official seal and the power to sue and be sued in its corporate name.

### Accountability of the regulator

A number of provisions in the Bill deal with the accountability of the regulator. These include sections on appearances before Oireachtas committees, provision of a three-year strategy statement and an annual work programme, and submission of an annual report to the Minister.

Appearing before Oireachtas committees to answer questions, including those regarding policy implementation, would be a key accountability mechanism for the new regulator. **Section 35** of the Bill provides for the attendance of the chief executive before the Committee of Public Accounts (PAC)<sup>45</sup> concerning certain financial matters as outlined in the section.

The Bill also envisages a role for other Oireachtas Committees in this regard, with **section 36** providing for attendance of the chief executive or chairperson before other Oireachtas Committees (Select or Joint) to discuss the general administration of the regulator.<sup>46</sup> This excludes matters relating to the general administration of the regulator that is, or is likely to be, the subject of proceedings before a court or tribunal in the State. Section 36 (11) makes explicit reference to the “Select Committee on Agriculture, Food and the Marine”.

This constitutes a form of Oireachtas oversight and accountability. Whether such sections in the Bill prove to offer sufficient accountability to the Oireachtas might depend on factors, including the scope for such appearances to focus on performance outcomes and policy of the new office (in addition to financial reporting), and whether reporting on its activities to a sectoral Committee (such as agriculture) is robust enough to adequately inform policy.

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<sup>45</sup> This appears in the Bill as “Attendance before Public Accounts Committee”.

<sup>46</sup> Head 17 of the General Scheme had provided for attendance of the Chief Executive before other Oireachtas Committees (Select or Joint), the business of which includes examination of policy relating to fairness and transparency in the agricultural and food supply chain, to discuss the general activities of the Office.

**Section 39** provides for the submission of a 3-year strategy statement by the regulator to the Minister, who should then lay this before the Houses of the Oireachtas. This should specify the key objectives, outputs and related strategies of the regulator, the manner in which the regulator shall assess its performance, a review of the outcomes of the previous strategy, and any other matters directed by the Minister.

Reviewing a strategy statement can help to ensure strategy aligns with intended policy (and is amended as appropriate) or to ensure performance indicators reflect objectives. From a parliament's point of view, it can also present an opportunity to identify problematic issues at the outset and be used as a benchmark for parliament's oversight. This is another form of accountability for the Oireachtas to explore.

An annual report on progress implementing strategy statements, including reporting on KPIs (key performance indicators), can aid in identifying achievements and possible issues with achieving KPIs, and also identify remedies as appropriate. For parliament, it can help to identify any misalignment between government policy and outcomes. **Section 41** provides that the regulator shall submit an annual report to the Minister who should then lay this before the Houses of the Oireachtas. It also specifies that it shall include recommendations to the Minister for legislation relating to any aspect of fairness and transparency in the agricultural and food supply chain, the remuneration of the chief executive, and any other information the Minister may direct. In addition, **section 40** provides that the regulator must also submit an annual work programme on the discharge of its functions to the Minister, including details of priorities and objectives for that year (and strategies to achieve those objectives).

### Board of the regulator

Provisions concerning membership of the regulator and provisions for meetings of the regulator are set out in the Bill. **Section 21** provides that the regulator shall have a board comprising a Chairperson and 7 ordinary members (at least 2 of which are to be primary producers) appointed by the Minister. **Section 27** provides for procedures and meetings of the regulator (where a quorum of 5 applies and decisions are by majority vote).

Membership of the Board has been increased from the General Scheme, which proposed (in Head 10) that the new body have a board comprising a chairperson and 5 members (2 of which are to be primary producers). Some stakeholder submissions (representing both primary producers and retail) received as part of the PLS process by the [Joint Committee](#) queried whether that size and composition in the General Scheme would be appropriate, as did the Joint Committee itself.

The [Code of Practice for the Governance of State Bodies](#) explains that (on page 31) “a fundamental duty of the Board [of a state body] is to ensure that a balanced, true and fair view of the State body's financial performance and financial position is made when preparing the annual report and financial statements of the State body and when submitting these to the relevant Minister”. The provision of accounts by the regulator to the Minister and signed accounts for audit to the Comptroller and Auditor General is set out in **section 47**.

### Functions of the regulator (including enforcement)

The Bill defines the functions of the Agri Food Regulator including in relation to price and market analysis and reporting and enforcement of unfair trading practices concerning the agricultural and food supply chain. The long title in the [General Scheme of the Agricultural and Food Supply Chain Bill 2022](#) which preceded the Bill, had previously described the role of the new body as follows:



- providing for principles of fairness and transparency in the agricultural and food supply chain;
- strengthening the position of farmers, fishers and other suppliers in the agricultural and food supply chain;
- enforcing unfair trading practice rules; and
- analysis and reporting of price and market data concerning the agricultural and food supply chain to help enhance market fairness and transparency.

The functions of the regulator are discussed in Part 2 of the Bill (particularly in sections 11 to 20).

### Policy background to functions of the regulator

The Unfair Trading Practices Enforcement Authority is currently the State's designated enforcement authority for enforcing the rules on unfair trading practices in business-to-business relationships in the agricultural and food supply chain. It is responsible for ensuring that fairness is observed all along the food supply chain. The role of the UTPEA is to:<sup>47</sup>

1. enforce the UTP Regulations and effectively deal with supplier complaints,
2. promote awareness of the establishment and of the role of the EA, and
3. provide guidance and advice to stakeholders on the UTP Regulations.<sup>48</sup>

### Enforcement function

The current policy of enforcement of the UTP Regulations, as performed by the UTP Enforcement Authority, is based on promoting and on-going monitoring of compliance while also responding to complaints received.<sup>49</sup> The Enforcement Authority itself notes that "promotion and guidance are considered to be a soft enforcement function, assisting many buyers with relevant information on their obligations under the UTP Regulations".

At present, part of the UTPEA's [enforcement policy](#) involves requesting implementation reports by larger buyers, although this feature extends beyond the requirements of the UTP Regulations:

"Annual Implementation reports are requested by the EA from the largest business buyers of agriculture and food products in the State to describe what measures they are taking to ensure compliance with the UTP Regulations.

While this reporting requirement is not included in Regulations, the EA considers the reporting of this information highly beneficial for the relevant businesses to enable their compliance, as well as providing a level of assurance to suppliers that they are taking appropriate actions".

In the context of monitoring and assessing compliance, the UTPEA states the following in its [enforcement policy](#):

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<sup>47</sup> Unfair Trading Practices Enforcement Authority (n.d.) *Unfair Trading Practices Enforcement Authority Activity Report 2021*. Available at <https://www.utp.gov.ie/media/utp/UTP%20Annual%20Activity%20Report%202021.pdf>

<sup>48</sup> See also the section "Background and policy context" on pages 17 to 30 for further information.

<sup>49</sup> Enforcement policy of the Unfair Trading Practices Enforcement Authority. Available at <http://www.utp.gov.ie/media/utp/UTP%20EA%20Enforcement%20Policy.pdf>

“Returns from businesses to the EA of their Implementation reports aids the monitoring of compliance efforts by the largest business entities with the Regulations.

The Implementation report returns inform a risk-based approach to inspections, including potential follow-up audits of claimed actions by buyers of agricultural and food products to ensure that they are compliant with the UTP Regulations”.

The UTPEA will respond to any complaint received as part of its [enforcement policy](#). The current [complaints process](#) outlines that a supplier of agricultural or food products who believes that they have been the subject of an unfair trading practice can provide details of their complaint in confidence to the UTPEA through a secure online complaint submission form on its website [here](#). While the UTPEA recommends providing unfair trading practices complaint details through the online form, complaints can also be made by email or phone. Following receipt of the complaint, the UTPEA will consider the information received and will revert within “a reasonable period of time” indicating how it intends to follow up on the complaint.<sup>50</sup>

In 2021, no complaints were received by the UTPEA concerning the UTP Regulations, and no investigation was opened by the UTPEA in the reporting period.<sup>51</sup>

### Information and engagement (price and market data)

As previously noted, one of the key functions of the regulator will be analysis and reporting of price and market data concerning the agricultural and food supply chain to help enhance market fairness and transparency. In this context, the [General Scheme](#) had previously noted that the purpose of this Bill is “to ensure the increased availability of market information with a view to strengthening the position of farmers, fishers and other suppliers in the agricultural and food supply chain against larger buyers with greater bargaining power”.

The [General Scheme](#) had elaborated on this in **Head 9 (1)** which states, *inter alia*, that particular functions of the Office shall include to:

- “(c) collect, analyse and report on publicly available price and market data in the agricultural and food supply chain;
- (d) publish regular analysis and reports on price and market information or contingency issues in regard to the agricultural and food supply chain; [and]
- (e) conduct and commission research, studies, surveys and analysis on matters relating to the functions of the Office and may publish such findings and reports as it considers appropriate (including studies and analysis from outside the State)”.

It is noted that the wording of Head 9 (1) (c) involves collecting, analysing and reporting on “publicly available price and market data in the agricultural and food supply chain”. In this context, it was not clear whether the new body would have any powers to pursue information it might require, including information not in the public domain, were the Bill to follow these wording. Some concerns were raised during PLS on the [General Scheme](#) about any association of this function with publicly available price and market data and whether that would prove a limitation on what the

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<sup>50</sup> Enforcement Authority website, *Making a Complaint*. Available at <http://www.utp.gov.ie/#Complaints>

<sup>51</sup> Enforcement Authority (n.d.) *Unfair Trading Practices Enforcement Authority Activity Report 2021*. Available at <http://www.utp.gov.ie/media/utp/UTP Annual Activity Report 2021.pdf>



new body can do in this respect, including to enhance transparency beyond what is already possible.<sup>52</sup>

The role of data in fostering market transparency was also previously considered in other discussions on the new office. The 'Overview of Submissions to NFO/new Office Consultation' presented at the [2021 UTP seminar](#) noted that 70% of respondents to the consultation were open to providing additional data to improve market transparency.

### Relevant provisions in the Bill

The general functions and role of the regulator are elaborated on in Part 2 of the Bill. These include its enforcement role.

### Fairness and transparency

The regulator is tasked, in **section 11**, with promoting fairness and transparency in the agricultural and food supply chain and in particular for farmers, fishers and small food businesses.

It has long been envisaged that the new body would meet the objective of promoting the principles of fairness and transparency in the agricultural and food supply chain, by, *inter alia*, performing a price and market analysis and reporting function. The regulator will bring greater transparency to the agricultural and food supply chain by carrying out analysis and regularly publishing reports on price and market data.<sup>53</sup>

### Information and engagement (price and market data)

**Section 12** provides that the regulator shall "publish analysis of information about price and market data" in the agricultural and food supply chain in Ireland. It also provides that the Regulator shall collect, analyse and regularly publish reports on price and market data relating to the agricultural and food supply chain, and generally regarding the agricultural and food sector in Ireland. In addition, it provides that the Regulator shall publish regular analysis and reports on contingency issues regarding the agricultural and food supply chain.

In discharging its functions under section 12, the Regulator may conduct and commission research and surveys, publish findings and reports, and consider relevant matters outside the State (including price and market data). The regulator must comply with requests by the Minister to study or analyse, and report on, any specified matter relating to the agricultural and food supply chain. It can, on its own initiative, conduct or commission a study or analysis of matters relating to the agricultural and food supply chain, and publish findings and recommendations.

### Compliance with unfair trading law

The regulator also has a role in encouraging compliance with, and raising awareness of, the rules on unfair trading practices provided for by or under the Bill.

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<sup>52</sup> For example, the analysis and reporting function of the new office was raised in the [IFA submission](#) to the Joint Committee, which stressed the need for the Office's reporting function on price and market data to include proper value chain analysis which outlines what portion the primary producer is receiving.

<sup>53</sup> Department of Agriculture, Food and the Marine press release, [Minister McConalogue welcomes Cabinet approval for the Agricultural and Food Supply Chain Bill 2022](#). 29 November 2022.

**Section 13** specifies that the regulator is responsible for enhancing understanding of and compliance with agri-food unfair trading law, including by:

- a) Encouraging fairness and transparency in the agricultural and food supply chain.
- b) Promoting fairness in trading practices through engagement and consultation with stakeholders.
- c) Publishing notices and guidelines containing practical guidance on compliance with agri-food unfair trading law and related matters.
- d) Promoting public awareness through public information campaigns about agri-food unfair trading law and related matters.
- e) Consulting and cooperating with other authorities (whether in the State or elsewhere) with responsibility for the promotion of trading fairness and transparency (whether in relation to the agricultural and food sector or otherwise).

### **Enforcement function**

**Section 14** of the Bill deals with the enforcement function of the regulator. It specifies that the regulator will assume responsibility for enforcing agri-food unfair trading law, and will in particular:

- a) Carry out inspections of buyers and suppliers.
- b) Investigate suspected breaches of agri-food unfair trading law.
- c) Promote, where appropriate, the use of alternative dispute resolution (ADR) procedures as a means of resolving disputes between buyers and suppliers.
- d) Bring proceedings for offences under the Bill.
- e) Refer cases to the Director of Public Prosecutions where the regulator believes that an indictable offence under the Bill has been committed.

The regulator will be empowered under section 14(3) to use its powers under the Bill to require a buyer to cease a prohibited contravention in cases where it finds that a buyer has contravened a provision of Agri-Food Unfair Trading Regulations.

Section 14(4) designates the regulator as the enforcement authority in accordance with Article 4 of the UTP Directive (concerning designated enforcement authorities). It provides that the regulator can take any actions it considers are required to fulfil its functions as the enforcement authority.

Section 14(5) provides for cooperation between the regulator and the European Commission and any other enforcement authorities in accordance with Article 8 of the UTP Directive (concerning cooperation amongst enforcement authorities), particularly regarding:

- a) Provision of mutual assistance to other enforcement authorities in cross-border investigations.
- b) Participation in annual meetings of enforcement authorities convened in accordance with Article 8(2) of the UTP Directive and actions taken for the implementation of recommendations adopted in accordance with same.
- c) Assisting the Minister in preparing reports for the purposes of Article 10(2) of the UTP Directive (concerning reporting).
- d) Assisting the Minister in complying with requests for additional information in accordance with Article 12(3) of the UTP Directive (concerning evaluation).

In performing functions under this section, the regulator will cooperate with other authorities (whether in Ireland or elsewhere) with responsibility for the enforcement of laws relating to supplier

protection and the promotion of fairness and transparency in the agricultural and food supply chain. Section 14(7) provides that references to an “enforcement function” under the legislation is a reference to a function under this section of the Bill.

Sections 74 to 79 deal with the power of authorised officers in relation to enforcement.

**Section 74** concerns the power to enter premises to inspect records. It provides that an authorised officer may, for the purposes of performing a function, “at any reasonable time” enter premises where the officer has reasonable grounds for believing that there are (a) records relating to agricultural and food products, or (b) anything used in connection with agricultural and food products.

Authorised officers will have the power under section 74, subject to certain conditions being satisfied, to search “premises” which is generally defined under section 3 of the Bill as including “land, buildings (including dwellings) and any structure (temporary or permanent) on land”. In addition, section 74(6) provides that in Chapter 2 of Part 4 of the Bill, “premises” includes a vehicle, vessel and aircraft. There are specific requirements that must be satisfied before entering dwellings<sup>54</sup> pursuant to the section. The section also sets out the timeframe for the use of search warrants issued by a District Court judge pursuant to the section.

**Section 75** provides that an authorised officer may enter premises if the officer has reasonable grounds for believing that (a) an offence under this Bill has been, is being, or is about to be committed on the premises, or (b) evidence of an offence under this Bill is likely to be found on the premises (or in anything on the premises). It also sets out relevant powers of the authorised officer to carry out such an investigation concerning an alleged offence under the Bill upon entering the premises. An authorised officer entering a premises under this section may, *inter alia*, search the premises.

**Section 76** concerns inspection powers and provides that an authorised officer may examine, inspect and require the production of records or any other thing related to an agricultural and food product; require the name and address of the owner or person in possession or control of such records or things; and provides for related matters regarding copies and ownership of records and ownership and use of premises (as explained in the [Explanatory Memorandum](#)).

**Section 77** provides for one or more persons to accompany an authorised officer exercising a function under Chapter 2 of Part 4. It also provides that the authorised officer or the person(s) accompanying them may bring any equipment or materials required. It also provides for matters relating to seizure of anything the authorised officer has reasonable grounds for believing might be evidence of an offence under the Bill. It also provides for the use of reasonable force to enter premises by an authorised officer

**Section 78** provides that an authorised officer may serve a compliance notice on a buyer in certain circumstances. It sets out details regarding the serving of such a notice and provides that it is an offence to damage, deface or remove a notice affixed on or near a premises in accordance with subsection 3(d) within 6 months of it being so affixed. It also requires that a compliance notice includes certain content (such as stating the grounds for the authorised officer’s being satisfied that there has been a contravention, specifying a date by which the buyer is required to take or refrain

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<sup>54</sup> The Bill does not appear to include a definition of “dwelling”.

from taking specified action for the purpose of ensuring compliance by the buyer with a provision mentioned in subsection (1), and information about the right of an appeal against the notice and the manner in which appeals shall be brought). An appeal against a compliance notice can be made by the buyer on whom a compliance notice is served to a judge of the relevant Circuit Court within 14 days of service of the notice. Subsection 9 provides that "A person who fails to comply with a compliance notice by the specified date shall be guilty of an offence".

**Section 79** creates offences concerning obstruction and the making of false statements. For example, it makes it an offence to obstruct, interfere with or impede an authorised officer in the exercise of their functions under the Bill. It will also be an offence to either knowingly or recklessly make statements to an authorised officer, concerning the exercise of the officer's functions, that are false or misleading in a material particular.

### Other functions

A number of other functions are provided for in Part 2 of the Bill, concerning:

- **Guidelines:** Section 15 provides that the regulator may issue guidelines for buyers on supplier protection and on trading practices. The Office may consult on draft guidelines with appropriate people. The section provides that guidelines under the section are admissible in evidence in court proceedings.
- **Review of codes:** Section 16 provides for the voluntary submission of a code of practice to the regulator for its review, by a person representing one or more buyers. Section 16(6) provides for the admissibility of codes of practice in court proceedings.
- **Information and advice:** Section 17 makes the regulator responsible for providing information and advice to the Minister about (a) the agricultural and food sector, and (b) agri-food unfair trading law. The Minister may seek advice on any matter which they consider is likely to affect:
  - a) Fairness and transparency in the agricultural and food supply chain,
  - b) The agricultural and food sector, or
  - c) Any other matter relating to the functions of the regulator.

The above may require the regulator to undertake or commission research and analysis; and make recommendations for legislative change or policy matters. The regulator may also undertake such measures on its own initiative. In the performance of its functions under this section the regulator may identify and comment on constraints imposed by any enactment or administrative practice on the efficient operation of the agricultural and food supply chain in the economy of the State.

- **Consideration of legislation:** Section 18 provides that the Minister may consult with the regulator regarding legislative proposals for fairness and transparency in the agricultural and food supply chain. The regulator is required to keep relevant regulations and statutory provisions under review and comply with any requests from the Minister in this regard. The regulator will make recommendations to the Minister for changing those regulations and provisions. The regulator shall consult any persons it considers appropriate or specified for that purpose by the Minister before making such recommendations.
- **Transfer of functions to regulator:** Section 19 transfers the functions of the UTPEA under the UTP Directive to the regulator on establishment day. It provides that anything commenced by the enforcement authority may be continued, including any legal

proceedings in so far as necessary or appropriate in connection with this transfer of functions.

## Unfair trading practices

This section looks at the policy background to unfair trading practices, in addition to relevant provisions in the Bill.

### Policy background to unfair trading practices

The existing policy and legislative framework underpinning the promotion of the principles of fairness and transparency in the agricultural and food supply chain includes the EU UTP Directive and related Statutory Instrument (No. 198 of 2021 transposing the UTP Directive – the UTP Regulations).

The [EU Directive 2019/633](#)<sup>55</sup> on unfair trading practices in the agricultural and food supply chain (the Unfair Trading Practices (UTP) Directive or ‘the Directive’) was adopted by the European Parliament and Council on 17 April 2019. EU countries were required to transpose the Directive into national law by 1 May 2021 and apply it six months later.<sup>56</sup> Some 15 of the 27 EU Member States notified their national implementing measures to the European Commission by 31 July 2021, whereby the Directive had been completely transposed, including Ireland.<sup>57</sup>

The rationale for the Directive includes the intention to address the issue of symmetric bargaining in the food supply chain:

“In adopting the 2019 directive, the EU recognised that asymmetry in commercial relationships may lead to the imposition of UTPs on producers in the agri-food sector. The latter, due to their weaker bargaining power, may be forced to accept unfair or onerous terms to continue to sell their produce to larger buyers.

The EU found that UTPs are less likely to occur when the negotiating parties have symmetric bargaining power. Although the 2019 directive represents the first time the EU has tackled UTPs in the agri-food sector, the new rules echo the EU’s regulation of unfair commercial practices that occur in business-to-consumer transactions.

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<sup>55</sup> [Unfair Trading Practices \(UTP\) Directive](#) (Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain.

<sup>56</sup> European Commission webpage, *Unfair trading practices in the food chain*. Available at [https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/market-measures/agri-food-supply-chain/unfair-trading-practices\\_en](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/market-measures/agri-food-supply-chain/unfair-trading-practices_en)

<sup>57</sup> European Commission (2022) *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the state of the transposition and implementation of Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain*. COM (2021) 652 final. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021DC0652>

Such unlawful conduct includes providing untruthful information to consumers (these rules are contained in Directive 2005/29 concerning unfair business-to-consumer commercial practices in the internal market)".<sup>58</sup>

The European Commission's [impact assessment](#) to the UTP Directive highlights a number of potential negative effects of UTPs, particularly for smaller operators. These can include a negative impact on profitability, the ability to compete fairly and capacity to invest. It also highlights past surveys which point to UTPs having a potential impact on turnover in the range of 1.5 to 1.8% (on pages 16-17):

"A series of surveys undertaken during the last few years shows that UTPs occurring in the food supply chain are seen as detrimental by a large majority of operators, in particular smaller ones. They perceive UTPs to endanger their profitability and ability to compete fairly and to affect their capacity to invest. They decrease the part of the added value generated that these operators would otherwise be able to appropriate. Qualitative research demonstrates suggests for instance that ex post unilateral changes to supply cause farmers and their organisations harm.

Literature also identifies negative welfare impacts, competition issues, investment and productivity effects, network effects and market failure. Concerning welfare effects, UTPs decrease the part of the added value generated that these operators would otherwise be able to appropriate with possible lower returns to suppliers and/or financial gains not necessarily passed on to the final consumer. Farmers, often already experiencing downward pressure on their incomes and a historically diminishing share of the added value accruing to them in the food supply chain, can ill afford being the subject of UTPs. UTPs are liable to have significant consequences in times of decreasing income support, increased price volatility and long-term trends of low commodity prices.

In the 2017 open public consultation, 94% of respondents agreed or partially agreed that such appreciably negative effects occurred in relation to farmers. 83% agreed they occur in relation to processors, 38% in relation to retail organisations, 35% in relation to retailers, 39% in relation to traders and 60% in relation to consumers. According to a 2013 survey of farmers and agricultural cooperatives, the estimated damage from UTPs amounted to EUR 10.9 billion per year. The cost effect on manufacturers of food products was estimated to amount to 0.5% of the turnover of the manufacturers participating in a survey in 2011, which would be equivalent to EUR 4.4 billion if extrapolated to the overall food industry turnover in that year. A specific consultation of undertakings in the food chain carried out in 2017 showed that 60% of the respondents considering themselves suppliers (farmers and processors mainly) stated that the commercial significance of UTPs represent more than 0.5% of the annual turnover. The weighted average of the modest number of suppliers who accepted to answer despite the "fear factor" to such consultation, can indicatively be estimated at 1.5 to 1.8% of their turnover, roughly in the same order of magnitude of previous surveys. While these numbers are based on perceptions, they are indicative of the magnitude of the problem."<sup>59</sup>

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<sup>58</sup> Law Society Gazette Ireland (2022) *Down on the farm*. Available at <https://www.lawsociety.ie/gazette/in-depth/farmers-and-unfair-trading-practices>

<sup>59</sup> Commission Staff Working Document Impact Assessment Initiative to improve the food supply chain (unfair trading practices) Accompanying the document Proposal for a Directive of the European Parliament and of the Council on Unfair trading practices in business-to-business relationships in the food supply chain {COM(2018) 173 final} - {SWD(2018) 91 final} - {SWD(2018) 93 final}. Available at



In April 2021, the Minister for Agriculture, Food and the Marine signed [Statutory Instrument No. 198 of 2021](#)<sup>60</sup> transposing the UTP Directive directly into Irish law before the 1 May deadline for transposition. Primary legislation is, however, required to establish the new office and to provide for functions that have been described as going “beyond the powers laid down in the UTP Directive”.<sup>61</sup> It is in this context, that the Bill has been published.

In addition, it may be of interest to note that the Commission published an [interim report on the state of the transposition and implementation of the UTP Directive](#) in October 2021. The European Commission shall carry out an evaluation of the Directive three years after the date of application of the Directive i.e., November 2024.<sup>62</sup>

### Unfair Trading Practices and the UTP Regulations

One of the key principles of the UTP Regulations is to protect farmers, farmers' organisations and other weaker suppliers of agricultural and food products against stronger buyers.<sup>63</sup> The Regulations aim to protect small suppliers in the agri-food sector in circumstances where larger buyers may have greater negotiating power through the creation of a list of unfair trading practices.<sup>64</sup> These UTPs are categorised as either prohibited (Black UTPs) or conditional (Grey UTPs). In addition, the Regulations provide for an enforcement authority in relation to the UTP Directive and these Regulations.

### Prohibited Black and Grey UTPs

The Minister for Agriculture, Food and the Marine is currently designated as the relevant enforcement authority in the State, under the UTP Regulations. The Minister created an interim UTP Enforcement Authority within the Department of Agriculture, Food and the Marine, pending (as stipulated by the current Programme for Government) the adoption of primary legislation to create a “National Food Ombudsman (NFO)”. Once established, this new body, which is proposed in this Bill, will succeed the Minister as the national enforcement authority for the Regulations.

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[https://ec.europa.eu/transparency/documents-register/api/files/SWD\(2018\)92\\_0/de00000000985628?rendition=false](https://ec.europa.eu/transparency/documents-register/api/files/SWD(2018)92_0/de00000000985628?rendition=false)

<sup>60</sup> Statutory Instrument No. 198 of 2021 (European Union (Unfair Trading Practices in the Agricultural and Food Supply Chain) Regulations 2021).

<sup>61</sup> Department of Agriculture, Food and the Marine press release, *Minister McConalogue reminds buyers of agricultural and food products of one-month deadline to meet their legal supply agreement obligations*. 28 January 2022. Available at <https://www.gov.ie/en/press-release/95b19-minister-mcconalogue-reminds-buyers-of-agricultural-and-food-products-of-one-month-deadline-to-meet-their-legal-supply-agreement-obligations/>

<sup>62</sup> Department of Agriculture, Food and the Marine (2022) [Regulatory Impact Assessment \(RIA\)](#).

<sup>63</sup> Enforcement Authority (n.d.) *Unfair Trading Practices Enforcement Authority Activity Report 2021*. Available at <http://www.utp.gov.ie/media/utp/UTP Annual Activity Report 2021.pdf>

<sup>64</sup> Arthur Cox (2022) *New Rules for the Agri-Food Sector*. Available at <https://www.arthurcox.com/knowledge/new-rules-for-the-agri-food-sector/>



**Text box 1: Black and Grey UTPs prohibited by the UTP Regulations****10 Black UTPs (prohibited in all circumstances):**

1. Payment later than 30 days for perishable agricultural and food products
2. Payment later than 60 days for other agricultural and food products
3. Short-notice cancellations of perishable agricultural and food products
4. Unilateral contract changes by the buyer
5. Payment not related to a specific transaction
6. Risk of loss and deterioration transferred to the supplier
7. Refusal of written confirmation of a supply agreement by the buyer, despite request of the supplier
8. Misuse of trade secrets by the buyer
9. Commercial retaliation by the buyer
10. Transferring the costs of examining customer complaints to the supplier

**6 Grey UTPs (prohibited unless previously agreed):**

1. The buyer returns unsold products to the supplier without paying for those unsold products
2. Payment by the supplier for stocking, display and listing
3. Payment the supplier for any discounts as part of a promotion
4. Payment by the supplier for marketing
5. Payment by the supplier for advertising
6. Payment by the supplier for staff of the buyer, fitting out premises

**Source:** Unfair Trading Practices Enforcement Authority website. Available at <http://www.utp.gov.ie/>

The UTP Regulations prohibit 16 specific unfair trading practices (see text box 1). In doing so, it distinguishes between 'Black and 'Grey' practices:

- **Black UTPs:** these 10 practices are prohibited in all circumstances. They can also be termed as unconditional UTPs.
- **Grey UTPs:** these 6 practices are prohibited unless previously agreed in clear and unambiguous terms by the parties in a supply agreement. They can also be termed as conditional UTPs.

## Agreements covered by the UTP Regulations

The Regulations apply to both oral and written agreements for the sale or supply of agricultural and food products by a supplier to a buyer where any one party is established in the EU.<sup>65</sup> The Regulations apply to business-to-business relationships in the agricultural and food supply chain, i.e. agreements between a 'buyer' and a 'supplier'. They do not apply to agreements between suppliers and private consumers.

Suppliers refer to certain people/groups of people who sell agricultural and food products. A '**supplier**' for the purposes of the UTP Regulations includes farmers, agricultural producers or any other groups thereof such as producer organisations or co-operatives.<sup>66</sup>

Buyers refer to certain people/groups of people who buys agricultural and food products. A '**buyer**' under the Regulations includes retailers<sup>67</sup>, wholesalers, food processors, food distributors and co-operatives when buying from primary producers.<sup>68</sup>

Relevant dates for application of the Regulations are 1 July 2021 for new agreements and 28 April 2022 for existing agreements. Specifically, the Minister for Agriculture, Food and the Marine signed the [Statutory Instrument No. 198 of 2021](#) to transpose the UTP Directive into Irish law on 28 April 2021 with effect from 1 July 2021, from when new contracts between suppliers and buyers need to be fully compliant with the rules; existing contracts must be fully compliant by 28 April 2022.<sup>69</sup>

It is the relative turnover of the supplier and the buyer involved (calculated by reference to annual turnover) that determines whether the Regulations apply to a particular agreement, rather than the absolute size of the buyer. The buyer must be larger than the supplier for the Regulations to apply and offer protection to the latter. The Regulations apply where both the buyer and the supplier to a particular transaction satisfy the relevant financial thresholds in one of the scenarios in table 4.

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<sup>65</sup> McCann FitzGerald LLP, *Reap What you Sow: Ireland Adopts Measures Tackling Unfair Trading Practices in the Food Supply Chain* (11 May 2021). Available at <https://www.mccannfitzgerald.com/knowledge/agri-food-and-drinks/ireland-adopts-measures-tackling-unfair-trading-practices-in-the-food-supply-chain>

<sup>66</sup> McCann FitzGerald LLP, *Reap What you Sow: Ireland Adopts Measures Tackling Unfair Trading Practices in the Food Supply Chain* (11 May 2021).

<sup>67</sup> In the context of what it views as inequalities in the food supply chain, the IFA submission to the Joint Committee notes that five main retailers control 91.2% of the Irish grocery market compared to a large number of farmers and fishers involved in primary production.

<sup>68</sup> Arthur Cox (2022) *New Rules for the Agri-Food Sector*. Available at <https://www.arthurcox.com/knowledge/new-rules-for-the-agri-food-sector/>

<sup>69</sup> Department of Agriculture, Food and the Marine (2022) [Regulatory Impact Assessment \(RIA\)](#).

**Table 4: Buyers' and suppliers' turnover thresholds for the Regulations to apply**

Supplier	Buyer
Less than €2 million	>€2 million
€2 million – €10 million	>€10 million
€10 million – €50 million	>€50 million
€50 million – €150 million	>€150 million
€150 million – €350 million	>€350 million
Less than €350 million	All buyers which are public authorities

**Source:** [Statutory Instrument No. 198 of 2021](#)

In the event the supplier or buyer is part of a group, the annual turnover of the group may be taken into consideration for the purposes of the turnover thresholds outlined above.<sup>70</sup>

A short preliminary overview of the submissions received in response to the 2021 [consultation](#) on the establishment of the Office of National Food Ombudsman/Regulator was presented at the [2021 UTP seminar](#). This noted that 65% of respondents to the consultation were of the view that categories of turnover should be changed. In addition, the following points were made:

- Turnover Values are too high relative to the size of companies in Ireland.
- Max turnover €350m should be increased.
- Include markets that might have monopoly/oligopoly powers.
- No minimum or maximum turnover - Office should have the powers to investigate complaints irrespective of the level of turnover.
- Max turnover €350m should not be increased.
- Turnover levels should not be changed.<sup>71</sup>

### Offences and fines under the UTP Regulations

Contravention of the Regulations on prohibited unfair trading practices is an offence, which may be prosecuted summarily by the Minister for Agriculture, Food and the Marine. A person who commits an offence under these Regulations is liable:

- on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months or to both, or

<sup>70</sup> Arthur Cox (2022) *New Rules for the Agri-Food Sector*. Available at <https://www.arthurcox.com/knowledge/new-rules-for-the-agri-food-sector/>

<sup>71</sup> Department of Agriculture, Food and the Marine (2021) *UTP Regulations and Overview of NFO Consultation Submissions*. Presentation at the [2021 UTP seminar](#). 25 June 2021. Available at <https://assets.gov.ie/152792/e08eb85c-395c-40ea-96a0-841b51ce5737.pptx>

- on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or to both.<sup>72</sup>

Suppliers making a complaint under the UTP Regulations can choose between filing a complaint with the enforcement authority in the Member State in which they are located or with the relevant authority in the Member State in which the buyer is located.<sup>73</sup>

### Consultation on the new office (2021)

The 'Overview of Submissions to NFO/new Office Consultation' presented at the [2021 UTP seminar](#) noted support for all Grey UTPs to be Black and for specific UTPs to be Black UTPs.

Other suggested changes included:

- Clear Guidelines needed for Grey
- More time needed to assess implementation/impact to consider all aspects of contracts and unforeseen consequences
- Option to change following review later
- Should deal with all Annex 1 and non-Annex 1 products and relevant non-food grocery products.
- Regulated practices covered by the existing Grocery Goods undertakings Regulations need to be maintained
- Office should deal with below cost selling
- Have an industry wide forum before recommendations made
- Recognise role of democratically elected supplier representatives

In addition, 70% of respondents were of the view that the list of UTPs is not sufficient. Other comments made as part of the consultation process included:

- Discrimination and retaliation including delisting related activities
- Below cost of production selling
- Unilateral imposition of quality standards
- Labelling/Marketing related
- More time needed to see how implementation operates
- Grocery Goods Undertakings regulations sufficient with UTPs

There was also strong support for the Office promoting ADR (85%).

### Relevant provisions in the Bill

Unfair trading practices are dealt with in Part 3 of the Bill. Sections 55, 56 and 57 deal with the scope of the Part, application of the Part and the power to make regulations respectively:

- **Section 55** specifies that Part 3 of the Bill provides for the prohibition of certain unfair trading practices and the enforcement of same.
- **Section 56** provides that the unfair trading practices shall apply to "anything done in relation to an agricultural and food product in the course of a business-to-business

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<sup>72</sup> Unfair Trading Practices Enforcement Authority website. Available at <http://www.utp.gov.ie/>

<sup>73</sup> McCann FitzGerald LLP, [Reap What you Sow: Ireland Adopts Measures Tackling Unfair Trading Practices in the Food Supply Chain](#) (11 May 2021).

relationship in the agricultural and food supply chain". The Minister may by regulations specify what matters are to be treated as "a business-to-business relationship" or "relating to the agricultural and food supply chain".

- **Section 57** is an enabling provision that allows the Minister to make regulations about business-to-business relationships in the agricultural and food supply chain under the Bill. It specifies what the Minister must take under consideration and have due regard to before issuing such regulations (which will be known as "the Agri-Food Unfair Trading Regulations"). Section 57 requires the Minister to have regard to Article 3 of the UTP Directive and to consult the Commission of the European Union. The [Explanatory Memorandum](#) explains that the Unfair Trading Practices included in [SI 198 of 2021](#) have been provided for in the regulation making powers.

Other provisions in Part 3 relate to issues including late payments, changes of supply terms, regulating contract arrangements, supply conditions and commercial malpractice.

**Section 58** provides for the creation of Agri-Food Unfair Trading Regulations regarding certain unfair trading practices specifically relating to **prohibited payments**, including:

1. Late payments for agricultural and food products (whether or not perishable).
2. Payments not related to the sale of the agricultural and food products.
3. Payment for deterioration or loss of products at the buyer's premises or after transfer of ownership to the buyer.
4. Charges for stocking, displaying or listing products, or making them available on the market.
5. The cost of any discounts sold by the buyer as part of a promotion.
6. Charges for advertising or marketing by the buyer.
7. Charges for fitting out premises used for the sale by the buyer of the supplier's products.
8. Payment of compensation for the cost of examining customer complaints.

**Section 59** provides for the creation of Agri-Food Unfair Trading Regulations concerning the regulation of **changes of supply terms**, including short notice cancellations of orders of perishable products. The Bill defines "perishable" agricultural and food products as meaning products that, by their nature or at their stage of processing, are liable to become unfit for sale within 30 days after harvest, production or processing. The Section also provides that Agri-Food Unfair Trading Regulations may prohibit a unilateral change to certain terms of a supply agreement.

**Section 60** provides for the creation of Agri-Food Unfair Trading Regulations concerning the **regulation of contract arrangements**, including but not limited to:

1. A prohibition of refusals to confirm in writing the terms of a supply agreement.
2. Forms of contract to be used between buyers and sellers.
3. The manner in which forecasts for the supply of products are prepared.
4. The means (including the provision of written notice) by which a contract for sale or supply of products may be varied, terminated or renewed.
5. Arrangements relating to the delivery of products.

6. Requirements concerning the inclusion of certain terms and conditions, including in relation to payment, promotion, wastage, and the resolution of a customer complaint.
7. Requirements concerning the inclusion of certain terms and conditions in new contracts or contracts being renewed.

**Section 61** provides for the creation of Agri-Food Unfair Trading Regulations concerning the **regulation of supply conditions**, including in regard to:

1. The manner and timeframe in which payments for agricultural and food products are to be made,
2. A prohibition of the return of agricultural and food products without paying for them or for their disposal.
3. The conditions under which a buyer, may or may not, require a supplier to obtain any goods or services from a third party from whom the buyer receives payment for the arrangement.
4. Arrangements regarding promotions of products and related activities.
5. Limitations on the obligation of suppliers to participate in promotions by buyers or similar activities.
6. Prohibitions on a buyer requiring a supplier to obtain any goods or services from a third party if the buyer receives payment for the arrangement.

**Section 62** provides for the creation of Agri-Food Unfair Trading Regulations concerning rules on **commercial malpractice**, including with regard to the prohibition of specified classes of misuse of trade secrets and the prohibition of acts of commercial retaliation against the supplier if the supplier exercises its contractual or legal rights, including the right to file a complaint, or cooperate, with an enforcement authority.

**Section 63** provides for the creation of Agri-Food Unfair Trading Regulations concerning compliance requirements including arrangements for the preparation and submission to the regulator of **annual compliance reports** by buyers and suppliers in respect of compliance with the Agri-Food Unfair Trading Regulations. The Agri-Food Unfair Trading Regulations may require the maintenance of specified records by trading partners in the agricultural and food supply chain in relation to the sale or supply of products. They may also specify the nature or type of information, documents or records that are to be maintained and kept by trading partners and the length of time for which such items shall be kept. The regulations may make provisions for the designation and training of staff in trading partners responsible for coordination of compliance with Agri-Food Unfair Trading Regulations and dissemination of information to other staff about their implementation.

**Section 64** provides for the inclusion in Agri-Food Unfair Trading Regulations of exemptions that apply in specified circumstances or for specified classes of buyer or supplier. Such exemptions may make reference, in particular, to:

- a) Public interest in, or benefit accruing from, the activities of a buyer,
- b) Healthcare providers, or
- c) Educational institutions participating in programmes promoting greater consumption of certain products.

**Section 65** provides for ancillary and transitional provisions that may be provided for in the Agri-Food Unfair Trading Regulations. This includes specifying the turnover disparity between buyers and suppliers at which a trading practice becomes unfair (which may include thresholds). Section 65 provides that the Agri-Food Unfair Trading Regulations may also specify categories of buyers

and suppliers, or of products, in respect of which particular unfair trading practices apply, and may include provision relating to services, ancillary to the sale of products, provided by the buyer to the supplier.

**Section 66** deals with the offence of an unfair trading practice and resulting penalties. It provides that a “person who contravenes or fails to comply with a provision of Agri-Food Unfair Trading Regulations that is specified in the Regulations to be a penal provision:

- a) to which this paragraph applies, commits an offence and is liable, on summary conviction to a class A fine, or
- b) to which this paragraph applies, commits an offence and is liable—
  - (i) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months, or to both, or
  - (ii) on conviction on indictment, to a fine not exceeding the greater of €10,000,000 or 10% of the aggregate turnover of the person in the financial year in which the offence was committed or to a term of imprisonment not exceeding 3 years, or to both.”

**Section 67** provides for the submission of complaints to the regulator, meaning “an allegation made to the regulator that a specified buyer has engaged in, or is engaging in, an unfair trading practice”. A complaint may be submitted by a) a supplier, b) a supply trade organisation, or c) another not-for-profit organisation on behalf of suppliers whom it represents. A supplier may make a complaint if either the supplier or the buyer is established in the State. Importantly, the section also provides for confidentiality measures aimed at protecting the complainant. Section 67(4) requires the Regulator to take steps to protect the identity of the complainant or their information where the complainant believes that disclosure of the information would be harmful to their interests. It also deals with communications between the complainant and the regulator, as well as grounds for why the regulator may decide not to investigate, or discontinue investigating, a complaint, which include:

- a) The complaint is frivolous or vexatious or was not made in good faith,
- b) The subject matter of the complaint is trivial,
- c) The unfair trading practice occurred too long ago to justify investigation,
- d) The complainant had an alternative and satisfactory means of redress, or
- e) The complainant has failed to respond to a request for further particulars of the complaint fully or within the time specified by the regulator

**Section 68** provides for the making of regulations imposing fees to be paid by a person making a complaint under this Bill. In making regulations under subsection (1) of section 68, the Minister shall have regard to the purpose of meeting expenses properly incurred by the regulator in the performance of its functions. Section 68 also provides that different rates may be prescribed in respect of a) different classes of persons liable to pay fees, or b) different classes of complaint. Regulations under this section may provide for, in particular:

- a) Rates of fees payable,
- b) The keeping of records and the making of returns by persons liable to pay fees, and
- c) The collection and recovery of fees.

**Section 69** provides for the conduct of investigations by the regulator, meaning an investigation of an alleged or suspected unfair trading practice. This may occur in response to a complaint or be carried out on the Regulator’s own initiative. It also sets out that the regulator may require buyers



and suppliers to provide information (including in writing) necessary to conduct investigations. Investigations are to be conducted and concluded within a reasonable period of time. When an investigation ends, the regulator shall determine any appropriate actions, including enforcement, for it to take in relation to the conduct to which the investigation related, and shall notify all relevant persons (including the person whose conduct was investigated, and the complainant in the case of an investigation responding to a complaint). The regulator may abstain from making a determination where doing so would risk revealing the identity of a complainant or would risk disclosing certain other information where the complainant considers that disclosure would be harmful to its interests.

**Section 70** provides for the promotion of alternative dispute resolution (ADR) mechanisms by the regulator for settling unfair trading disputes. Article 7 of the UTP Directive also promotes the use of ADR (such as mediation).

## Sanctions / penalties for offences

This section looks at the policy background to sanctions / penalties for offences and relevant provisions in the Bill.

### Policy background to sanctions / penalties for offences

Sanctions and penalties for offences are important including in the context of fostering compliance with rules on unfair trading practices. By way of background, and for the purposes of highlighting the evolution of legislative proposals in this area, some information on the treatment of this issue in the [General Scheme of the Agricultural and Food Supply Chain Bill 2022](#) which preceded the Bill is presented below.

The [General Scheme](#) had made provision for penalties for offences where there has been a breach of UTPs. Specifically, it provided, in Head 50, for a 2-year time limit for instituting proceedings. Head 51 provided that a director, manager, secretary or any other officer of a body corporate, or an individual purporting to act in such a capacity, may be held responsible on an individual basis for an offence under the Bill committed by a body corporate where the offence was committed with the relevant individual's consent, connivance or approval, or as a result of their neglect. In addition, Head 53 provided that a court should order a guilty party to pay the Office for the costs and expenses in relation to the investigation, detection and prosecution of the offence, unless the court is satisfied that there are special and substantial reasons for not so doing.

Head 52 set out fines and penalties for certain offences provided for under the Bill. It provides that a person who commits an offence under section 29(3) would be liable, on summary conviction, to a class A fine. A person who commits an offence under sections 48(11) or 49(1) would be liable:

- on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or to both, or
- on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or to both.

### Relevant provisions in the Bill

A number of provisions in the Bill relate to sanctions and penalties for offences.

**Section 80** provides that the Minister may make regulations concerning enforcement and supplementary matters. These include regulations concerning:

- a) The regulator's enforcement functions (including potential additional functions),
- b) The complaints procedures provided for under the Bill,
- c) The regulator's enforcement powers (including a power to hold hearings),
- d) Publications of decisions, offences, penalties and fines for non-compliance,
- e) The efficient use and operation of alternative dispute resolution mechanisms,
- f) Any additional agricultural and food products to be covered by the Bill,
- g) The collection of price and market information to address issues of lack of transparency and information asymmetry in the food supply chain, and
- h) The giving effect to EU legislation relating to unfair trading practices in the agri-food sector, or the reporting of market prices in the sector.

Section 80 also provides that a person who contravenes or fails to comply with a provision of regulations made under the section that is specified to be a penal provision commits an offence and is liable:

- on summary conviction to a class A fine, or
- on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months, or to both, or
- on conviction on indictment, to a fine not exceeding the greater of €10,000,000 or 10% of the aggregate turnover of the person in the financial year in which the offence was committed or to a term of imprisonment not exceeding 3 years, or to both.

**Section 81** provides for the time limit for instituting summary proceeding under this Bill (such proceedings may be instituted at any time within three years from the date on which the offence was alleged to have been committed).

**Section 82** provides that a person (such as a director, manager, secretary or any other officer of a corporate body or a person purporting to act in such a capacity) may be held responsible on an individual basis where the corporate body commits an offence under the Bill with the relevant person's consent, connivance or approval, or as a result of their neglect.

**Section 83** provides that a person who commits an offence under section 78(5) is liable, on summary conviction, to a class A fine. A person who commits an offence under any other provision of the Bill, other than an offence concerning unfair trading practices (section 66) or an offence created under regulations made under the Bill (section 80(5)) is liable:

- a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or to both, or
- b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years, or to both.

**Section 84** provides that a court shall order a person found guilty of an offence under the Bill to pay the regulator for the costs and expenses in relation to the investigation, detection and prosecution of the offence, unless the court is satisfied that there are special and substantial reasons for not so doing. A convicted person would be liable for the costs and expenses of the proceedings and investigation, in addition to and not instead of any fine or penalty the court may impose.

**Section 85** provides that the regulator may institute summary proceedings in the District Court.

**Section 86** relates to a fixed payment notice, which a designated authorised officer may issue to certain persons where reasonable grounds exist to believe that they are committing/have

committed an offence under section 66, section 78(5) or section 80 of the Bill, subject to certain conditions being satisfied as outlined in section 86.

## Financial aspects (levies and fees)

This section sets out the policy background to financial aspects (levies and fees) of the Bill and also discusses relevant provisions in the Bill.

### Policy background to financial aspects (levies and fees)

Provisions in the Bill provide for proposed fees for making complaints to the new regulator, and proposed levies on buyers which will contribute to the cost of enforcing laws concerning UTPs in Ireland. Discussions around levies and fees were part of the PLS of the [General Scheme](#), with some stakeholders voicing concerns around elements of same.

The [General Scheme](#) had provided for regulations imposing fees to be paid by a person making a complaint under the proposed legislation, which would be used to pay the expenses incurred by the office when performing its functions under this Bill. It further proposed that the Regulations may specify the rate of fees payable. During PLS, some stakeholder written submissions raised concerns about charging fees for complaints to the Office (including the [IFA](#)) and whether this might act as a deterrent to advancing a complaint.

The [General Scheme](#) had provided for the power to impose levies, which would contribute to the cost of enforcing rules on UTPs and pay for expenses arising from the discharge of the office's functions under the proposed legislation. During PLS, issues identified in relation to this legislative proposal included how the level of levies on buyers would be determined, including to ensure fairness and equity. In addition, there was also the issue of how the regulator might provide a reasonable level of predictability and clarity around the level of future levies.

### Relevant provisions in the Bill

**Section 49** provides for the power to impose levies which will contribute to the cost of enforcing rules on UTPs. The regulator may, with relevant Ministerial consent, make regulations prescribing levies to be paid by buyers who are subject to obligations under the Agri-Food Unfair Trading Regulations. Under section 49(5), where the regulator proposes to make regulations under this section, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of the draft has been passed by each House.

**Section 68** enables the Minister, with the consent of the Minister for Public Expenditure and Reform, to make regulations imposing fees to be paid by a person making a complaint under the Bill. Such regulations may provide for, inter alia, the rate of fees payable. Regulations under subsection (1) of section 68 may provide for, in particular:

- a) Rates of fees payable,
- b) The keeping of records and the making of returns by persons liable to pay fees, and
- c) The collection and recovery of fees.

Some level of flexibility is envisaged in relation to fees in that different rates may be prescribed in respect of a) different classes of persons liable to pay fees, or b) different classes of complaint.

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