

Consumer Rights Bill 2022

Bill No. 44 of 2022

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10 May 2022

Abstract

The main purpose of the Consumer Rights Bill 2022 is to amend and consolidate the current law on the rights and remedies in the main types of contract between traders and consumers. It transposes two Directives, the Digital Content Directive and the Sale of Goods Directive, which relate to contracts for the sale of goods and contracts for the supply of digital content or digital services. It also transposes elements of a third Directive, the Omnibus Directive, that relates to better enforcement and modernisation of EU consumer protection rules.

In addition to transposing EU provisions, it replaces Part IV of the *Sale of Goods and Supply of Services Act 1980* for contracts between traders and consumers in relation to service contracts. The Bill also amends and consolidates the law in relation to unfair terms in consumer contracts and provides for amendments to the *Consumer Credit Act 1995* to provide for rights and remedies in relation to certain hire-purchase agreements and consumer-hire agreements.



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This L&RS Bill Digest may be cited as:

Oireachtas Library & Research Service, 2021, *L&RS Bill Digest: Consumer Rights Bill 2022. Bill No. 44 of 2022.*

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Glossary and abbreviations

Table 1 Glossary and abbreviations.

Term	Meaning
The 1942 Act	Refers to the Central Bank Act 1942
The 1995 Act	Refers to the Consumer Credit Act 1995
The 2002 Act	Refers to the Communications Regulation Act 2002
The 2007 Act	Refers to the Consumer Protection Act 2007
The 2014 Act	Refers to the Competition and Consumer Protection Act 2014
The Bill	Refers to the <i>Consumer Rights Bill 2022</i>
The CCPC	Refers to the Competition and Consumer Protection Commission
The CCR	Refers to the Commission for Communications Regulation
The Central Bank	Refers to the Central Bank of Ireland
The Department	Refers to the Department of Enterprise, Trade and Employment
The EECC	Refers to the European Electronic Communications Code, see Directive (EU) 2018/1972 of the European Parliament and the Council establishing the European Electronic Communications Code
The GDPR	Refers to the General Data Protection Regulation, Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC
The Minister	Refers to the Minister for Enterprise, Trade and Employment
The Consumer Rights Directive	Refers to Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council
The Digital Content Directive	Refers to Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services
The Omnibus Directive	Refers to Directive (EU) 2019/2161 of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU as regards the better enforcement and modernisation of Union consumer protection rules
The Sale of Goods Directive	Refers to Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC
The Unfair Commercial Practices Directive	Refers to Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council

Source: L&RS analysis of the Bill

Table of provisions

A summary of the Bill's provisions is included in Table 2 below.

Table 2 Table of provisions of the Consumer Rights Bill 2022

Section	Title	Effect
Part 1: Preliminary and General		
1.	Short title and commencement	Standard provision that defines the short title of the Bill and provides for commencement by Ministerial order. The Bill will come into operation upon a commencement order being made by the Minister for Enterprise, Trade and Employment. Commencement orders may be limited to particular provisions of the Bill or purposes.
2.	Interpretation	Standard provision that provides for the definitions of various terms within this Bill. Defines "the Minister" as "the Minister for Enterprise, Trade and Employment".
3.	Regulations	Standard provision that provides for the making of regulations by the Minister. Regulations made under this Bill are required to be laid before each House of the Oireachtas as soon as possible after it is made and may be subject to a resolution in either House annulling the regulation, if passed within 21 days of the laying of the regulation.
4.	Making of contract	Provides that subject to certain specified enactments, a contract to which any of Parts 2 to 6 applies may be made in writing, by word of mouth or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.
5.	Contract terms may be more favourable to consumer	Provides that the Bill shall not be interpreted as precluding in a contract, terms that are more favourable to the consumer than the rights and remedies that are set out in the Bill.
6.	Powers of court in relation to remedies under Parts 2 to 4	Provides that where proceedings come before the District Court, Circuit Court or High Court, relating to a contract to which any of Parts 2 to 4 applies, the court shall have the power to make any of the following orders: <ul style="list-style-type: none"> • An order providing for the repair or replacement of goods; • An order providing for a reduction in the price of goods, digital content, a digital service or a service; • An order providing for a remedy for bringing digital content, a digital service or a service into conformity with the contract under which it is supplied; and • Any incidental or ancillary order as it thinks fit.
7.	Representations purporting to restrict rights of consumer: offences	Provides for an offence relating to making a representation that suggests that a right or the exercise of a right conferred by any of Parts 2 to 4, or an obligation or a liability arising under any of those Parts, is restricted or excluded otherwise than as provided for in the Bill. The penalty for this offence is set out in section 142: a person who commits an offence under the Act will be liable on summary conviction to a class A fine (a maximum of €5,000) or to imprisonment for no more than 12 months or both or on conviction on indictment to a fine no more than €60,000 or to imprisonment for no more than 18 months or both.
8.	Repeals and revocations	Provides for the repeal of the Acts set out in column (3) of Part 1 of Schedule 1 to the extent provided for in column (4) of that Part of that Schedule.

Section	Title	Effect
		Provides for the repeal of the statutory instruments set out in column (3) of Part 2 of Schedule 1 to the extent provided for in column (4) of that Part of that Schedule.
9.	Savings	Provides for saving provisions allowing for the continued application of certain regulations that are to be revoked and sections of Acts that are to be repealed or amended by the Bill, in certain specified circumstances.
Part 2: Sales Contracts		
Chapter 1: Interpretation and application (Part 2)		
10.	Interpretation (Part 2)	<p>Standard provision that provides for the definitions of various terms used in Part 2 of the Bill.</p> <p>Provides that words or expressions used in this Part that are also used in the Sale of Goods Directive have the same meaning.</p> <p>Provides that the courts construe Part 2 in a manner that gives effect to the Sale of Goods Directive and have regard to its provisions for this purpose.</p>
11.	Sales contracts	<p>Provides more detail in relation to what is meant by the term “sales contract” in this Bill.</p> <p>It also provides that a sales contract may be either a transaction referred to as “a sale” or a transaction referred to as “an agreement to sell” and defines each of these terms.</p> <p>It also provides for where a sales contract may be absolute or conditional and clarifies that a contract is not a conditional sales contract if it is a hire-purchase agreement (as defined in the 1995 Act).</p>
12.	Application (Part 2)	<p>Provides for the application of Part 2 to specified contracts that are concluded between a trader and a consumer.</p> <p>These contracts include:</p> <ul style="list-style-type: none"> • Sales contracts; and • Single contracts between traders and consumers including elements consisting of the sale of goods in combination with: <ul style="list-style-type: none"> (i) the supply of digital content, (ii) the supply of a digital service, or (iii) the supply of a service, insofar as digital content or a digital service is supplied with goods under a single contract, and the digital content or digital service is incorporated in or inter-connected with the goods in such a way that the absence of the digital content or digital service would prevent the goods from performing their functions. <p>It also provides that Chapter 5 only applies where there is a commercial guarantee in respect of the goods sold under the sales contract.</p> <p>It also provides that Part 2 does not apply to contracts intended to operate as a mortgage, pledge, charge or other security, or made by deed for which the sole consideration is the consideration imported by the deed. Part 2 (with the exception of Chapter 4) does not apply to a tangible medium that serves exclusively as a carrier for digital content.</p> <p>It also provides for a presumption that where doubt exists as whether the supply of incorporated or inter-connected digital content or an incorporated or inter-connected digital service forms part of a single contract, the digital content or digital service shall be presumed to form part of the contract irrespective of whether the consumer is obliged to consent to a licensing agreement with a person other than the trader in order to access the digital content or digital service.</p>

Section	Title	Effect
13.	Power of Minister to extend application of Part 2	<p>Provides for the Minister to extend the application of Part 2 by way of regulations, to apply to contracts for the sale of goods with digital elements under which the consumer:</p> <ul style="list-style-type: none"> • does not pay or undertake to pay the price of the goods; and • provides or undertakes to provide personal data to the trader, other than where personal data is processed by the trader for the purpose only of supplying the goods with digital elements in accordance with this Part or complying with any other legal requirement to which the trader is subject. <p>It also provides that such regulations may only be made where the Minister is satisfied, following consultation with such persons as the Minister considers appropriate, that such contracts are being concluded on a significant scale and the regulation of such contracts are in the interests of consumer protection and fair competition.</p>
Chapter 2: Consumer rights in sales contracts		
14.	Right to terminate sales contract where trader has no right to sell	<p>Provides that at the time of transfer of ownership of goods under a sales contract, the trader must ensure they have the right to sell the goods. Where a trader does not have the right to sell the goods, the consumer will have a right to terminate the contract. Such right of termination must be exercised in accordance with section 28, while a trader must comply with their obligations under section 30. In a dispute, it is the trader who must show they had the right to sell the goods.</p>
15.	Goods to be in conformity with sales contract	<p>Provides that the goods delivered to a consumer as part of a sales contract are to be in conformity with the sales contract. For goods to be in conformity they must meet the requirements of sections 16 to 18, and not be excluded by virtue of incorrect installation as set out in section 19.</p> <p>Where goods are delivered that are not in conformity, the consumer will have the right to remedies provided for in Chapter 3 of Part 2.</p> <p>Subsection (4) provides a definition of “relevant time” for the purposes of this section.</p>
16.	Goods to be free from charge and other encumbrance	<p>Provides that a trader is required to ensure that when ownership of goods is to be transferred:</p> <ul style="list-style-type: none"> • the goods are free from any charge or other encumbrance (other than a charge or encumbrance that has been disclosed to the consumer prior to entering the sale contract); and • that the consumer will enjoy quiet possession of the goods save insofar as it may be disturbed by a person entitled to benefit from any charge or encumbrance as has been disclosed prior to entering into the sales contract. <p>Subsection (2) provides that where a sales contract shows or implies that only a limited title to the goods be transferred that the trader or a third person may have:</p> <ul style="list-style-type: none"> • the trader must disclose all charges or encumbrances known to the trader, prior to the consumer entering into the sales contract; and • the consumer’s quiet possession of the goods will not be disturbed by the trader, the third person, or a person claiming through or under the trader or the third person unless that person is claiming under a charge or encumbrance that was disclosed to the consumer prior to entering into the sales contract. <p>Subsection (3) provides for circumstances where the consumer shall have the right to remedies set out under section 23.</p>

Section	Title	Effect
		Subsection (4) provides that in cases of dispute it will be for the trader to show that the requirements under subsections (1)(a) and (b), and (2)(a) and (b) have been complied with.
17.	Subjective requirements for conformity with sales contract	<p>Provides that goods under a sales contract must meet the following subjective requirements:</p> <ul style="list-style-type: none"> • that they are of the description, type, quantity and quality, and possess the functionality and features, specified in the sales contract; • that they are fit for purpose; • that they are delivered with the necessary accessories and instructions specified in the sales contract; and • that they are supplied with updates as specified in the sales contract. <p>It also provides for information requirements relating to distance contracts and off-premises contracts.</p> <p>Subsection (4) provides for the circumstances in which spare parts and an adequate after-sales service is required to be made available by the trader.</p>
18.	Objective requirements for conformity with sales contract	<p>Provides that goods under a sales contract must meet the following objective requirements:</p> <ul style="list-style-type: none"> • that they are fit for all the purposes for which goods of the same type would normally be used, taking into account relevant legal, technical or industry standards; • that they are of the quality and correspond to any description of a sample that was made available by the trader prior to the conclusion of the sales contract; • that they are delivered with any accessories and instructions that the consumer may reasonably expect to receive; and • that they are of the quantity and possess the relevant qualities and features, (such as durability, functionality, compatibility and security) for goods of the same type, given the nature of the goods and any public statement made particularly in advertising or on labelling. <p>It also provides for requirements for traders in respect of the supply of updates in relation to sales contracts for the sale of goods with digital elements to maintain conformity.</p> <p>It also provides for circumstances where the trader will not be liable for a lack of conformity, such as:</p> <ul style="list-style-type: none"> • where the consumer fails to install the update; and • where at the time of the conclusion of the sales contract, the consumer was informed of a deviation from subsections (1), (4), (5) or (6) arising from a restriction resulting from a restriction resulting from a violation of an intellectual property right or any other right of a third person, which was accepted by the consumer.
19.	Incorrect installation of goods	Provides that any lack of conformity arising from the incorrect installation of goods will be treated as a lack of conformity where incorrect installation of the goods has been carried out by the trader, or by the consumer due to following defective installation instructions provided by the trader.
20.	Implied terms of sales contract	Provides that sections 14, 16, 17, 18 and 19 are to be treated as implied terms in every sales contract.
21.	Liability of trader under sales contract	Provides for the liability of a trader to the consumer for any lack of conformity with the goods under the sales contract.

Section	Title	Effect
22.	Burden of proof under sales contract	<p>Provides that during the first 12 months from when the goods were supplied, any lack of conformity shall be presumed to have existed at the time when the goods were delivered, unless the contrary is proven, or this presumption is incompatible with the nature of the goods or lack of conformity. To rely on this presumption the consumer need only prove that the goods are not in conformity with the sales contract and that the lack of conformity with the sales contract became apparent during the relevant 12 month period.</p> <p>It also provides that where a sales contract for the sale of goods with digital elements provides for the continuous supply of the digital content or digital service for a specified period, the burden of proof as to whether the digital content or digital service was in conformity with the sales contract during that period shall be on the trader for any lack of conformity which becomes apparent during that period.</p>
Chapter 3: Consumer remedies in sales contracts		
23.	Right to remedies under sections 24 and 25	<p>Provides for the consumer to have the right to remedies, including a short-term right to terminate sales contract and a right to repair or replacement, where goods are not in conformity with the sales contract.</p> <p>It also provides for when the consumer may choose between the rights to repair or replacement and specifies circumstances in which a trader may refuse to bring goods into conformity with the sales contract.</p>
24.	Short-term right to terminate sales contract	Provides for a 30 day limitation period in which the short-term right to terminate a sales contract must be exercised.
25.	Repair or replacement of goods	<p>Provides for a number of requirements in relation to the carrying out of repairs or replacing goods. These include:</p> <ul style="list-style-type: none"> • an obligation on traders to carry out repairs or replacement free of charge; • an obligation to carry out any repairs or replacement within a reasonable period after being informed of any lack of conformity; • an obligation on the consumer to make the goods requiring repair or replacement available to the trader; and • an obligation where goods have been installed and are to be removed for repairs, an obligation on traders to install replacement goods and to bear the costs of removal and installation. <p>It also provides the Minister with the power to make regulations specifying what is to be regarded as a “reasonable period” for specific categories of goods in respect of their repair or replacement.</p>
26.	Right to proportionate reduction in price and to final termination of sales contract	<p>Provides for the consumer to have the right to a proportionate reduction in price and to final termination of a sales contract, in circumstances relating to a failure to bring goods back into conformity following the exercise by the consumer of the right to repair or replacement.</p> <p>The right to final termination of the sales contract does not arise if the lack of conformity is minor.</p> <p>It also provides that where some (but not all) of the goods to which the sales contract relates are not in conformity with the sales contract, the consumer may exercise this right only in relation to:</p> <ol style="list-style-type: none"> a) the goods that are not in conformity with the sales contract; and b) any other goods that the consumer acquired with the goods that are not in conformity with the sales contract, if the consumer cannot reasonably be expected to keep only the goods that are in conformity with the sales contract.

Section	Title	Effect
27.	Price reduction: sales contract	Provides for the procedures that apply in relation to the right of a price reduction proportionate to the decrease in the value of the goods received by the consumer compared with the value that the goods would have if they were in conformity with the sales contract.
28.	Obligations of consumer in event of termination of sales contract	<p>Provides for a series of obligations on consumers where they exercise the right of termination of the sales contract under sections 14(2), 23(1), 26(2)(b), 29(1) or 37(2)(a).</p> <p>The consumer is required to terminate the contract by sending a statement to the trader informing the trader of the decision to terminate the contract, and to return the goods to the trader at the trader's expense.</p> <p>A consumer who fails to comply with these requirements will be liable in damages for any loss suffered by the trader arising from the failure.</p>
29.	Remedies where contract also provides for supply of digital content etc.	<p>Provides for remedies of termination or receipt of a reduction in price where a contract for sale of goods also provides for the supply of digital content.</p> <p>These remedies will apply where the consumer would be entitled to terminate the contract under this Part if it were a contract for the sale of goods only, and the value of the digital content, digital service or service to the consumer would be materially reduced in the absence of the goods.</p>
30.	Obligations of trader where sales contract terminated	Provides for obligations in respect of reimbursement by the trader of the price paid for goods and any costs incurred by the consumer in returning goods to the trader, where a sales contract has been terminated under sections 14(2), 23(1), 26(2)(b), 36, 37.
31.	Time limits and means of reimbursement by trader: sales contract	<p>Provides for a 14 day limitation period during which the trader is required to reimburse the consumer, where such arises under sections 27(4) and 30(2).</p> <p>A trader is also required to use the same means of payment as the consumer used to pay for the goods unless the consumer expressly agrees otherwise and provided that the consumer does not incur any fees as a result of such reimbursement.</p> <p>A failure to comply with these requirements will result in the trader being liable in damages for any loss suffered by the consumer arising from the failure.</p>
32.	General right of consumer to withhold payment under sales contract	Provides for a general right of a consumer to withhold payment of any outstanding part of the price, where a trader fails to deliver goods that are in conformity with the sales contract. The right is to be exercised by the consumer by sending a written statement expressing the consumer's decision to exercise this right.
33.	Effect of termination of sales contract on ancillary contract	<p>Provides that where a consumer terminates a sales contract in accordance with section 28, any ancillary contract shall be automatically terminated without any cost to the consumer.</p> <p>An "ancillary contract" is defined as "another contract concluded between that consumer and that trader, or that consumer and a third party under which the trader, or in pursuance of arrangements made between the trader and a third party, the third party supplies to the consumer goods, digital content, a digital service or a service related to the principal contract."</p>
34.	Consumer's right to pursue other remedies	<p>Provides that the remedies provided for in this Chapter and Chapter 4 do not interfere with the consumer's right to pursue other remedies (without recovering twice for the same loss), such as:</p> <ul style="list-style-type: none"> • claiming damages; • relying on the lack of conformity with the contract against a claim under the sales contract by the trader for payment of the price;

Section	Title	Effect
		<ul style="list-style-type: none"> • seeking to recover money paid to the trader for goods that do not comply with the requirements of this Part; • having a lack of conformity of the goods with the sales contract remedied elsewhere and recovering from the trader all reasonable costs incurred in having the lack of conformity so remedied; or • an order for specific performance under section 52 of the Sale of Goods Act 1893 in an action for breach of contract to deliver specific or ascertained goods.
Chapter 4: Other rules in sales contracts		
35.	Passing of risk	Provides for the passing of risk in relation to when a sales contract is concluded. The goods remain at the trader's risk until the consumer or a carrier commissioned by the consumer (and not proposed by the trader) acquires physical possession of the goods.
36.	Delivery of goods under sales contract	<p>Provides that the trader shall deliver the goods to the consumer upon conclusion of the sales contract by transferring physical possession without undue delay and not later than 30 days following conclusion of the sales contract.</p> <p>Subsection (3) provides that if the trader does not deliver the goods the consumer is required to call upon the trader to make the delivery within an appropriate additional period.</p> <p>Subsection (4) provides that subsection (3) does not apply where the trader has refused to deliver the goods, where the delivery within the period agreed is essential taking into account the relevant circumstances at the time the sales contract was concluded, or where the consumer has informed the trader prior to conclusion of the sales contract that delivery by a specified date is essential.</p> <p>Subsection (5) provides for the circumstances where the consumer will have a right to terminate the sales contract in respect of failure to deliver the goods.</p> <p>Subsection (6) provides that where a consumer exercises the right to terminate under subsection (5) that right must be exercised by the consumer in accordance with section 28, and the trader must comply with the obligations set out in section 30.</p>
.	Instalment deliveries	Provides that unless specifically agreed, the consumer is not bound to accept delivery of the goods under a sales contract by instalments. It also provides for the right of consumer to exercise the right to terminate in respect of non-conforming goods in respect of one or more instalments and the circumstances where such right is limited to the non-conforming goods delivered in that instalment (or those instalments) only.
38.	Right of redress of trader	Provides for the trader to have a right of redress and to pursue remedies against a person constituting a previous link in the chain of transactions relating to the sales contract who is liable for a lack of conformity, where the trader is liable to the consumer because of a lack of conformity with the sales contract resulting from an act or omission by the person constituting a previous link in the chain of transactions relating to the sales contract.
39.	Exclusion or limitation of liability of trader (Part 2)	<p>Provides that a trader's liability under the following provisions may not be contractually excluded or restricted:</p> <ol style="list-style-type: none"> a) section 14 (right to terminate sales contract where trader has no right to sell); b) section 15 (goods to be in conformity with sales contract); c) section 16 (goods to be free from charge and other encumbrance); d) section 17 (subjective requirements for conformity of goods with sales contract); e) section 18 (objective requirements for conformity of goods with sales contract);

Section	Title	Effect
		<p>f) section 19 (incorrect installation of goods); g) section 20 (implied terms of sales contract); h) section 21 (liability of trader under sales contract); i) section 22 (burden of proof); j) section 35 (passing of risk); k) section 37 (instalment deliveries); l) section 43 (right of action pursuant to commercial guarantee); m) section 46 (rights of recipient of gift); n) section 47 (rights of certain users of motor vehicle which is not in conformity with sales contract).</p> <p>It also provides that any term which purports to exclude or restrict a trader's liability in such fashion, will not be binding on the consumer.</p>
Chapter 5: Commercial guarantees		
40.	Liability for commercial guarantee	<p>Provides that when a guarantor (defined in section 10 as a producer, trader or any other person provides a commercial guarantee under a sales contract) that guarantee shall be binding.</p> <p>Subsection (2) provides that where a producer offers the consumer a commercial guarantee of durability the producer will be liable directly to the consumer for the repair or replacement of the goods.</p> <p>Subsection (3) provides that if the conditions set out in the commercial guarantee statement are less advantageous than those specified in the advertising for the goods, the commercial guarantee shall be binding under the more advantageous conditions, unless prior to the conclusion of the sales contract, the advertising was corrected to reflect the conditions of the commercial guarantee statement.</p>
41.	Liability of trader for other guarantor's commercial guarantee	<p>Provides for the liability of a trader as if they were the original guarantor, where they give the consumer a commercial guarantee of another guarantor, save where the contrary is expressly indicated to the consumer.</p> <p>Subsection (2) provides for a presumption that the trader is not liable to the consumer under a commercial guarantee from another guarantor, where the trader has given their own commercial guarantee to the consumer.</p>
42.	Liability under commercial guarantee to subsequent consumers	<p>Provides for the application of sections 40 and 41, where a commercial guarantee is provided under a sales contract and during the period of the guarantee the goods are acquired by another consumer.</p>
43.	Right of action pursuant to commercial guarantee	<p>Provides consumers with a right of action against guarantors or others subject to the observance of the guarantor's guarantee, who fail to comply with the terms of a guarantee, with such a failure treated as a breach of warranty. Where such an action is brought, the court may award damages to the consumer or provide the guarantor or person liable for the observance of the guarantee the opportunity to perform the required obligations if the guarantee, as specified by the court.</p>
44.	Provision and content of commercial guarantee statement	<p>Provides for commercial guarantees to be provided on a durable medium, in plain language and is required to include the following information:</p> <ul style="list-style-type: none"> • a clear statement that the consumer is entitled by law to remedies from the trader free of charge in the event of a lack of conformity of the goods with the sales contract and that those remedies are not affected by the commercial guarantee; • the name and address of the guarantor; • the procedure to be followed by the consumer to obtain the implementation of the commercial guarantee; • the designation of the goods to which the commercial guarantee applies; and • the conditions of the commercial guarantee.

Section	Title	Effect
45.	Exclusion or limitation of rights of consumer under commercial guarantee	Provides that a commercial guarantee cannot exclude or limit the rights of the consumer, impose additional obligations beyond those set out under the sales contract, or purport to make the guarantor the sole authority in respect of determining the conformity of goods with the sales contract or whether the consumer is otherwise entitled to make a claim under a commercial guarantee.
Chapter 6: Other third party rights		
46.	Rights of recipient of gift	Provides that when a consumer gives goods acquired under a sales contract to another consumer as a gift, that consumer will have the same entitlements to rights and remedies under this Part as the consumer who is a party to the sales contract.
47.	Rights of certain users of motor vehicle	Provides that where a person uses a motor vehicle with the consent of the consumer, and that motor vehicle was purchased under a sales contract, is not in conformity with the sales contract and the lack of conformity render it a danger to the public, that person may bring action for damages against the trader for the lack of conformity as if they were the consumer. It also provides for a definition of a “motor vehicle” and that the Minister may make regulations to expand the range of types of vehicle that come under this definition.
Part 3: Digital Content Contracts and Digital Service Contracts		
Chapter 1: Interpretation and application (Part 3)		
48.	Interpretation (Part 3)	This sets out key definitions relating to Part 3 of the Bill, including for: <ul style="list-style-type: none"> • ‘Digital Directive’ (Directive (EU) 2019/770) • ‘digital environment’ • ‘free of charge’ • ‘integration’ • ‘number-independent interpersonal communications service’; and • ‘price’ <p>It also clarifies that references to a digital content or digital service being in conformity with a contract is in accordance with section 52(2) below.</p> <p>It also provides that words or expressions used in Part 3 that are also used in the Digital Directive have the same meaning, unless the context requires otherwise, and requires the courts to construe Part 3 in a manner that gives effect to the Digital Directive and to have regard to its provisions for this purpose.</p>
49.	Application (Part 3)	This provides that Part 3 applies to the following contracts: <ul style="list-style-type: none"> • A digital content contract; • A digital services contract; • Contractual provisions relating to the supply of digital content or a digital service in contracts that also include the supply of other goods or services; or • Any contract where the digital content or digital service that the trade supplies or undertakes to supply is developed in accordance with the consumer’s specifications. <p>Part 3, with the exception of sections 51 and 60, also applies to any tangible medium which exclusively serves as a carrier of digital content.</p> <p>The section also provides that Part 3 does not apply to the following contracts:</p> <ul style="list-style-type: none"> • Service contracts; • Supply of an electronic communications service (except for the supply of a number-independent interpersonal communications service;

Section	Title	Effect
		<ul style="list-style-type: none"> • The supply of healthcare; • The supply of a gambling service; • The supply of a financial service; • Open source software, where no price is paid and the only data processing by the trader is for improving security, compatibility or interoperability of the software; • The supply of digital content other than by signal transmission as part of a performance or event, including digital cinematographic projections; and • Digital content provided by a public sector body in accordance with open data and PSI regulations. <p>Part 3 also does not apply to digital content / services which are incorporated or interconnected with goods with digital elements that are supplied as part of a sales contract.</p> <p>Section 49 also clarifies that references to both digital content contracts and digital services contracts in Chapters 2 and 3 of Part 3 are to be construed as a reference to any contract to which Part 3 applies.</p>
Chapter 2: Consumer rights in digital content contract or digital service contract		
50.	Right to supply digital content or digital service	This requires the trader to have the right to supply digital content or a digital service, with the consumer having the right to terminate the contract where the trader does not have the right to supply. The consumer must exercise the right to terminate the contract under section 66 and the trader must comply with obligations under section 67. In the event of a dispute, the burden of proof is on the trader.
51.	Duty to supply digital content or digital service	<p>This sets out the requirements on a trader to supply digital content or a digital service to a consumer, stating that this must be in accordance with the contract, must be supplied without undue delay (except if agreed otherwise) as well as requirements to supply for contracts requiring continuous supply or supply on more than one occasion.</p> <p>This section also provides that a trader is deemed to supply digital content or a digital service to a consumer where:</p> <ul style="list-style-type: none"> • The digital content or any means for accessing or downloading digital content is made available or accessible to the consumer or a physical or virtual facility chosen by the consumer for that purpose. • The digital service is made accessible to the consumer or a physical or virtual facility chosen by the consumer for that purpose. <p>The section further provides for circumstances where a consumer is not deemed to have chosen a physical or virtual facility:</p> <ul style="list-style-type: none"> • Where the facility is under the trader's control or contractually linked to the trader; or • The facility was the only facility offered by the trader. <p>Finally, the section provides that a trader who fails to supply digital content or a digital service is liable for that failure and the consumer has the right to remedies under section 60.</p>
52.	Digital content or digital service to be in conformity with digital content contract or digital service contract	<p>This requires digital content or services provided by a trader to be in conformity with the digital content contract or digital service contract. The content or service is in conformity with the contract if it complies with the requirements of sections 53 and 54 and does not fall to be treated as not being in conformity under section 55.</p> <p>Where a contract is not in conformity, the consumer has the right to remedies specified in Chapter 3 of Part 3.</p>

Section	Title	Effect
		Further, short-term interruptions to a continuous supply of digital content or a digital service, which are more than negligible or recur, constitute a lack of conformity with the contract, as do failures comply with the <i>Data Protection Act 2018</i> or the GDPR.
53.	Subjective requirements for conformity with digital content contract or digital service contract	<p>This requires that digital content or a digital service provided under a contract must meet the following subjective requirements for conformity:</p> <ul style="list-style-type: none"> • Be of the description, quantity and quality, and possess the functionality, compatibility, interoperability, accessibility, continuity, security and other features specified in the contract; • Be fit for any particular purpose for which it is required that is made known to the trader prior to concluding the contract and accepted by the trader; • Be supplied with all accessories, instructions and customer assistance as specified in the contract; and • Be updated as specified in the contract. <p>The information that a trader is required to provide to the consumer in a distance or off-premises contract under sections 103, 104 or 106 must form part of the contract. The digital content or digital service supplied under a distance or off-premises contract must comply with any term deriving from this information.</p> <p>Where there is a continuous supply of digital content or a digital service over a period specified in the contract, this must comply with the above requirements during that period.</p>
54.	Objective requirements for conformity with digital content contract or digital service contract	<p>This requires that the digital content or digital service supplied under a digital content contract or digital service contract must also meet the following requirements:</p> <ul style="list-style-type: none"> • It must be fit for all purposes for which it would normally be used, taking into account relevant legal rules, technical standards, or in the absence of such standards, applicable sector-specific codes of conduct; • Comply with the trial version or preview made available to the consumer before the contract; • Be supplied with any accessories or instructions that the consumer can reasonably expect to receive; and • Be of the quantity, and have the qualities and performance features normal for similar digital content or digital services, that the consumer may reasonably expect given the nature of such content or services and taking into account any public statement by or on behalf of the trader or anyone in a previous link in the transaction chain. <p>This further provides that the trader is not bound by a public statement if they can show that they were not, or could not have reasonably been, aware of the statement in question, that the public statement was corrected before the conclusion of the contract, or that the consumer was not influenced by the public statement.</p> <p>Requirements on the version of the digital content or service to be supplied, any updates to the content and the trader's liability for such updates, and conformity where there is a continuous supply of a digital content or service for the duration of the contract, are also set out.</p> <p>This section also provides that in relation to the objective requirements and the requirements on the supply of updates, there is no lack of conformity if the consumer of specifically informed that a particular characteristic of the digital content or service deviated from these requirements and this is expressly and separately accepted by the consumer. In such cases, the burden of proof is on the trader to show this in the event of a dispute.</p>

Section	Title	Effect
55.	Incorrect integration of digital content or digital service	This provides that any lack of conformity resulting from the incorrect integration of the digital content or digital service into the consumer's digital environment is treated as a lack of conformity with the digital content contract or digital service contract for the purposes of Part 3 if the digital content or digital service was integrated by the trader or a person acting on their behalf, or was intended to be integrated by the consumer and the incorrect integration was due to shortcomings in the integration instructions provided by the trader.
56.	Implied terms of digital content contract or digital service contract	This provides that the provisions of section 50 and sections 53 to 55 are implied terms in every digital content contract or digital service contract.
57.	Third party rights	This provision entitles the consumer to a remedy under section 61 for lack of conformity where there is a restriction on digital content or digital service due to a violation of third party rights, in particular intellectual property rights.
58.	Liability of trader under digital content contract or digital service contract	<p>This provides that the trader is liable to the consumer for any failure to supply the digital content or digital service under section 51. It also provides that the trader is liable for:</p> <ul style="list-style-type: none"> • lack of conformity with the digital content contract or digital service contract where the contract is for a single act of supply or a series of individual acts of supply, and includes any lack of conformity resulting from a violation of a third party's intellectual property rights or other rights. • lack of conformity caused by an update which exists at the time of the supply or installation of the update, or caused by the failure to supply an update by the trader in accordance with section 54(4). • Lack of conformity with a digital content contract or digital service contract for continuous supply of digital content or a digital service that occurs or becomes apparent. <p>This further provides that the consumer has a right to a remedy for 6 years from:</p> <ul style="list-style-type: none"> • The supply of the digital content or digital service in the case of contracts where there is a single act of supply or series of such acts, and • In the case of continuous supply for a specified period, the time at which the lack of conformity occurs or becomes apparent during that period. <p>In the case of a failure to supply digital content or a digital service, the right to a remedy applies for six years from when the trader was required to supply the digital content or digital service.</p>
59.	Burden of proof under digital content contract or digital service contract	<p>This provides for the burden of proof on whether the digital content or digital service was supplied and that the trader was in conformity with the digital content contract or digital service contract is on the trader. Further provision is made that the burden of proof on conformity does not apply if the trader shows that the digital environment of the consumer was not compatible with the technical requirements of the digital content or digital service and informed the consumer of such requirements before the conclusion of the contract.</p> <p>Provision is also made for an obligation on the consumer to cooperate with trader in ascertaining whether the digital environment is compatible. If the consumer fails to cooperate and the trader informed them of the technical requirements, the burden of proof shifts to the consumer. Finally, the section clarifies that none of its provisions can prevent a consumer from exercising a remedy after the expiry of 12 months beginning with the date of supply of the digital content or service.</p>

Section	Title	Effect
Chapter 3: Consumer remedies in digital content contract or digital service contract		
60.	Remedy for failure to supply digital content or digital service	<p>This provides that the consumer has a right to terminate the contract where a trader fails to supply digital content or a digital service under a contract in accordance with section 51 and fails to comply with a subsequent request from the consumer to supply the digital content or digital service without undue delay or within an additional period agreed by the parties.</p> <p>Further, the consumer may terminate the contract immediately where:</p> <ul style="list-style-type: none"> • a trader has declared that they will not supply the digital content or digital service or it is clear that the trader will not do so, or • the consumer and trader have agreed that it is essential for the consumer that the digital content or digital service is supplied by a particular date and time but the trader fails to do so. <p>The consumer is required to exercise the right to terminate the contract in accordance with section 66 and the trader must comply with obligations under section 67.</p>
61.	Right to have digital content or digital service brought into conformity with contract	<p>This provides for a right for the consumer to have the digital content or service brought into conformity with the contract. This is subject to subsection (2), which provides that this right will not apply if it is impossible to bring it into conformity or doing so would impose disproportionate costs on the trader taking all circumstances of the case into account.</p> <p>The trader must bring the digital content or service into conformity free of charge, within a reasonable time after being informed of the lack of conformity and without significant inconvenience to the consumer.</p> <p>The reasonable time for bringing the digital content or service into conformity must be the shortest possible time for remedying it.</p>
62.	Right to proportionate reduction in price or termination of contract	<p>This provides for a right to a price reduction or termination of the contract for the consumer and applies where:</p> <ul style="list-style-type: none"> • Bringing the digital content or service into conformity is either impossible or imposes disproportionate costs on the trader under section 61(2); • The consumer has exercised their right for the digital content or service to be brought into conformity and the trader has not done so; • The some or different lack of conformity appears despite the attempts of the trader to bring the digital content or service into conformity; • The lack of conformity is so serious as to justify an immediate price reduction or termination of the contract; or • The trader has declared, or it is clear from the circumstances, that they will not bring the digital content or service into conformity within a reasonable time or without inconvenience to the consumer. <p>Subsection (2) clarifies that if the digital content or service is supplied in exchange for a price, then the consumer is entitled to a price reduction. Where there is no payment of a price, the consumer only has the right to terminate the contract under subsection (4).</p> <p>Subsection (3) further clarifies that the consumer only has the right to terminate the contract if the lack of conformity is not minor. The burden of proof is placed on the trader to show that a lack of conformity is minor for these purposes.</p> <p>This also sets out the considerations that regard must be given to in determining if a lack of conformity is serious enough to justify an immediate price reduction or termination. These include where the consumer cannot maintain confidence in the trader's ability to bring the digital content or</p>

Section	Title	Effect
		service into conformity, and where the consumer's ability to use the digital content or service is severely affected and they cannot be reasonably expected to trust that the trader can remedy it.
63.	Price reduction: digital content contract or digital service contract	<p>This provides that the right to a price reduction may either be a reduction in the price that the consumer is required to pay or, where payment is already made, a reimbursement of the excess amount paid in accordance the reduction of value under subsection (3).</p> <p>Subsection (3) provides that the reduction in price shall be proportionate to the decrease in value of the digital content or service compared to its value if in conformity. Subsection (4) further provides that in contracts for a continuous supply of digital content or services, the price reduction shall apply for the period in which it was not supplied in conformity. Reimbursement by the trader must be in accordance with section 68.</p>
64.	Modification of digital content or digital service	<p>This provides that where the contract requires that the digital content or service is supplied or made accessible to the consumer for a period of time and certain conditions are met, then the trader may modify the digital content or service beyond what is necessary to maintain it in conformity with the contract. These conditions are:</p> <ul style="list-style-type: none"> • The contract allows and provides a valid reason for such modification; • The modification is made without additional cost to the consumer; • The consumer is informed clearly and comprehensively of the modification; and • The consumer is informed reasonably in advance of the features and time of the modification. The consumer must also be informed of their right to cancel or the possibility to maintain the digital content or service without modification. <p>The consumer has the right to terminate the contract if the modification negatively affects access or use of the digital content or service, but this does not apply if the negative effect is minor or if the trader has enabled the consumer to maintain an unmodified version of the digital content or service that is in conformity and without additional cost.</p> <p>The section also provides for the objective requirements in ascertaining the impact on a consumer's access or use of the digital content or service.</p> <p>Where a consumer wishes to terminate the contract, they must exercise this right in accordance with section 66 within 30 days from the later of when they were informed of the modification or when the digital content or service was modified. In this event, the trader must comply with their obligations under section 67 and make any reimbursement in accordance with section 68.</p> <p>Where a trader exercises their power to modify a digital content or service and has enabled the consumer to maintain the unmodified version, but this does not meet the subjective or objective conformity requirements, then the consumer is entitled to have it brought into conformity, receive a price reduction, terminate the contract or without payment.</p> <p>Finally, the section clarifies that it does not apply to bundle contracts within the scope of Article 107 of Directive (EU) 2018/1972.</p>
65.	Right to terminate contract other than digital content contract or digital service contract	<p>This provides for circumstances where the digital content or service is supplied to a consumer under a contract that also includes the supply of goods or the supply of a service. It clarifies that a consumer may terminate the contract if the consumer would be entitled to do so if it was a contract for digital content or service only and the value of the goods or service would be materially reduced without the digital content or service. In determining whether there is a material reduction, all relevant circumstances must be taken into account.</p>

Section	Title	Effect
		The section clarifies that it does not apply to bundle contracts within the scope of Article 107 of Directive (EU) 2018/1972.
66.	Obligations of consumer in event of termination of digital content contract or digital service contract	<p>This sets out the obligations of a consumer in terminating a digital content or digital service contract. Under this section, the consumer:</p> <ul style="list-style-type: none"> • Inform the trader of the decision to terminate by means of a statement to that effect; • After termination, they must not use the digital content or service or make it available to another person; • Where supplied on a tangible medium, they must return that medium to the trader without undue delay; • They are not liable to pay for any use of the digital content or digital service in the period before termination it was not in conformity; • If they use the digital content or service, make available to another person or fail to return it, they are liable for any loss or damage suffered by the trader as a result. Such liability in damages is without prejudice to other remedies available to the trader.
67.	Obligations of trader where digital content contract or digital service contract terminated	<p>This sets the obligations of the trader where a digital content or digital service contract is terminated. Under its provisions:</p> <ul style="list-style-type: none"> • They must reimburse the customer in accordance with section 68 (time limits and means of reimbursement); • Where the digital content or service is provided for a period of time under the contract, they must reimburse the consumer for the proportionate part of the price paid for the period it was not in conformity and any period paid for in advance had the contract not been terminated. • The trader may request the return of a tangible medium by the consumer without delay. This must be done within 14 days of being informed of the consumer's decision to terminate. The trader is also liable for the cost of the return. • The trader is prohibited from using any content provided or created by the consumer with the digital content or digital service, unless it is not personal data and the content meets certain conditions set out in subsection (6). • Further provision is made for the consumer to request digital content other than personal data from the trader and certain exemptions. This must be provided free of charge, without hindrance from the trader, within a reasonable time and in a commonly used and machine-readable format. <p>Finally, the section allows the trader to prevent further use of the digital content or digital service by the consumer by making it inaccessible or disabling the consumer's account.</p>
68.	Time limits and means of reimbursement by trader: digital content contract or digital service contract	<p>This provides that where a trader is required to reimburse the consumer under section 63(5) or 67(1), they must do so:</p> <ul style="list-style-type: none"> • Without undue delay and within 14 days of the consumer's decision to exercise the right to a price reduction or termination; • Using the same method of payment unless agreed otherwise; and • Without the imposition of any fee on the consumer for the reimbursement. <p>This also provides that where a tangible medium is involved, the trader may withhold reimbursement until it is returned, or on their request, the consumer provides evidence of its return. The trader is also liable for any loss or damage suffered by the consumer if they fail to comply with the obligation to reimburse the consumer.</p>

Section	Title	Effect
69.	General right to withhold payment	<p>This provides for a general right on the consumer to withhold payment of any outstanding part of the price until the trader has fulfilled their obligations under Part 3. Where there is a lack of conformity, the price withheld must be proportionate to the decrease in value of the digital content or service.</p> <p>The consumer may exercise this right by means of a statement to the trader expressing the consumer's decision to withhold payment until the trader has fulfilled their obligations.</p>
70.	Effect of termination of digital content contract or digital service contract on ancillary contract	<p>This provides that where a consumer terminates a digital content or digital service contract under section 66, any ancillary contract is terminated automatically without any further cost to the consumer.</p>
71.	Exclusion or limitation of liability of trader (Part 3)	<p>Section 71 prohibits a term of the contract from excluding or restricting the trader's liability under sections 50 to 55 and 57 to 59. Any such term is not binding on the consumer.</p> <p>The section further clarifies that "excluding or restricting the trader's liability" includes:</p> <ul style="list-style-type: none"> • Excluding or limiting a right or remedy under the specified provisions; • Making such a right or remedy, or its enforcement, subject to a restrictive or onerous condition; • Allowing a trader to put a person at a disadvantage as a result of pursuing such a right or remedy; • Excluding or restricting rules of evidence or procedure; or • Preventing an obligation arising or limiting its extent. <p>The section also provides that a trader who contravenes the prohibition set out in subsection (1) commits an offence.</p>
72.	Right of redress	<p>This provides for a right of redress for a trader against a person constituting a previous link on the transaction chain, where the failure to supply the digital content or service or its lack of conformity with the contract resulted from an act or omission of that person.</p>
73.	Other remedies	<p>This provides that the consumer may pursue other remedies where the digital content or service is not in conformity or the trader otherwise fails to comply with the requirements under Part 3, but cannot recover twice for the same loss.</p> <p>This includes:</p> <ul style="list-style-type: none"> • Claiming damages; • Relying on the trader's failure to comply with Part 3 where the trader makes a claim for the payment of the price; • Seeking to recover money paid for a digital content or service that does not comply with Part 3 requirements; or • Having the lack of conformity remedied elsewhere and recovering all reasonable costs from the trader.
Part 4: Service Contracts		
Chapter 1: Interpretation and application (Part 4)		
74.	Interpretation (Part 4)	<p>This sets out some of the key definitions for this Part, including 'consumer-hire agreement', 'free of charge' and 'hire-purchase agreement'. It also clarifies that references to conformity with a service contract are to be construed in accordance with section 79(2).</p>
75.	Application (Part 4)	<p>This provides that Part 4 applies to service contracts between a trader and consumer. It also provides that where a contract provides a service, as well as the sale of goods or the supply of digital content or a digital service,</p>

Section	Title	Effect
		<p>then Part 4 applies only to the service aspect of the contract. Contracts for the rental of accommodation and consumer-hire agreements are excluded from Part 4.</p> <p>It also clarifies that references to service contracts in Chapters 2 and 3 of Part 4 must be construed as any contract to which the Part applies, and that nothing in Part 4 affects a consumer's right to terminate a contract under sections 29(1) or 65(2).</p>
76	Power of Minister to restrict or extend application of Part 4	<p>This sets out the Minister's powers to make regulations to extend or restrict its applicability to certain services.</p> <p>The Minister may also make regulations to apply Part 4 to service contracts where a service is provided in exchange for personal data instead of a price (except personal data that is processed by the trader in accordance with Part 4 or to satisfy a legal requirement).</p> <p>The consultation requirements for both types of regulations are also set out and provides that the application of regulations to certain services may be modified.</p>
77.	Effect of Part on other enactments etc.	This clarifies that nothing in Part 4 affects any additional or stricter obligations placed on traders by other enactments, and that Part 4 is subject to any other enactment or international convention to which the State is party that defines or limits the rights, obligations and liabilities relating to a service.
Chapter 2: Consumer rights in service contracts		
78.	Supply of service	<p>This requires the trader to supply the service to the consumer under the contract. For an off-premises contract, the trader must provide the service at such time or within the period specified in information provided under sections 103, 104 or 106, or where no time period is specified at a time or period agreed with the consumer.</p> <p>Further provisions on when a service is supplied, when it is continuous supplied and when it is supplied on more than one occasion are also set out.</p> <p>It also provides that if a trader fails to supply a service and fails to comply with a subsequent request from the consumer to provide it, the consumer is entitled to terminate the contract in accordance with section 84.</p> <p>If there is a short-term interruption in supply that is more than negligible and recurs, then section 84 does not apply, the service is deemed not to be in conformity and the consumer has the right to have the service brought into conformity under section 85, or to a price reduction or termination under section 86.</p>
79.	Service to be in conformity with service contract	Section 79 requires that the service is provided by a trader in conformity with the contract. It also provides that a service is in conformity if it complies with the subjective and objective conformity requirements under sections 80 and 81 respectively. Where a service is not in conformity, the consumer is entitled to the remedies set out in Chapter 3.
80.	Subjective requirements for conformity with service contract	<p>This sets out the subjective requirements for conformity with a service contract. As well as services supplied under a service contract, it also applies any goods or digital content produced by or resulting from the service. The service must:</p> <ul style="list-style-type: none"> • comply with the terms of the service contract; • comply with any oral or written statement to the consumer on the service or the trader on which the consumer relied upon when entering the contract or on any subsequent decision made in relation to the service;

Section	Title	Effect
		<ul style="list-style-type: none"> • be reasonably fit for any purpose that the consumer made known to the trader before or at the conclusion of the contract and the trader accepted this; • be of a nature and quality that can reasonably be expected to achieve a result that the consumer made known to the trader before or on the conclusion of the contract and the trader accepted this; and • for off-premises and distance contracts, comply with any additional terms imposed by sections 103, 104 or 106. <p>The section also provides that the requirement concerning a written or oral statement such that it is subject to any qualifying statement from the trader and any change to that statement subsequently agreed by the consumer and the trader.</p> <p>Provisions on ensuring compliance where a service is continuously supplied or supplied on more than one occasion are also set out.</p> <p>Finally, where there is a dispute relating to the fitness for purpose or the nature / quality requirements above, it is for the trader to show they did not accept the consumer's requirements.</p>
81.	Objective requirements for conformity with service contract	<p>This provides for the objective conformity requirements for service contracts, which require the trader to have the necessary skill to supply the service, and to do so with reasonable skill and care and in accordance with any applicable laws. Any materials used must also be sound, reasonably fit for purpose and correspond to the trader's description.</p> <p>The service must also comply with any public statement made by the trader or anyone on their behalf, or anyone in a previous link in the transaction chain, unless the trader can show they were unaware of it, the public statement was corrected at the time the contract was concluded or that it could not have influenced the consumer's decision.</p> <p>This also provides that where a trader purports to supply a service to a higher standard of care or skill, then they must do so. Similarly, where standards of care and skill are set by a body or public authority, the trader must apply these if they are, or purport to be, a member of the professional body. They are also required to abide by a code of practice if they are, or purport to be, bound by that code.</p> <p>Provisions on ensuring compliance where a service is continuously supplied or supplied on more than one occasion are also set out.</p> <p>A definition for 'code of practice' is also included.</p>
82.	Implied terms of service contract	<p>This provides that the following are implied terms in every service contract:</p> <ul style="list-style-type: none"> • Section 78(2)(b) to (6); • Section 80; and • Section 81.
83.	Reasonable price to be paid for service	<p>This provides that the price to be paid for a service must be a reasonable price and no more where:</p> <ul style="list-style-type: none"> • The consumer has not paid a price or other consideration for the service; • The contract does not fix a price or consideration for the service or provide how it is to be fixed; or • The price or consideration is not fixed by an oral or written statement by the trader (section 80(1)(b)) or in the information provided to a consumer in an off-premises contract (sections 103 and 104) or distance contract (section 106).
Chapter 3: Consumer remedies in service contracts		

Section	Title	Effect
84.	Remedy for failure to supply service	<p>Provides that the consumer has the right to terminate the service contract if the trader fails to provide the service and fails to comply with a subsequent request from the consumer to supply the service within an additional period.</p> <p>Also provides for a right for the consumer to immediately terminate the contract where:</p> <ul style="list-style-type: none"> • The trader has declared they will not supply the service, or it is clear from the circumstances that they will not do so; • The supply of the service in accordance with section 78 is essential taking all relevant circumstances into account; or • The consumer informed the trader at the time of or before the conclusion of the contract that the supply of the service by a specified date was essential and the trader failed to supply it. <p>Where the consumer wishes to exercise the right to terminate the contract, they must do so in accordance with section 88 and the trader must comply with their obligations under section 89.</p>
85.	Right to have service brought into conformity with service contract	<p>Provides for a right for the consumer to have the service brought into conformity with the service contract, unless it is impossible to do so.</p> <p>The trader must ensure it is brought into conformity free of charge, within a reasonable time and without significant inconvenience to the consumer. The section also sets out what is meant by reasonable time and significant inconvenience.</p> <p>Provisions are also set out to include the removal of goods for repair or replacement by the trader at their cost in the trader's obligation to bring the service into conformity.</p>
86.	Right to proportionate reduction in price or termination of service contract	<p>Provides for a right for the consumer to a price reduction under section 87 or termination of the contract under section 88 in the following circumstances:</p> <ul style="list-style-type: none"> • The trader does not have the necessary skill to provide the service; • It is impossible to bring the service into conformity; • The trader has declared, or it is clear from the circumstances, that they will not bring the service into conformity within reasonable time and without significant inconvenience to the consumer; • The trader fails to remedy the lack of conformity within a reasonable time, without significant inconvenience to the consumer, or free of charge; • The same or a difference lack of conformity appears despite the trader's attempt to bring the service into conformity; • The lack of conformity is so serious as to justify an immediate price reduction or termination of the contract; • The service, or any goods produced by or resulting from the service, are unsafe. <p>This section also provides that the question of whether the right to a price reduction or termination of the contract applies or is required to accept further attempts by the trader to bring the service into conformity must be objectively determined by:</p> <ul style="list-style-type: none"> • The type and value of the service; • The nature and significance of the lack of conformity; and • Whether the consumer can reasonably be expected to maintain confidence in the trader's ability to bring the service into conformity, particularly if the same lack of conformity occurs more than once.

Section	Title	Effect
		<p>Further provision is made on what considerations are taken into account in objectively determining if the lack of conformity is so serious as to justify an immediate termination of the contract.</p> <p>Finally, the section also provides that the right to terminate the contract only applies if the lack of conformity is not minor and in the event of a dispute, places the burden of proof on the trader to show otherwise.</p>
87.	Price reduction: service contract	<p>This sets out the requirements in relation to the right to a price reduction under section 86(1). It requires the trader to either:</p> <ul style="list-style-type: none"> • Reduce the price the consumer is required to pay; or • Reimburse the price already paid by the consumer. <p>The reduction must be proportionate to the decrease in the value of the service in comparison to its value had it been in conformity.</p> <p>Further provision is made for contracts where there is a continuous supply of a service, providing that the reduction shall be proportionate to the period for which the service was not in conformity.</p> <p>Where there is a right to reimbursement, the trader must reimburse the consumer in accordance with section 90.</p>
88.	Obligations of consumer in event of termination of service contract	<p>This sets out the obligations of the consumer where they decide to terminate the contract for failure to supply the service under sections 84(1) or (2) and section 86(2)(b).</p> <p>The consumer must inform the trader by means of a statement expressing the decision to terminate.</p> <p>A consumer who exercises the right to terminate is obliged to make any goods or material supplied under the service contract available to the trader for collection, and must not use, or make available to another person, any digital content or services supplied under the service contract.</p> <p>The consumer is not required to make the goods available for collection, or return of the goods to the trader, if such collection or return would cause disproportionate inconvenience to the consumer or would damage their property. The requirement to make the goods available for collection also does not apply if the trader and consumer agree that the consumer returns the goods and the trader bears the consumer's costs.</p> <p>A consumer who otherwise fails to make the goods or material available for collection is liable for any resulting loss or damage incurred by the trader.</p>
89.	Obligations of trader where service contract terminated	<p>This provides that where a consumer exercises the right to terminate under sections 84(1) or (2) or 86(2)(b), the trader is obliged to reimburse the consumer in accordance with section 90 for all payments made under the contract.</p> <p>Where the contract is for a service supplied over a specified period, the trader is only obliged to reimburse the proportionate amount for the period it was not in conformity and for any remaining period paid for in advance.</p>
90.	Time limits and means of reimbursement by trader: service contract	<p>Where the trader reimburses the consumer for a price reduction (section 87) or following the termination of a contract (section 89), the trader must reimburse the consumer without undue delay and within 14 days since being informed of the consumer's exercise of their right.</p> <p>In making the reimbursement, the trader must use the same means of payment used by the consumer to make the payment unless the consumer agrees otherwise. The trader may not impose any fees on the consumer in relation to the reimbursement. A trader who fails to reimburse a consumer in accordance with section 90 is liable in damages for any resulting loss or damage suffered by the consumer.</p>

Section	Title	Effect
91.	General right to withhold payment: service contract	<p>Provides for a right for the consumer to withhold payment where a trader has failed to comply with an obligation under Part 4 until they have fulfilled that obligation. It further provides that the part of the price withheld by the consumer must be:</p> <ul style="list-style-type: none"> • Proportionate to the decrease in the value of the service where there is a lack of conformity; or • Proportionate to the price payable for the period a service was not supplied where there is a failure to supply the service. <p>This further provides that the consumer must inform the trader of the exercise of this right by means of the statement to the trader informing them of their decision.</p>
92.	Effect of termination of service contract on ancillary contract	<p>Provides for the automatic termination of any ancillary contract where a consumer terminates a service contract in accordance with section 88. The trader must inform any other trader who has an ancillary contract with the consumer.</p> <p>The consumer must comply with obligations under section 88(3) (making goods and materials available for collection and not using or making available any digital content or digital service provided under the contract), while the trader who is party to the ancillary contract must comply with obligations under section 89 (reimbursement of payments).</p> <p>It further provides that where any security is provided under an ancillary contract that is terminated, it is treated as never having any effect. The section also defines what is meant by an 'ancillary contract'.</p>
93.	Remedies where contract also provides for supply of goods etc.	<p>This provides for remedies where a contract supplying a service also supplies goods, digital content or a digital service. It provides that where the following conditions are met, the consumer has the right to terminate the contract or obtain a proportionate price reduction:</p> <ul style="list-style-type: none"> • If it were a contract for the supply of a service only, the consumer would have the right to a proportionate price reduction or termination; and • The value of the goods, digital content or digital service would be materially reduced in the absence of the service. <p>The considerations in objectively determining if the value of the goods, digital content or digital service are reduced so as to justify termination, all circumstances must be taken into account, including the nature / purpose of the contract, the relative value of its different elements and the nature / degree of the interdependence of these elements.</p> <p>Finally, the section also clarifies that it does not apply to bundle contracts within the scope of Article 107 of Directive (EU) 2018/1972 and does not apply to consumer-hire or hire-purchase agreements.</p>
94.	Exclusion or limitation of liability of trader (Part 4)	<p>Section 94 prohibits a term of the contract from excluding or restricting the trader's liability under sections 78 to 81 and 83. Any such term is not binding on the consumer.</p> <p>The section further clarifies that "excluding or restricting the trader's liability" includes:</p> <ul style="list-style-type: none"> • Excluding or limiting a right or remedy under the specified provisions; • Making such a right or remedy, or its enforcement, subject to a restrictive or onerous condition; • Allowing a trader to put a person at a disadvantage as a result of pursuing such a right or remedy; • Excluding or restricting rules of evidence or procedure; or • Preventing an obligation arising or limiting its extent.

Section	Title	Effect
		The section also provides that a trader who contravenes the prohibition set out in subsection (1) commits an offence.
95.	Continuing entitlement to pursue other remedies	<p>This provides that the consumer may pursue other remedies where the service is not in conformity, but cannot recover twice for the same loss.</p> <p>This includes:</p> <ul style="list-style-type: none"> • Claiming damages; • Relying on the trader's failure to comply with Part 4 where the trader makes a claim for the payment of the price; • Seeking to recover money paid for a service that does not comply with Part 4 requirements; or • Having the lack of conformity remedied elsewhere and recovering all reasonable costs from the trader. <p>The section further provides that an exclusion or limitation of a remedy under section 95 shall be subject to an assessment for unfairness under Part 6.</p>
Part 5: Consumer Information and Cancellation Rights		
Chapter 1: Interpretation and application		
96.	Interpretation (Part 5)	<p>Defines 'business premises', 'Consumer Rights Directive', 'on-premises contract', 'public auction' and 'service contract'.</p> <p>This provision clarifies that certain provisions in relation to package holidays retain the same meanings as they do in the Package Holidays and Travel Trade Act 1995.</p> <p>This provision also provides that words or expressions used in Part 5 have the same meaning as in the Consumer Rights Directive unless the context requires otherwise, and requires the courts to interpret Part 5 in a manner giving effect to the same Directive.</p>
97.	Application (Part 5)	<p>Subject to certain exceptions, this provides that Part 5 applies to any of the following contracts:</p> <ul style="list-style-type: none"> • Sales contracts; • Service contracts; • Digital content contracts; • Digital service contracts; • Contracts for the supply of water, gas or electricity not supplied on the basis of a limited volume or set quantity. • Contracts for the supply of district heating. <p>Subsection (3) provides that Part 5 does not apply to contracts for financial services (except ancillary contracts) and contracts for rental accommodation.</p> <p>Subsection (4) provides that Part 5, with the exception of Chapter 6, does not apply to certain contracts. This provision covers contracts such as contracts for gambling, the creation / acquisition / transfer of immovable property or rights, the construction or substantial conversion of buildings, contracts relating to time-share and long-term holiday products, contracts relating to the frequent and regular supply of foodstuffs, beverages and other goods for household consumption, and contracts concluded by automatic vending machines or commercial premises.</p> <p>Subsection (5) provides that Part 5 also does not apply to package travel contracts and passenger transport services subject to further requirements in subsections (6) and (7).</p> <p>Subsection (8) provides that Chapters 2 and 6 apply to contracts for the supply of healthcare after section 97 comes into operation but expressly provides that otherwise Part 5 does not apply to such contracts.</p>

Section	Title	Effect
98.	Off-premises contracts to which Part 5 does not apply	Expressly excludes off-premises contracts where the payment is €50 or less from the scope of Part 5. This provision also provides that the cumulative value of similar contracts be taken into account when applying this monetary threshold.
99.	Rights of consumer cannot be waived	Provides that any waiver of a right conferred by Part 5 has no effect and any term which directly or indirectly waives such a right does not bind the consumer.
100.	Burden of proof	Provides that the burden of proof is on the trader to show they complied with any requirement under Chapters 2 and 3 of Part 5.
Chapter 2: Consumer information for on-premises contract		
101.	Information requirements for on-premises contract	Requires the trader to provide the information specified in Schedule 2 in a clear and comprehensive manner, if that information is not already apparent from the context, before a consumer is bound by an on-premises contract or corresponding offer. A trader who fails to do this is guilty of an offence. This does not apply to day-to-day transactions where the contract is performed immediately after the contract is concluded.
102.	Power of Minister to specify further information requirements	This provision empowers the Minister to make regulations that prescribe further information to be provided to a consumer before concluding an on-premises contract or corresponding offer (including specific categories of contract or offer), with the objective of enabling consumers to make informed decisions. Matters that the Minister must have regard to in making such regulations are also set out in this provision.
Chapter 3: Consumer information for off-premises contract		
103.	Information requirements for off-premises contract	Provides that before binding the consumer into an off-premises contract or any corresponding offer, the trader must provide the consumer with the information specified in Schedule 3 and where there is a right to cancel, the model cancellation form in Part 2 of Schedule 4. Failure to do this is an offence. Further, where there is a failure to provide information in respect of clauses (g) and (n) of Schedule 3, the consumer is not liable for the charges and costs specified in those clauses. In relation to the right to cancel, further provision is made to allow the trader to provide clauses m to o of Schedule 3 by means of the model instructions on the right to cancel in Part 1 of Schedule 4. The provision also clarifies the position on information provided in relation to auctioneers acting on behalf of traders. Further provision is made for the requirements on how the information is provided, the means of communication provided by the trader and stipulates that the information in Schedule 3 forms part of the contract and cannot be altered without express agreement of the trader and consumer.
104.	Information requirements for off-premises contract for repairs or maintenance	This sets out provisions in relation to certain off-premises contracts for repairs or maintenance, where the consumer explicitly requests the services of the trader, both the consumer and trader immediately perform their obligations under the contract and the payment does not exceed €200. Before the consumer is bound under the contract, the trader must provide certain information to the consumer, including: <ul style="list-style-type: none"> • The main characteristics of the service, • The identity of the trader, including the trader's trading name and legal identity. • Where the trader acts on behalf of another trader, the identity and geographical address of that other trader, • the geographical address of the trader and certain contact information,

Section	Title	Effect
		<ul style="list-style-type: none"> • the total price of the service including taxes, or if this cannot be provided in advance, the manner in which the price is calculated, • where a right to cancel exists, the conditions, time limit and procedures for exercising that right, • where the right to cancel does not apply, a statement that the consumer does not benefit from the right to cancel or, where applicable, the circumstances in which the consumer loses that right. <p>This also sets out the information that must be provided to the consumer and the information that must be provided on paper or a durable medium. It also provides that the means of communication must allow for the customer to contact the trader quickly and communication with them efficiently.</p> <p>Finally, this section also provides that Sections 104(2) and 104(3)(a) form part of the contract and cannot be altered without express agreement of the trader and consumer, and that a trader who contravenes the information requirements under sections 104(2) and (3) commits an offence.</p>
105.	Provision of copy or confirmation of off-premises contract	<p>This provides that trader must provide the consumer with a copy of the signed off-premises contract or confirmation of the contract at the time of, or before, the conclusion of the contract. This must be on paper or another durable medium.</p> <p>Specific provision is made for instances where the performance of an off-premises contract for the supply of digital content not supplied on a tangible medium has begun, the copy or confirmation of the contract must include confirmation of the customer's acknowledgement of the loss of the right to cancel. A trader who contravenes only of the provisions under this section is guilty of an offence.</p>
Chapter 4: Consumer information for distance contract		
106.	Information requirements for distance contract	<p>This sets out the information that must be provided by the trader to the consumer before the latter is bound by a distance contract or any corresponding offer. This includes the information set out in Schedule 3 and where there is a right to cancel, the model cancellation form set out in Part 2 of Schedule 4. The trader may also provide the information set out in clauses (m) to (o) in Schedule 3 by means of the instructions on cancellation set out in Part 1 of Schedule 4. The position of auctioneers in relation to traders is also clarified by this provision.</p> <p>The section also requires information provided under the section to be legible and that all means of communication provided by the trader to enable the consumer to contact the trader quickly and communicate efficiently.</p> <p>The section also sets out what clauses in Schedule 3 must be prioritised on a means of distance communication where that means allows limited time or space to display the information, with the remaining clauses and model cancellation form provided in an appropriate way.</p> <p>A trader who calls a consumer with a view to concluding a distance contract must provide their identity, the identity of the other trader if the call is made on their behalf and the commercial purpose of the call.</p> <p>Where the distance contract is concluded through a trading website, the trader must ensure that the website clearly and legibly indicates any delivery restrictions apply and which means of payment are accepted and the information required under Schedule 3 and Part 2 of Schedule 4.</p> <p>Final provisions are made to provide that the information in Schedule 3 cannot be altered without the express agreement of the trader and consumer, that the consumer is not liable for costs or charges in clauses g and n of Schedule 3 if the trader has not provided this information and that</p>

Section	Title	Effect
		any contravention of the information requirements under the section by the trader (subsections 1, and 6 to 8) is guilty of an offence.
107.	Additional information requirements for distance contract concluded on online marketplace	<p>This sets out obligations on information provided by online marketplace providers to consumers before the latter is bound by a distance contract, including:</p> <ul style="list-style-type: none"> • general information on the main parameters determining the ranking of offers; • whether the third party offering the goods, service, digital content or digital service is a trader or not; • where the third party is not a trader, that EU consumer law does not apply to the contract; • information on any shared obligations between the third party and the online marketplace. <p>The information on the main parameters must be made available in a specific section of the online interface that is directly and easily accessible from the page where offers are presented.</p> <p>Information provided on the obligations of third parties and online marketplace providers is without prejudice to any obligations either has under EU or national contract law or consumer protection law.</p> <p>The section also defines where is meant by 'ranking' and states that an online marketplace that contravenes the information requirements under subsection 1 is guilty of an offence. The terms 'online marketplace' and 'provider of an online marketplace' are also defined.</p>
108.	Additional information requirements for distance contract concluded by electronic means	<p>This provision relates to distance contracts concluded by electronic means, including specific provisions relating to package travel contracts and passenger transport services. It clarifies how the terms 'trader', 'consumer' and 'package travel contract' are to be construed in relation to packages and linked travel arrangements.</p> <p>This section also provides that if the contract places a consumer under an obligation to pay, the consumer must be made aware of this in a clear and prominent manner and directly before the consumer places his or her order. The trader must also ensure the consumer explicitly acknowledges the obligation to pay when placing an order, with further provision made for activating a button or similar function to do this. The consumer is not bound by a contract where this obligation does not occur. A trader who fails to do comply with the above obligations is guilty of an offence.</p>
109.	Provision of confirmation of distance contract	<p>This requires a trader who concludes a distance contract with a consumer to provide the consumer with confirmation of the concluded contract on a durable medium. The trader is also required to provide the information set out in Schedule 3 if they have not done so prior to the conclusion of the contract.</p> <p>Specific provision is made for instances where a distance contract for the supply of digital content not supplied on a tangible medium and the performance of that contract has begun, the copy or confirmation of the contract must include confirmation of the customer's acknowledgement of the loss of the right to cancel.</p> <p>The confirmation under this section must be provided by the trader within a reasonable time and not later than the delivery of the goods or when performance begins of services stipulated in that section.</p> <p>A trader who contravenes any of the provisions of this section is guilty of an offence.</p>
Chapter 5: Right to cancel distance contract or off-premises contract		
110.	Interpretation (Chapter 5)	Provides that the term 'cancellation period' be construed in accordance with section 114.

Section	Title	Effect
111.	Application (Chapter 5)	<p>Provides for a list of specific off-premises or distance contracts to which Chapter 5 does not apply. These include:</p> <ul style="list-style-type: none"> • Certain contracts for which the consumer does not pay or undertake to pay a price, or provide or undertake to provide personal data • Certain contracts where the consumer agrees or acknowledges they will lose the right to cancel; • Certain contracts where the price is dependent on financial markets and outside the trader's control; • Contracts for the supply of specified goods, • Contracts where the consumer has specifically required a visit from the trader for the purpose of urgent repairs or maintenance; • Contracts concluded at public auction; and • Contracts for the provision of accommodation for non-residential purposes, the transport of goods, car rental, catering or services related to leisure activities. <p>In the case of visits by a trader for the purposes of urgent repair or maintenance, the Chapter applies to additional services to the urgent repairs or maintenance and any goods other than replacement parts.</p> <p>Chapter 5 does apply to a sales contract or a contract for the sale of land (within the meaning of the <i>Land and Conveyancing Law Reform Act 2009</i>)</p>
112.	Right to cancel	Permits a consumer to cancel a distance or off-premises contract during the cancellation period, under the procedure specified by section 115 without giving a reason for cancellation.
113.	Duration of cancellation period	<p>Provides for the cancellation period for specified contracts, set at 14 days after the conclusion of the contract, or set at 30 days where the contract for a service is concluded following an unsolicited visit to a consumer's home or an excursion organised by the trader with the aim of promoting or selling a service to a consumer.</p> <p>Provision is also made for the cancellation periods applicable for different forms of goods contracts.</p>
114.	Omission of information on right to cancel	Provides for a further cancellation period of 12 months following the date the cancellation period would have expired under section 113 where a trader omits information on the right to cancel the contract as required by clause m of Schedule 3. If the trader provides the information within 12 months of the date the cancellation period would have expired then the original cancellation period applies from the date the information is received by the consumer.
115.	Exercise of right to cancel	Provides for the exercise of the consumer's right to cancel a distance or off-premises contract before the expiry of the cancellation period. A consumer may do so by using either the model cancellation form in Part 2 of Schedule 4, or by making any other unequivocal statement setting out his or her decision to cancel. This may also be done through the trader's website and the trader is required to reply with an acknowledgement without delay. The burden of proof is on the consumer where there is a dispute.
116.	Effect of cancellation or withdrawal	Provides that the exercise of the right to cancel, or the withdrawal of an offer to enter into, a distance or off-premises contract terminates the respective obligations of the consumer and trader to perform or conclude the contract.
117.	Obligations of trader in event of cancellation	<p>Sets out the obligations of a trader in the event of a cancellation by a consumer:</p> <ul style="list-style-type: none"> • To reimburse the consumer for all payments, including any payment for delivery.

Section	Title	Effect
		<ul style="list-style-type: none"> • A trader is only required to reimburse the cost of the least expensive type of standard delivery where a consumer has expressly opted for a more expensive delivery. • For sales contracts, a trader may withhold reimbursement until either the goods are received back or the consumer has provided evidence the goods are sent back. • Unless the consumer expressly agrees otherwise, a trader must reimburse the consumer with the same means of payment as the initial transaction. • Where a different means of reimbursement is agreed, the trader must ensure that the that the consumer does not incur any fees as a result. • Obligations on the use of content created by a consumer using digital content or a digital service by a trader following cancellation. <p>A trader who contravenes the provisions set out in sections 117(1) to (8) is guilty of an offence. A trader is also liable for any loss or damage suffered by the consumer as a result of a failure to reimburse under section 117.</p>
118.	Return of goods and obligations of consumer in event of cancellation	<p>Provides that a trader is obliged to collect goods at their own expense if</p> <ol style="list-style-type: none"> a) they have offered to collect them, or b) in the case of off-premises contracts, the nature of the goods means they cannot be sent back by post. <p>Otherwise, the consumer is required to send the goods back or hand them over to the trader or a person authorised by the trader to receive them. This must be done without undue delay and not later than 14 days after informing the trader of cancellation of the contract. The consumer is also required to bear the costs of returning the goods unless the trader has either:</p> <ol style="list-style-type: none"> a) agreed to bear these costs, or b) failed to inform the consumer under clause n of Schedule 3 that the consumer must bear those costs. <p>The consumer is also required to take reasonable care of the goods prior to return and is liable for any diminished value of the goods resulting from the handling of the goods beyond that necessary to establish their nature, characteristics and functioning. The consumer is exempt from liability under this requirement if the trader failed to provide the consumer with the information on the right to cancel required by clause (m) of Schedule 3.</p> <p>The consumer is liable for any loss or damage suffered by the trader resulting from failure to return the goods under section 118. Where the cancellation involves the cancellation of a contract for a digital content not supplied on a tangible medium, or a digital service, the consumer is required to cease using the service or make it available to any third person.</p>
119.	Performance of certain contracts during cancellation period	<p>This provides for circumstances where a trader has begun to perform a contract for a service, digital service, supply of utilities or supply of district heating.</p> <p>Where the consumer wishes the trader to begin performing the contract, the trader must require the consumer to make an express request to this effect on a durable medium and request acknowledgement that once the contract is fully performed, the consumer no longer has the right to cancel.</p> <p>Where a cancellation of contracts covered by section 119 occurs, the consumer is required to pay the trader for the service used up to the date the trader was informed of cancellation. However, the consumer is not liable for the cost if the trader has failed to provide the consumer with information on the right to cancel required by clause m of Schedule 3, or the consumer's liability to pay reasonable costs to the trader for</p>

Section	Title	Effect
		performance of the contract under clause o of Schedule 3, or the consumer has not requested performance to begin during the cancellation period.
120.	Supply of digital content during cancellation period	Provides for circumstances where a consumer is not liable for the cost of supply in full or in part where they cancel a contract for the supply of digital content not supplied on a tangible medium. These circumstances include where a consumer has not given express consent to beginning performance of the digital content before expiry of the cancellation period. Has not acknowledged that the right to cancel would be lost in giving their consent to beginning performance of the digital content, or the trader has failed to provide confirmation of the consumer's prior express content or the consumer's acknowledgement of the right to cancel.
121.	Effect of cancellation on ancillary contract	Provides that any ancillary contracts are automatically terminated on the cancellation of a distance or off-premises contract, with the exception of costs for non-standard delivery, the direct cost of returning goods, the diminished value of goods or services, utilities or district heating supplied during the cancellation period.
Chapter 6: Other consumer rights		
122.	Fee for use of means of payment	This provision prohibits a trader from charging a fee for a means of payment that is more than the costs borne by the trader for using that means. Where such an overpayment occurs, the trader must reimburse the excess to the consumer and a term of a contract requiring a higher fee is unenforceable. It is an offence to charge a higher fee and the trader is liable for any loss or damage to the consumer resulting from a failure to reimburse the excess. The burden of proof is on the trader where there is a dispute.
123.	Additional payments	This requires a trader to obtain express consent from a consumer for any additional payment to payments or other consideration agreed under the contract. Inferred consent from the use of a default option which the consumer is required to reject is not express consent under this provision. A trader who received an additional payment without the consumer's express consent must reimburse the payment to the consumer. A provision of a contract requiring a consumer to make an additional payment is unenforceable. It is an offence to fail to obtain express consent or to fail to reimburse a consumer for an additional payment not consented to. A trader is also liable for any loss or damage to a consumer resulting from a failure to reimburse. The burden of proof is on the trader in the event of a dispute.
124.	Charges for communication by telephone	This provides that where a trader operates a telephone line for consumers to contact them in relation to a contract, they cannot charge more than the basic rate, which is defined by section 124(7). Doing so is an offence under this provision. Where more than the basic rate is charged, the trader must reimburse the excess to the consumer. A trader who fails to do this is liable in damages for any loss or damage to the consumer as a result. The burden of proof is on the trader in the event of a dispute.
125.	Inertia selling	This addresses the practice of inertia selling, providing that where unsolicited goods or services are provided to a consumer, that consumer may treat the goods or service as an unconditional gift. Further provision is made that where there is no response from a consumer this is not to be treated as consent to payment or the return / safekeeping of goods supplied.

Section	Title	Effect
Part 6: Unfair Terms in Consumer Contracts		
Chapter 1: Interpretation and application (Part 6)		
126.	Interpretation (Part 6)	<p>Defines an 'authorised body' as:</p> <ul style="list-style-type: none"> the Competition and Consumer Protection Commission; the Central Bank of Ireland; the Commission for Communications Regulation; the Consumers' Association of Ireland, being the association of that name whose purpose is to promote and protect the interests of consumers, or such other person as may be prescribed. <p>Defines a 'consumer contract' as meaning 'any contract between a consumer and a trader.'</p> <p>Provides that reference to a term in a consumer contract includes any reference to a term, condition or specification, irrespective of the word used, which governs, or appears to govern, the contractual relationship between the trader and consumer.</p>
127.	Application (Part 6)	<p>Part 6 (subject to subsections 2-6) applies to a consumer contract that is concluded on or after the day the section comes into operation.</p> <p>Application of Part 6 to a consumer contract is not excluded merely due to:</p> <ul style="list-style-type: none"> the consumer contract or a term of the consumer contract being individually negotiated between the trader and the consumer, or the consumer not paying a price under the contract <p>Part 6 does not apply to a term of a consumer contract that reflects mandatory or regulatory provisions including rules not otherwise established or international provisions or principles to which a State is party.</p> <p>Part 6 does not apply to the following:</p> <ul style="list-style-type: none"> a contract of employment; a contract relating to succession rights; a contract relating to rights under family law, or a contract relating to — <ul style="list-style-type: none"> the incorporation and organisation of a company, or the creation and organisation of a partnership. <p>This Part will apply regardless of whether the applicable law chosen for a contract is a non-EEA state and the contract has a close connection to that State.</p> <p>Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L 177, 4.7.2008 applies where no applicable law has been chosen or the law of an EEA State is chosen unless it's one not bound by that Regulation.</p>
128.	Application of Part in relation to implied term of consumer contract	Provides that no term that could be considered unfair if expressly included, can be implied into a contract.
Chapter 2: Unfair terms in consumer contracts		
129.	Unfair term not binding	Provides that an unfair term is not binding on the consumer. A consumer may rely on the unfair term if they choose. The contract can continue without the unfair term, and the contract is considered binding on all parties.

Section	Title	Effect
130.	Meaning of “unfair”	<p>Defines the meaning of unfair as ‘contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations under the contract to the detriment of the consumer’.</p> <p>It also provides a list of matters that must be considered when assessing if a term is unfair.</p> <p>It sets out a list of criteria that must be considered when assessing whether a consumer contract complies with the requirement of good faith.</p> <p>This section does not affect the operation of the following provisions:</p> <ul style="list-style-type: none"> • section 39 (exclusion or limitation of liability of trader (Part 2)); • section 71 (exclusion or limitation of liability of trader (Part 3)); • section 94 (restriction on exclusion or limitation of liability of trader (Part 4)); • section 132 (consumer contract terms that are always unfair).
131.	Exclusion from assessment for unfairness	<p>Sets out the circumstances where a consumer contract will be excluded from being assessed for unfairness under section 130 as follows:</p> <ul style="list-style-type: none"> • it specifies the main subject matter of the contract and lays down the essential obligations under it, or • it relates to the adequacy of the price or payment in relation to the goods, digital content, digital service, service or other subject matter of the contract supplied. <p>This does not include price or payment that is:</p> <ul style="list-style-type: none"> • incidental or ancillary to the price or payment in relation to the goods, digital content, digital service, service or other subject matter of the contract supplied in exchange for same or, • a payment that is contingent on whether a particular event occurs or not. <p>It also provides that a contract term will only be excluded from assessment for unfairness if it is consistent with section 134.</p> <p>This section does not apply to a term of a consumer contract that is presumed to be unfair under section 133(1).</p>
132.	Consumer contract terms that are always unfair	<p>Subsection 1 provides several instances where a contract term will always be unfair, dependent on the object or effect of the action as follows:</p> <ul style="list-style-type: none"> • to exclude or limit the liability of a trader for the death of or personal injury (‘personal injury’ is given the same meaning as in the Civil Liability Act 1961) to a consumer arising from an act or omission of the trader; • to require a consumer to pay for goods that have not been delivered or digital content, a digital service or a service that has not been supplied; • to impose on a consumer a burden of proof that, according to the appropriate law, would otherwise be on a trader; • to exclude or hinder a consumer’s right to take legal action or exercise a legal remedy, including by requiring the consumer to take a dispute to an arbitration procedure that is not governed by law; • to require a consumer to bear his or her own costs in respect of any arbitration; • to give a trader the exclusive right to determine whether goods, digital content, a digital service or a service conforms with the contract; • to give a trader the sole right to interpret any term of the contract; • to grant the trader a shorter notice period to terminate the contract than the notice period required of the consumer, or

Section	Title	Effect
		<ul style="list-style-type: none"> to confer exclusive jurisdiction for disputes arising under the contract on a court in the place where a trader is domiciled unless the consumer is also domiciled in that place. <p>This does not impact the validity of any discharge or indemnity given by a person for compensation in settlement of any claim that the person has.</p> <p>The section also sets out several exclusions in relation to trader liability for consumer injury or death from an act or omission of the trader:</p> <ul style="list-style-type: none"> insurance contract including life insurance; consumer contract including a conveyance; a person suffers loss or damage due to the dangerous state of the premises where access was for recreational purposes and unrelated to trader's business, trade, craft or profession. <p>A consumer cannot voluntarily accept any risk even where they agreed to or were aware of a contract term that claimed to exclude the trader's liability for death or personal injury.</p>
133.	Consumer contract terms presumed to be unfair	<p>Part 1 of Schedule 5 sets out an indicative and non-exhaustive list of terms of consumer contracts that must be presumed to be unfair for the purposes of this Part. This is subject to the provisions of Part 2 of that Schedule.</p> <p>A term in a consumer contract contained in Part 1 of Schedule 5 can be assessed for unfairness under section 130, provided it has not been excluded from being assessed under section 131.</p> <p>The Minister may make regulations to identify further terms that shall be presumed to be unfair for the purposes of this Part. They can only do so when satisfied that it is necessary in the interests of consumer protection and fair competition.</p>
134.	Consumer contract terms to be transparent	<p>Provides that a trader must ensure that the terms of a contract are transparent.</p> <p>It sets out a list of requirements for a term to be considered transparent as follows:</p> <ul style="list-style-type: none"> it should be expressed in plain and intelligible language, a written term must be legible and presented clearly, the term must be made available to the consumer in a manner which allows them a reasonable opportunity to familiarise themselves with the term prior to the conclusion of the contract, irrespective of whether such an opportunity is availed of, a term that is novel or onerous must be specifically brought to the consumer's attention in such a way that the average consumer would be aware of the term, any costs or other financial consequences deriving from the term would be clear to the average consumer, and the term complies with such other requirements as may be prescribed. <p>It also provides a list of matters that must be considered when assessing the transparency of a term of a consumer contract.</p> <p>If there is any dispute, it is the responsibility of the trader to demonstrate that a term is transparent.</p> <p>Where a contract is directed at a certain group of consumers, any reference to an average consumer will be understood as an average member of that group.</p> <p>According to subsection 2(f), before the Minister makes regulations, they must consult any persons they consider appropriate.</p>

Section	Title	Effect
		<p>It defines 'novel' in relation to a term of a consumer contract as "a term which may be considered new or original by reference to existing or established market practice in the relevant sector or industry."</p> <p>It defines 'the average consumer', subject to subsection (5), as "a consumer who is reasonably well-informed, reasonably observant and circumspect."</p>
135.	Interpretation of term of consumer contract	<p>Provides that if there is any doubt surrounding the interpretation of a term, the term that is most favourable to the consumer will be the binding one.</p> <p>Also provides that this will be the approach where the interpretation of a term is the basis of a court application for a declaration or injunction under section 137.</p>
136.	Duty of court to consider whether term of consumer contract unfair	<p>A court must determine whether a term is unfair, when considering a term in a contract, even if neither party allege nor imply unfairness. This can only happen when the court considers that it has enough legal and factual information available to make its decision.</p>
137.	Application to court for declaration or injunction	<p>A court can make several differing orders upon application by an authorised body for a declaration that a term is unfair as follows:</p> <ul style="list-style-type: none"> • declaration that a term is unfair • prohibiting continued or future use of a term or similar terms with comparable effect or outcome • imposing certain conditions as it considers appropriate including: <ul style="list-style-type: none"> - trader to publish a corrective statement - trader to issue an amended contract to relevant parties <p>The court can make such a declaration where an authorised body seeks a decision on the proper interpretation of a general term of a contract.</p> <p>Before an authorised body makes an application, it must publish its notice of intention to apply for that declaration under the relevant subsection, in Irish Ofigiúil and two national newspapers and in any other manner the court directs.</p> <p>An authorised body can apply for an injunction (including an interim one) against any trader using or endorsing the use of a term which the authorised body considers to be an unfair one. Where an application is made for an injunction, the court can grant one on terms it considers appropriate including a corrective statement or amended contract. An injunction can be made also based on any similar term or a term having a similar effect or outcome as recommended for use by the trader.</p> <p>The court in making a declaration or granting an injunction must take account of all the interests involved, particularly the public interest in the protection of consumers.</p> <p>Every person claiming to have an interest in an application shall be entitled to appear before and to be heard by the court on the hearing of the application.</p> <p>An application by an authorised body for a declaration or injunction that is not the Competition and Consumer Protection Commission shall be on notice to the Commission.</p> <p>An authorised body is not required to prove the following:</p> <ul style="list-style-type: none"> • probable loss or damage; • actual loss or damage, or • recklessness or negligence on the part of the trader. <p>An application for a declaration or injunction does not prejudice the right of a consumer to rely upon the provisions of this Part in any case before a court of competent jurisdiction.</p>

Section	Title	Effect
		<p>An application under this section to the Circuit Court must be made to the judge of the circuit in which the trader is ordinarily resident or carries on any profession, trade or business.</p> <p>In this section, 'court' means the High Court or the Circuit Court.</p>
138.	Transfer from Circuit Court to High Court	<p>When hearing an application under section 137, if a Circuit Court decides that it is inappropriate for a Circuit Court to deal with the matter, it can transfer the hearing to the High Court.</p> <p>The Circuit Court has jurisdiction to deal with an application under section 137 once it is satisfied at the time the application was made, it had the jurisdiction to deal with it.</p> <p>Any procedural orders made by the Circuit Court prior to the proceedings being transferred to the High Court are considered to have been made by the High Court.</p>
139.	Publication of order made by court under section 137(1)	<p>Where a court makes an order declaring that a term is unfair, the authorised body or the Competition and Consumer Protection Commission (if no authorised body made an application) must publish a copy of the order on their website.</p> <p>This must be done within 90 days beginning from:</p> <ul style="list-style-type: none"> • where no appeal is brought against an order made under section 137(1), the expiration day for bringing an appeal; • where an appeal is brought, the day it is determined, withdrawn or abandoned. <p>An authorised body or the Competition and Consumer Protection Commission, as applicable, may instead of publishing a copy of the order, publish a notice in a manner and form they consider appropriate. The notice must include the term that has been declared unfair but does not need to disclose information that would identify the parties or any information that cannot be disclosed due to legal or regulatory requirements.</p> <p>This type of notice is published where it is in the interests of consumer protection or necessary to comply with a legal or regulatory requirement.</p> <p>Where such a notice is published, the authorised body and where it did not make the application, the Competition and Consumer Protection Commission must publish the same notice.</p>
140.	Offence	<p>A trader will commit an offence where:</p> <ul style="list-style-type: none"> • an authorised body publishes an order declaring that a term relevant to the contract has been found unfair or a notice setting out a term the Court has declared unfair, and • the trader uses the term in a contract.
Part 7: Proceedings and Penalties		
141.	Interpretation (Part 7)	Provides for the definition of "relevant authority" in Part 7 of the Bill.
142.	Offences: penalties	<p>Provides for the penalties that apply for offences that are set out in the Bill.</p> <p>On summary conviction the punishment is a class A fine (maximum €5,000) or imprisonment for a term not exceeding 12 months, or both.</p> <p>On conviction on indictment the punishment is a fine not exceeding €60,000 or imprisonment for a term not exceeding 18 months, or both.</p> <p>Subsection (2) provides for a list of factors to be taken into account by a court when sentencing a person convicted of an offence under Parts 5 or 6 of the Bill.</p>

Section	Title	Effect
143.	Liability for offences by body corporate	Provides that where offences under the Bill are committed by a body corporate and are attributable to a person who is a director, manager, secretary or other officer of the body corporate, that person, as well as the body corporate, may be found guilty of an offence.
144.	Defence of due diligence	Provides for a defence of due diligence where a defendant can prove that they exercised due diligence and took all reasonable precautions to avoid committing an offence under the Bill.
145.	Convicted persons liable for costs and expenses of proceedings and investigation	Provides that where a person is convicted of an offence under this Bill, the court will generally order the person to pay to the relevant authority the costs and expenses of the proceedings and investigation.
146.	Convicted traders liable to compensate consumers for loss or damage	<p>Provides that where a trader is convicted of an offence under the Bill, the relevant authority that brought the proceedings, may on behalf of a consenting aggrieved consumer, apply for a compensation order requiring the trader to pay an amount calculated by the court as compensation to that consumer for loss or damage arising from the offence. This may be instead of or in addition to any fine or penalty already imposed.</p> <p>An application cannot be made where the aggrieved consumer has brought an action under section 34, section 73 or section 95 against the trader in respect of the same failure to comply with the Bill that has given rise to the conviction.</p> <p>If a trader fails to comply with a compensation order the aggrieved consumer may enter judgment in the District Court, or, as appropriate, the Circuit Court, with such judgment being enforceable in the same manner as a judgment rendered in that court in civil proceedings.</p>
147.	Prosecution of summary offences	Provides for the relevant authorities that may bring summary proceedings for offences under the different Parts of the Bill.
Part 8: Amendment of Consumer Credit Act 1995		
148.	Amendment of section 2 of Act of 1995	Amends section 2 of the 1995 Act in several ways. It inserts several new definitions including commercial guarantee, digital content, digital service. It also inserts a new subsection (10) setting out the standard for reasonableness as “being objectively ascertained having regard to the nature and purpose of the hire-purchase agreement, the circumstances of the case and the usages and practices of the parties to the agreement.”
149.	Sections 73A to 73X: interpretation	Inserts a new section 56A into the 1995 Act which provides that a reference in sections 73A to 73X to goods compliant with a hire-purchase agreement must be construed in accordance with section 73A(2).
150.	Insertion of sections 73A to 73X into Act of 1995	<p>Inserts sections 73A to 73X into the 1995 Act. These are outlined as follows:</p> <ul style="list-style-type: none"> • 73A - Goods to be in conformity with hire-purchase agreement at time of delivery • 73B - Owner to have right to sell goods etc. • 73C - Subjective requirements for conformity with hire-purchase agreement • 73D - Objective requirements for conformity with hire-purchase agreement • 73E - Incorrect installation of goods • 73F- Implied terms of hire-purchase agreement • 73G - Liability of owner • 73H - Burden of proof • 73I - Right to remedies under sections 73J and 73K • 73J- Short-term right to terminate hire-purchase agreement • 73K - Repair or replacement of goods

Section	Title	Effect
		<ul style="list-style-type: none"> • 73L - Right to proportionate reduction in price and to final termination of hire purchase agreement • 73M – Price reduction • 73N - Obligations of hirer in event of termination of hire-purchase agreement • 73O – Obligations of owner where hire-purchase agreement terminated • 73P – Time limits and means of reimbursement by owner • 73Q - Effect of termination of hire-purchase agreement on ancillary contract • 73R - Representations purporting to restrict rights of hirer: offences • 73S - Exclusion or limitation of liability of owner • 73T – Liability for commercial guarantee • 73U – Liability of owner for another’s commercial guarantee • 73V- Liability under commercial guarantee to subsequent hirers • 73W - Provision and content of commercial guarantee statement • 73X - Exclusion or limitation of rights of hirer under commercial guarantee
151.	Application of sections 73A to 83 of Act of 1995 to consumer-hire agreements	<p>Amends the 1995 Act by substituting section 88 for a section titled “Application of sections 73A to 83 to consumer-hire agreements”. It provides that the section applies to goods let under a consumer-hire agreement as if it were a hire-purchase agreement.</p> <p>Where section 73P applies, entitlement to reimbursement of the price referred to in subsection 73P(1)(a) regarding price reduction under section 73M, only applies as it relates to any price paid by the hirer for a period of hire during which the hirer is not in possession of the goods because of the termination of the consumer-hire agreement.</p> <p>It provides that it is the duty of an owner to ensure any good is free of any charge or burden before entering a consumer-hire agreement. The consumer’s quiet possession of the goods may only be disturbed by the owner or any other person entitled to the benefit of any charge or encumbrance already disclosed.</p> <p>It also provides that the amendment will apply in relation to a consumer-hire agreement that is concluded on or after the day on which this section comes into operation.</p>
Part 9: Amendment of <i>Consumer Protection Act 2007</i>		
152.	Amendment of section 2 of Act of 2007	<p>Amends section 2(1) of the 2007 Act as follows:</p> <ul style="list-style-type: none"> • substitutes a new definition for ‘product’; • amends the definition for ‘relevant statutory provisions’; • inserts the following definitions <ul style="list-style-type: none"> ○ ‘Act of 2022’ means the Consumer Rights Act 2022; ○ ‘digital content’, and ‘digital service’ has the same meaning as in the Act of 2022; ○ ‘distance contract’ has the same meaning as in Part 5 of the Act of 2022; ○ ‘online marketplace’ means a service using software, including a website, part of a website or an application, operated by or on behalf of a trader which allows consumers to conclude distance contracts with other traders or consumers; ○ ‘ranking’ means the relative prominence given to products, as presented, organised or communicated by the trader, irrespective of the technological means used for such presentation, organisation or communication”.

Section	Title	Effect
153.	Amendment of section 41 of Act of 2007	Inserts a new subsection 4 into section 41 of the 2007 Act which provides that a trader commits an offence liable to conviction on indictment or to the fines or penalties under Chapter 4 of Part 5 on summary conviction, where they continue to engage in a commercial practice already found to be unfair by a court under this section.
154.	Misleading: marketing of goods as identical where significantly different	Inserts a new section 44A into the 2007 Act setting out the terms for a misleading commercial practice including how the factual context must be considered.
155.	Amendment of section 46 of Act of 2007	<p>Substitutes a new paragraph (e) into section 46(3)(e) of the 2007 Act regarding the standard of skill and care reasonably expected of traders and the general principle of good faith.</p> <p>Inserts a new paragraph (g) as follows:</p> <p>“(g) for products offered on online marketplaces, whether the third party offering the products is a trader or not, on the basis of the declaration of that third party to the provider of the online marketplace.”</p> <p>It inserts a new s.3A and 3B after section 46(3) which provides that general information about parameters used in online keyword searches for products offered by different traders will be treated as material information for the purposes of this section. This general information relates to the key parameters determining the ranking of products as well as the overall contextual importance of those parameters. This must be made available in a distinct accessible section of the online interface. This is irrespective of where transactions are ultimately concluded.</p> <p>Section 3A does not apply to anyone who provides or offers to provide an online search engine to consumers.</p> <p>The new Section 3B provides that the information about whether and how traders ensure published reviews come from consumers who have used or bought the product will be considered material information for the purposes of the section.</p> <p>In subsection 4, it substitutes ‘subsection (3) to (3B)’ for ‘subsection 3’.</p>
156.	Amendment of section 47 of Act of 2007	Amends section 47 of the 2007 Act by inserting ‘44(1), 44A, 45(1) or 46(1) or (2)’ after ‘43(1) or (2)’.
157.	Amendment of section 55 of Act of 2007	<p>Amends section 55(1) of the 2007 Act by inserting a new paragraph (qa) after paragraph (q) prohibiting the provision of search results without clear disclosure of paid advertisement or payment for higher ranking of products within results.</p> <p>It also inserts paragraphs (z), (za) and (zb) after paragraph (y) relating to reselling event tickets to circumvent purchasing rules, appropriate steps to ascertain authenticity of consumer reviews and using or commissioning false or misrepresented reviews to promote products respectively.</p>
158.	Amendment of section 67 of Act of 2007	Amends section 67 of the 2007 Act by deleting paragraph (g) and inserting new paragraphs (o) - (t) after paragraph (n). These relate to ‘prohibited act or practice’.
159.	Amendment of section 71 of Act of 2007	<p>Substitutes a new subsection 1 into section 71 of the 2007 Act setting out what is excluded in terms of a prohibited act or practice in the context of civil proceedings.</p> <p>Inserts a new subsection 2A into section 71 of the 2007 Act setting out the court orders available through an application under subsection 2. These are an interim order, an interlocutory order, or an order for an indefinite period or for specified period in the application.</p> <p>Inserts a new subsection 6A providing that an order can be made regarding any similar prohibited act or practice (or ones having like effect)</p>

Section	Title	Effect
		where they relate to a certain prohibited act or practice relevant to Parts 2 to 5 of the 2022 Act.
160.	Amendment of section 73 of Act of 2007	Amends section 73 of the 2007 Act by substituting a new section 7. It provides that the Commission for Communications Regulation can, despite subsection 6, where a trader fails to comply with the terms and conditions of an undertaking under section 73, apply for an order under section 71 or serve a compliance order under section 75.
161.	Consumer's right to price reduction and termination of contract	<p>Inserts a new section 73A into the 2007 Act setting out the remedies available when a consumer is aggrieved by a prohibited act or practice. These are a right to a price reduction from the contract price and a right to termination of the contract.</p> <p>The conditions under which the consumer will have the right to those remedies, and the obligations of the trader and the consumer under them, shall be prescribed for the purposes of section 73A.</p>
162.	Amendment of section 75 of Act of 2007	<p>Amends section 75 of the 2007 Act by:</p> <ul style="list-style-type: none"> • substituting "relevant court specified in the notice" for "District Court" in subsection 3(d); • inserting a new section 3A after section 3 permitting an authorising officer to include a requirement within a compliance notice, to refund any payments to a consumer in any transaction relevant to the notice; • substituting "relevant court specified in the notice" for "District Court in the district court district in which the notice was served" in subsection (5); • inserting a new subsection 15 which provides that 'relevant court' means the District Court, the Circuit Court, or the High Court.
163.	Time limit for instituting summary proceedings	Inserts a new section 77A setting the time limit for instituting summary proceedings under the 2022 Act, notwithstanding section 10(4) of the <i>Petty Sessions (Ireland) Act 1851</i> . The time limit is any time within 3 years of the date on which the offence was alleged to have been committed.
164.	Amendment of section 79 of Act of 2007	Amends section 79(1)(a) of the 2007 Act substituting "a class B fine" for "a fine not exceeding €3,000"
165.	Amendment of section 85 of Act of 2007	<p>Amends section 85 of the 2007 Act as follows:</p> <ul style="list-style-type: none"> • amends section 85(1)(a) by inserting "47 (respecting misleading commercial practices) or" after "section" • a new paragraph (ba) after (b) "section 101(3), 103(9), 104(9), 105(4), 106(11), 107(4), 108(7), 109(5), 117(11), 122(4), 123(5) or 124(4) of the Act of 2022;" • a new paragraph (ca) after paragraph (c) "Regulation 7, 8, 13 or 14 of the European Communities (Directive 2000/31/EC) Regulations 2003 (S.I. No. 68 of 2003) • deletes paragraph d • amends section 85(3)(c) by substituting "the prescribed amount specified in the notice" for "the amount of €300" • inserts a new section 6A after subsection (6) - "The amount of a fixed payment, being not more than €1,500, may be prescribed and different amounts may be prescribed in relation to the different relevant offences specified in subsection (1)."
166.	Amendment of section 90 of the Act of 2007	Substitutes section 90(1)(e) of the 2007 Act for the following paragraph "(e) the Act of 2022;"
167.	Amendment of section 91 of Act of 2007	Amends section 91 of the 2007 Act by substituting "sections 66(1) and 74A" for "section 66(1)", and "any product" for "any goods or the provision of any services."

Section	Title	Effect
168.	Amendment of Schedule 4 to Act of 2007	Amends Schedule 4 to the 2007 Act through the deletion of reference to the <i>Sale of Goods and Supply of Services Act 1980</i> and eight related statutory instruments. It also inserts an entry to the 2022 Act.
169.	Amendment of Schedule 5 to Act of 2007	Amends Schedule 5 to the 2007 Act through the deletion of reference to the <i>Sale of Goods and Supply of Services Act 1980</i> and five related statutory instruments. It also inserts an entry to the 2022 Act.
Part 10: Amendment of <i>Central Bank Act 1942</i>		
170.	Amendment of <i>Central Bank Act 1942</i>	Provides for amendments to section 5A and Parts 1 and 2 of Schedule 2 of the 1942 Act, to reflect consequential changes arising from Parts 4 and 6 of the Bill.
Part 11: Amendment of <i>Communications Regulation Act 2002</i>		
171.	Amendment of section 10 of <i>Communications Regulation Act 2002</i>	Provides for amendments to subsections (1), (1A), (1B) and (1D)(b) of section 10 of the 2002 Act to reflect changes to the functions of the Commission for Communications Regulation and the CCPC, arising from this Bill.
Part 12: Amendment of <i>Competition and Consumer Protection Act 2014</i>		
172.	Amendment of section 12 of <i>Competition and Consumer Protection Act 2014</i>	Provides for an amendment to section 12 of the 2014 Act, to broaden the range of periods, to include those outlined in section 12(3)(b) and section 12(5)(a), as not deemed to be a term of office, in respect of reappointment as a member of the CCPC.
Part 13: Minor and Consequential Amendments of Enactments		
173.	Minor and consequential amendments of enactments	Provides for minor and consequential amendments to Acts and statutory instruments as set out in Schedule 6 of the Bill.

Source: L&RS Analysis of the Bill

Background

The [Consumer Rights Bill 2022](#) [the Bill] was published by the Tánaiste and Minister for Enterprise, Trade and Employment, Leo Varadkar TD, [the Minister], on 22 April 2022. A General Scheme of the Bill was published in May 2021, alongside a public consultation in respect of the legislation, carried out by the Department.¹ The Joint Committee on Enterprise, Trade and Employment, undertook Pre-Legislative Scrutiny [PLS] of the General Scheme of the Bill on 13 October 2021.²

The main purpose of the Bill is to amend and consolidate the current law on the rights and remedies for consumers, including in relation to contracts for the sale of goods and the supply of digital content.

Announcing the decision to publish the Bill, the Minister stated:

“This new law is good for consumers and good for business. Most businesses are responsible and treat their customers fairly when things go wrong. For those that don’t, it can give them an unfair advantage over their competitors. This new law consolidates a lot of existing legislation and updates it, to make it fit for the modern, digital age.

For the first time, we’re extending consumer rights over digital goods and services, meaning you will have the same rights over anything you stream or download as you do over a good or service you’d buy in a shop. We’re also cracking down on aggressive commercial practices, such as a company leaving fake reviews on its own or competitor’s services.”³

The Bill has been described as the biggest overhaul of consumer protection law in 40 years. It seeks to transpose the provisions of three EU Directives into Irish law, including provision for consumers to have the same rights in relation to digital content and digital services, such as cloud services and streaming products. The three Directive being transposed are the Digital Content Directive,⁴ the Sale of Goods Directive⁵; and Articles 1, 3 and 4 of the Omnibus Directive.⁶

¹ Details of the public consultation and the general scheme are available at <https://enterprise.gov.ie/en/Consultations/Consultation-on-Scheme-of-Consumer-Rights-Bill-2021.html>.

² Joint Committee on Enterprise, Trade and Employment, [General Scheme of the Consumer Rights Bill 2021: Discussion](#), *Committee Debate*, 13 October 2021.

³ Department of Enterprise, Trade and Employment, Press Release, “Government approves new law strengthening consumer rights” (22 February 2022). Available at <https://www.gov.ie/en/press-release/9676a-government-approves-new-law-strengthening-consumer-rights/>.

⁴ [Directive \(EU\) 2019/770](#) of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, [2019] OJ L 136/1.

⁵ [Directive \(EU\) 2019/771](#) of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC, [2019] OJ L 136/28.

⁶ [Directive \(EU\) 2019/2161](#) of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU as regards the better enforcement and modernisation of Union consumer protection rules, [2019] OJ L 328/7.

The Bill also proposes to introduce greater transparency for consumers, including a 'black list' of prohibited terms and requirements on the information that must be provided to consumers before entering into a contract. It also seeks to crack down on dishonest commercial practices, such as fake reviews, and provides for more redress options, including the right to request a price reduction on faulty goods.⁷

The publication of the Bill was also welcomed by the Competition and Consumer Protection Commission, which noted that "will bring about a number of positive changes for consumers, including stronger consumer rights, protections and remedies across a range of key areas".⁸

This section provides background material in relation to:

- The Regulatory Impact Analysis;
- Departmental consultation and Pre-legislative scrutiny;
- Stakeholder commentary; and
- EU legal and policy context.

The Regulatory Impact Analysis

A Regulatory Impact Analysis [RIA] for the Bill was prepared in February 2022.⁹ The RIA explored two separate policy options in respect of addressing developments in European Union consumer law, and consolidating and modernising Irish consumer contract law.

The first of these options, is to adopt an approach of no policy change and maintaining the status quo. While it was noted that this would not give rise to additional costs to the Exchequer or to businesses, it was acknowledged that the existing consumer contracts law is disjointed and deficient in certain respects, something that would continue if updated legislation was not introduced. It also highlighted that the impact of no policy change would be that the Government would fail to meet its EU law obligations and may lead to the imposition of financial penalties pursuant to Article 260(3) of the Treaty on the Functioning of the European Union.

The RIA notes that the preferred option is the introduction of legislation. The RIA identifies costs associated with enforcement of the legislation by the CCPC and notes that this was factored into the Budget 2022 Estimates with the CCPC receiving a 9% increase in its annual budget. The RIA also suggests that additional minor resources may be required of the Department of Enterprise, Trade and Employment in relation to its governance and oversight of the legislation and of the CCPC.

A number of benefits associated with the introduction of legislation are outlined in the RIA, including:

⁷ Department of Enterprise, Trade and Employment, Press Release, "Government approves new law strengthening consumer rights" (22 February 2022). Available at <https://www.gov.ie/en/press-release/9676a-government-approves-new-law-strengthening-consumer-rights/>.

⁸ Competition and Consumer Protection Commission, Press Release "CCPC welcomes the publication of the Consumer Rights Bill 2022" (22 April 2022). Available at <https://www.ccpc.ie/business/ccpc-welcomes-the-publication-of-the-consumer-rights-bill-2022/>.

⁹ This RIA was made available to the L&RS courtesy of the Department. It notes that the RIA will be published on the Department's website. At the time of writing, it has not yet been published.

- The Government fulfilling its obligations under EU law;
- Benefits to consumers and businesses from legislation that is easier to understand and navigate;
- New statutory rights and remedies in contracts for digital content and digital services which have not previously been the subject of the type of statutory rights that have applied to contracts for goods;
- Strengthened consumer rights relating to the quality, fitness for purpose and other aspects of consumer contracts for the full range of non-digital services and, for the first time, statutory remedies for consumers where the services supplied by providers do not comply with those quality and other standards;
- Stronger transparency requirements for terms and conditions in standard form consumer contracts and for the first time a 'blacklist' of contract terms that are always and automatically unfair; and
- New enforcement powers for the CCPC where traders do not provide the remedies or reimbursement to which consumers are entitled under the legislation.

In respect of ongoing review, the RIA notes that the legislation will be reviewed as part of an ongoing review of consumer protection legislation by the Department and will be subject to a Post Enactment Report.

Consultation and Pre-legislative scrutiny

Prior to this Bill, the Government considered proposing a Bill at national level to reform certain aspects of consumer protection law, including contracts for the sale of goods, contracts for the supply of digital content and unfair contract terms. In May 2015, it published a [General Scheme for a Consumer Rights Bill](#) and conducted a [consultation](#). However, with the publication of two proposals by the European Commission in December 2015, the decision was taken not to introduce the legislation if large parts of it would have to be repealed or amended shortly after enactment.¹⁰

Following the adoption of Directives (EU) 2019/770, 2019/771 and 2019/2161, a [new General Scheme](#) was published in May 2021. Between 20 May and 30 June 2021, the Department of Enterprise, Trade and Employment sought the views of stakeholders in relation to the General Scheme of the Bill. It also noted that (with limited exceptions) Parts 2, 3, 5 and 6 were maximum harmonisation measures, with the focus on the consultation being on the other Parts of the Bill.¹¹

The Joint Committee on Enterprise, Trade and Employment also engaged with representatives of the Department at its [meeting of 13 October 2021](#) for pre-legislative scrutiny (PLS) of the Bill. The Committee did not publish a report and completed its scrutiny.

¹⁰ Heather Humphreys TD, Minister for Business, Enterprise and Innovation, [Response to Parliamentary Question No. 1037 – Consumer Protection](#), Written Answer, *Dáil Éireann Debate*, 23 July 2019.

¹¹ Department of Enterprise, Trade and Employment, Consultation on Scheme of Consumer Rights Bill 2021, at p.4, available at <https://www.gov.ie/en/consultation/3c8be-consultation-on-scheme-of-consumer-rights-bill-2021/>.

Commentary and Observations

Given the time available between publication of the Bill and Second Stage debate, and the presence of maximum harmonisation measures in the content of the Bill, this section focuses on issues where there is an element of national flexibility, such as service contracts, and highlights in particular issues raised in the consultation and PLS processes.

Part 4 of the General Scheme is related to the supply of non-digital services, which is not regulated by EU legislation.¹² At present, this is regulated by [Part IV](#) of the *Sale of Goods and Supply of Services Act 1980*. What the Bill proposes to do is bring certain types of contract under the remit of the consolidated legislation.

It is important however to note that while the Bill is consolidating the requirements for service contracts, it is replacing Part IV for service contracts between a consumer and a trader, i.e. contracts to which Part 4 of the Bill applies. The 1980 Act will remain in place for all other contracts, and this is provided for by Schedule 6 of the Bill, which proposes to insert a new section 38A to the 1980 Act to provide that it does not apply to contracts to which Part 4 of the Bill applies.

The Consumer Association of Ireland noted that the legislation is aimed at complementing Irish legislation on consumer contracts to include services in general and noted that the approach on conformity requirements and remedies corresponds to Parts 2 and 3.¹³ Similarly, the Competition and Consumer Protection Commission noted that current legislation on the supply of services does not provide the same levels of protection provided for the sale of goods.¹⁴ It also stated that it supported the protection available to consumers for service contracts being brought into line with contracts for the sale of goods and digital contracts.¹⁵

Conformity requirements

One particular issue to arise in the consultation were differences between the conformity requirements in the 1980 Act and those proposed by the Bill. Under [section 39 of the 1980 Act](#), a number of implied terms are set out in every contract for the supplier of a service where the supplier is acting in the course of a business:

- a) that the supplier has the necessary skill to render the service,
- b) that he will supply the service with due skill, care and diligence,
- c) that, where materials are used, they will be sound and reasonably fit for the purpose for which they are required, and
- d) that, where goods are supplied under the contract, they will be of merchantable quality within the meaning of section 14 (3) of the Act of 1893 (inserted by section 10 of this Act).

¹² Ibid.

¹³ Submission of Consumer Association of Ireland to the Consultation on the Scheme of the Consumer Rights Bill 2021, at p.6. Available at <https://www.gov.ie/en/consultation/3c8be-consultation-on-scheme-of-consumer-rights-bill-2021/>.

¹⁴ Submission of the Competition and Consumer Protection Commission to the Consultation on the Scheme of the Consumer Rights Bill 2021, at p.9. Available at <https://www.gov.ie/en/consultation/3c8be-consultation-on-scheme-of-consumer-rights-bill-2021/>.

¹⁵ Ibid.

[Section 40 of the 1980 Act](#) qualifies section 39 by providing that an express term may negative or vary an implied term if it is fair and reasonable and brought to the attention of the consumer.

The Law Society of Ireland described the changes to the conformity requirements in Head 65 (corresponding to section 80 of the Bill) as representing “a major change in the law”, arguing that the introduction of a fitness to purpose standard represents a significant development in respect of contracts for the provision of professional services to consumers.¹⁶ Similarly, the Bar Council noted that while barristers do not provide services to consumers, this may change if [section 101 of the Legal Services Regulatory Act 2015](#) is commenced. It argued that barristers providing legal services should be specifically exempted from the legislation due to the unique legal services that barristers provide and the existing regulatory regime, noting that it is foreseeable that unsuccessful litigants may seek to sue barristers on the basis that they did not exercise due skill, care and diligence.¹⁷ The Irish Dental Association also highlighted potential effects on the healthcare sector arising from the conformity requirements in Part 4 of the General Scheme.¹⁸

At the PLS hearing, the Committee was told that in the consultation, concerns were raised regarding Part 4, particularly in relation to the supply of professional services. The Department also indicated that it was engaging with Departments with responsibility for redress schemes, as well as other bodies, to ensure that it avoids regulatory overlap without impinging consumer rights.¹⁹

Exemption clauses

Part 4 of the Bill also seeks to bring provisions in relation to services regarding exemption clauses in line with those applicable to goods. This follows a recommendation in the Report of the Sales Law Review Group that contract terms which exclude the terms implied by statute into consumer contracts for services should be automatically unfair in all circumstances under the applicable Regulations.²⁰ It also recommended the repeal of [section 41 of the 1980 Act](#), which relates to statements purporting to restrict the rights of recipients of services.²¹ Head 73 of the General

¹⁶ Submission of the Law Society of Ireland to the Consultation on the Scheme of the Consumer Rights Bill 2021, at p.7. Available at <https://www.gov.ie/en/consultation/3c8be-consultation-on-scheme-of-consumer-rights-bill-2021/>.

¹⁷ Submission of the Bar Council to the Consultation on the Scheme of the Consumer Rights Bill 2021, at p.3. Available at <https://www.gov.ie/en/consultation/3c8be-consultation-on-scheme-of-consumer-rights-bill-2021/>.

¹⁸ Submission of the Irish Dental Association to the Consultation on the Scheme of the Consumer Rights Bill 2021, at p.4. Available at <https://www.gov.ie/en/consultation/3c8be-consultation-on-scheme-of-consumer-rights-bill-2021/>.

¹⁹ Ms Clare McNamara, Principal Officer, Department of Enterprise, Trade and Employment, General Scheme of the Consumer Rights Bill 2021: Discussion, *Committee Debate*, 13 October 2021.

²⁰ [European Communities \(Unfair Terms in Consumer Contracts\) Regulations 1995](#), S.I. No. 27/1995 and [European Communities \(Unfair Terms in Consumer Contracts\) \(Amendment\) Regulations 2000](#), S.I. No. 307/2000.

²¹ Sales Law Review Group, [Report on the Legislation Governing the Sale of Goods and Supply of Services](#), 2011 at pp.444-445.

Scheme, corresponding to section 94 of the Bill, provides for this change. This alignment of the rules on service contracts with sales contracts was also welcomed by the CCPC.²²

European Electronic Communications Code

Some observations were also raised in relation to the European Electronic Communications Code (EECC).²³ In its consultation submission, Ibec stated that it should be “recognised by Government that detailed sector specific legislation exists for the telecoms sector and that consumer protection rules for the sector are set out in the EECC”. It noted that electronic communications services should either be excluded or it should be acknowledged that where there is a potential conflict between these provisions and the EECC, then the EECC should prevail.²⁴

The Law Society of Ireland also highlighted the potential for confusion between parts of the General Scheme and the EECC, stating that it is important to ensure that the consolidation of the legislation is not undermined by future events, including the need to implement sector-specific legislation like the EECC.²⁵

The Bill does contain reference to the EECC, providing in sections 29, 64 and 93 of the Bill to provide that the section does not apply to a bundle of electronic communications services or a bundle of such services and terminal equipment that includes elements of an internet access service or number-based interpersonal communications service.²⁶

Unfair Contract terms (Part 6 of the Bill)

One of the main reforms proposed by the Bill is to amend the current Unfair Terms in Consumer Contracts Regulations 1995, which transposed Directive No. 93/13/EEC, to provide for “black lists” and “grey lists” of unfair contract terms:

- The “black list” refers to terms that are automatically unfair, which are set out in section 132 of the Bill. As these are set out in primary legislation they will require amendment to be changed in the future.
- The “grey list” however, is provided for to be “indicative and non-exhaustive” under section 133 of the Bill. The Minister may make regulations to specify further terms that are

²² Submission of the Competition and Consumer Protection Commission to the Consultation on the Scheme of the Consumer Rights Bill 2021, at p.9. Available at <https://www.gov.ie/en/consultation/3c8be-consultation-on-scheme-of-consumer-rights-bill-2021/>.

²³ Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code, [2018] OJ L321/36.

²⁴ Submission of Ibec to the Consultation on the Scheme of the Consumer Rights Bill 2021, at pp.9-10. Available at <https://www.gov.ie/en/consultation/3c8be-consultation-on-scheme-of-consumer-rights-bill-2021/>.

²⁵ Submission of the Law Society of Ireland to the Consultation on the Scheme of the Consumer Rights Bill 2021, at p.13. Available at <https://www.gov.ie/en/consultation/3c8be-consultation-on-scheme-of-consumer-rights-bill-2021/>.

²⁶ This applies to internet access services and number-based interpersonal communications services within the meaning of Article 107 of [Directive \(EU\) 2018/1972](#) of the European Parliament and of the Council establishing the European Electronic Communications Code [2018] OJ L321/36. In the case of sections 29 and 64, this applies to internet access services and number-based communications services provided with digital content or a digital service.

presumed to be unfair and add them to the grey list, but this is only where the Minister is satisfied, after consulting persons they consider appropriate, that the regulations will be in the interests of consumer protection and fair competition.

The Department's consultation document noted that legislation giving effect to the Unfair Contract Terms Directive includes a list of contract terms that are automatically and always deemed to be unfair (commonly referred to as blacklist terms). It also highlighted a European Commission study which found that such a list of terms provided greater legal certainty and made it easier to tackle unfair terms.²⁷ The study stated that blacklists have helped eradicate certain practices considered dangerous for consumers, such as arbitration clauses in consumer contracts, and are generally considered to provide better protection to consumers.²⁸ However, it also noted that Ireland did not have a blacklist in place.²⁹

The Department addressed the issue of how the black and grey lists would be updated after enactment during the PLS hearing in October 2021, stating that while it has been comprehensive in the grey list's drafting, that is not to say that it would not be open to expanding it in future.³⁰ The Department also advised Members that the grey list would probably be amended by primary legislation as the Schedule is set out in the Act.³¹

²⁷ Department of Enterprise, Trade and Employment, Consultation on the Consumer Rights Bill 2021, at p.75. Available at <https://www.gov.ie/en/consultation/3c8be-consultation-on-scheme-of-consumer-rights-bill-2021/>.

²⁸ European Commission. 2017. Study for the Fitness Check of EU consumer and marketing law: final report, at p.79. Available at <https://op.europa.eu/en/publication-detail/-/publication/f7b3958b-772b-11e7-b2f2-01aa75ed71a1/language-en>.

²⁹ Ibid, at p.78.

³⁰ Ms Clare McNamara, Principal Officer, Department of Enterprise, Trade and Employment, [General Scheme of the Consumer Rights Bill 2021: Discussion](#), *Committee Debate*, 13 October 2021.

³¹ Ibid.

EU legal and policy context

The Bill provides for the transposition of elements of three separate Directives. These are each discussed separately below.

Transposition of Directives

All three Directives provide for deadlines in which Member States had adopt and publish the necessary measures to comply with them, as well as dates from which these measures are to apply. These are as follows:

- Digital Content Directive: Measures adopted and published by 1 July 2021 and applied from 1 January 2022³²
- Sale of Goods Directive: Measures adopted and published by 1 July 2021 and applied from 1 January 2022³³
- Omnibus Directive: Measures adopted and published by 28 November 2021 and applied from 28 May 2022³⁴

The Digital Content Directive

In proposing both the Digital Content and Sale of Goods Directives in 2015, the European Commission noted that the objective of the proposals was to contribute to the faster growth of the Digital Single Market. The explanatory memorandum to the proposal for the Digital Content Directive highlighted some of the main challenges related to cross-border online sales, stating that:

“[b]y eliminating the key contract law-related barriers hindering cross-border trade, the rules put forward in the proposals will reduce the uncertainty faced by businesses and consumers due to the complexity of the legal framework and the costs incurred by businesses resulting from differences in contract law between Member States.”

In addition to the barriers quoted by business, the Commission also noted the concerns of customers, referencing the 2014 Eurostat survey on ICT usage in households and by individuals in highlighting that 18% of European consumers purchased online from another EU country while 55% did so domestically.³⁵ In noting the range of items covered by digital content, including music, films, apps, games, cloud storage services and broadcasts of sports events, it estimated that the combined value of financial detriment faced by consumers of digital content and the time trying to

³² Article 24, [Directive \(EU\) 2019/770](#) of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, [2019] OJ L 136/1.

³³ Article 24, [Directive \(EU\) 2019/771](#) of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC, [2019] OJ L 136/28.

³⁴ Article 7, [Directive \(EU\) 2019/2161](#) of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU as regards the better enforcement and modernisation of Union consumer protection rules, [2019] OJ L 328/7.

³⁵ European Commission, [Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content](#), COM(2015) 634 final, at pp.2-3.

resolve such problems in the 12 months prior to the proposal to be in the region of €9-11 billion. A further consideration for consumers was uncertainty of their key contractual rights.³⁶

In an Irish context, in 2021 the CSO found that half of internet users it surveyed bought or subscribed to apps or streaming services for films and TV series, while 38% bought or subscribed to apps or streaming services for music streaming or download. It also highlighted that data for younger persons shows higher trends, with 59% of the 16-29 year old group buying or subscribing to streaming services for films / TV series and 56% of this age group buying or subscribing to apps or streaming services for music. This is compared to one third and one quarter of users in the 60 to 74 year old age group.³⁷

[Directive \(EU\) 2019/770](#) of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, known as the Digital Content Directive, was adopted by the European Parliament and the Council on 20 May 2019.³⁸ The purpose of the Directive is to provide for common rules on certain requirements concerning contracts between traders and consumers for the supply of digital content or digital services. It focuses on:

- Conformity of digital content or a digital service with the contract,
- Remedies where there is a lack of conformity or a failure to supply, and
- The modification of digital content or a digital service.

The Directive consists of 27 Articles in total, with the main provisions of the Directive described in more detail below.

Article 1 sets out the subject matter and purpose of the Directive.

Article 2 sets out the definitions for the purposes of the Directive, including definitions for 'digital content', 'digital service', 'goods with digital elements', 'integration', 'trader', 'consumer', 'price', 'personal data', 'digital environment', 'compatibility', 'functionality', 'interoperability' and 'durable medium'.

Article 3 provides for the scope of the Directive, which applies to any contract where the trader supplies or undertakes to supply digital content or a digital service and the consumer pays or undertakes to pay a price. The Directive also applies to the following instances:

- Where the trader provides the above and, instead of a price, the consumer provides or undertakes to provide personal data to the trader. except for data exclusively processed for the purposes of providing the digital content or service or for allowing the trader to comply with legal requirements, and the personal data is not used for any other purpose.
- Where the digital content or digital service is developed in accordance with the consumer's specifications.
- With the exception of Articles 5 to 13, any tangible medium which serves exclusively as a carrier or digital content.

³⁶ Ibid, at p.3.

³⁷ Central Statistics Office, [Household Digital Consumer Behaviour 2021 – Internet Purchases](#).

³⁸ [Directive \(EU\) 2019/770 of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content and digital services](#), [2019] OJ L136/1.

The Directive does not apply to content or digital services which are incorporated in or interconnected with goods with digital elements which are provided with the goods under a sales contract concerning those goods. This is irrespective of whether the goods are provided by the trader or a third party.

The Directive also does not apply to the following contracts:

- Provision of services other than digital services, regardless of whether digital forms or means are used by the trader to produce the output of the service, or to deliver / transmit it to the consumer.
- Electronic communications defined in Article 2(4) of Directive (EU) 2018/1972
- Healthcare
- Gambling services by electronic means
- Financial services as defined in Article 2(b) of Directive 2002/65/EC
- Software offered by the trader under a free or open source licence
- Supply of digital content where the content is made available to the public other than by signal transmission, e.g. digital cinematographic projection
- Digital content provided by public sector bodies under Directive 2003/98/EC.

Article 3 further clarifies that where digital content or services form part of a bundle, the Directive shall only apply to the elements concerning digital content or digital services. Further, it also sets out a number of provisions on the Directive's interaction with other elements of EU and national law:

- Where there is conflict with another EU act governing a specific area, that act takes precedent to the Directive;
- The provisions of EU law concerning personal data apply to the Directive, with the Directive being without prejudice to the General Data Protection Regulation and ePrivacy Directive;
- The Directive is without prejudice to EU and national law on copyright and related rights, including the Information Society Directive; and
- The Directive does not affect the right of Member States to set their own rules on general contract law.

Article 4 limits the level of harmonisation of the Directive, prohibiting Member States from diverging from the Directive or introducing more or less stringent measures. This is known as a **maximum harmonisation Directive**.

Requirement to supply the digital content or digital service

Article 5 requires the trader to provide the digital content or service, and to do so without undue delay after the contract is concluded unless the trader and consumer have agreed otherwise. Separate provisions for digital content and digital services in relation to when they are supplied are also set out.

Conformity

Article 6 requires the trader to supply the digital content or service in line with the conformity requirements set out in Articles 7 to 9, also clarifying that this does not impact third-party rights.

Article 7 sets out the subjective requirements for conformity, including that the digital content or service must include the features required by the contract, be fit for the purpose for which it is required, be supplied with all accessories, instructions and customer assistance as required by the contract and be updated as the contract stipulated.

Article 8 sets out the objective requirements for conformity, which include the fitness for purpose for normal use of the digital content or service, being of the quantity and possessing the qualities and performance features that are normal for the type of digital content / service and what the consumer may reasonably expect, include any accessories or instructions as the customer may reasonably expect and comply with any trial or preview of the content or service prior to the conclusion of the contract. Further requirements in relation to updates to the content or service and where the consumer is specifically informed, and expressly accepts, that a particular aspect of the content or service deviates from the objective conformity requirements.

Article 9 relates to the incorrect integration of digital content or services into a consumer's digital environment, setting out the circumstances where there is a lack of conformity. These are when the digital content or service is integrated by the trader or under the trader's responsibility, or where it is integrated by the consumer but the incorrect integration is due to shortcomings in instructions provided by the trader.

Third-party rights

Article 10 provides that consumers are entitled to a remedy for lack of conformity where the use of digital content or services is prevented or limited due to third party rights, in particular intellectual property rights. It also provides that this entitlement applies unless national law provides for the contract to be annulled or rescinded in such circumstances.

Liability and burden of proof

Article 11 requires that the trader is liable for any failure to supply the digital content or digital service in accordance with Article 5. It also sets out the liability requirements for contracts for both a single supply and continuous supply of digital content and services

Article 12 sets out the burden of proof requirements for the trader in relation to the supply of the digital content or service and in relation to whether it was in conformity with the contract. The requirements on conformity do not apply if the trader can show the consumer's digital environment is not compatible with the content or service. The burden of proof shifts to the consumer if they fail to cooperate with the trader in ascertaining if the digital environment is the cause of the lack of conformity.

Remedies

Remedies are available to consumers under the Directive where there is a failure to supply the digital content or service, or where there is a lack of conformity.

Article 13 provides for the remedy available where there is a failure to supply. This requires the consumer to call upon the trader to supply the digital content or service, and if the trader then fails to do so without undue delay or time as agreed by the parties, the consumer may terminate the contract. The only exceptions to the requirement of the consumer to call upon the trader to supply is where the trader has declared, or it is equally clear from the circumstances, that trader will not supply or where the supply was agreed to take place within an agreed period of time. The consumer must follow the termination procedure in Articles 15 to 18.

Article 14 provides for three broad forms of remedy where there is a lack of conformity:

- Bringing the digital content or digital service into conformity;
- A proportionate reduction in price; or
- The termination of the contract.

Article 14 also sets out the specific requirements in relation to bringing the content or service into conformity and in relation to price reductions.

Article 14.2 provides for a general entitlement for the consumer to have the digital content or service brought into conformity, unless this would be impossible or would impose disproportionate costs on the trader. The considerations to be taken into account include the value of the digital content or service if there was no lack of conformity and the significance of the lack of conformity. Article 14.3 further provides that the trader must bring the content or service into conformity within a reasonable time, free of charge and without any significant inconvenience to the consumer.

Article 14.4 provides for two further remedies, which entitle the consumer to a proportionate price reduction or to terminate the contract. These remedies are available in any of the following cases:

- The remedy of bringing the digital content or service into conformity is impossible or disproportionate under Article 14.2;
- The trader has not brought the digital content or service into conformity under Article 14.3;
- A lack of conformity appears despite the trader's attempt to bring the digital content or service into conformity;
- The lack of conformity is of such a serious nature as to justify an immediate price reduction or termination of the contract; or
- The trader has declared, or it is clear from the circumstances, that the trader will not bring the digital content or service into conformity within a reasonable time or without significant inconvenience to the consumer.

The reduction in price must be proportionate to the decrease in value of the digital content or service in comparison to the digital content or service if it were in conformity. When the content or service is supplied over a period of time, the reduction must apply to the period in which it was not in conformity.

Where the digital content or service is supplied in exchange for a price, the consumer has the right to terminate the contract only if the lack of conformity is not minor, unless the trader can show that this is not the case.

Terminating a contract

Articles 15 to 18 provide for the process of termination and provisions relating to reimbursement where a price reduction or termination of the contract is selected by the consumer. They set out the process of terminating a contract and the obligations of both the trader and the consumer.

- Article 15 requires that the consumer exercises the right to termination by means of a statement to the trader expressing the decision to do so.
- Article 16 sets out the trader's obligations in the event of termination. This includes an obligation to refund all sums paid by the consumer under the contract
- Article 17 sets out the consumer's obligations in the event of termination. This includes an obligation to refrain from using digital content or a digital service and from making it available to third parties.

Time limits and reimbursement

Article 18 sets out the time limits and procedures for reimbursement, providing that any reimbursement must be provided without undue delay and within 14 days of when the trader was informed of the consumer's decision to invoke a right to a price reduction or termination of the contract. The reimbursement must be in the same form as the payment made by the consumer,

unless a different form of payment is agreed by the trader and consumer, and no fees may be applied in relation to the reimbursement.

Modification of the digital content or digital service

Article 19 sets out the conditions under which a trader may modify the digital content or service where it is supplied or made accessible to the consumer over a period of time in order to maintain conformity. The trader must meet four conditions to do this:

- The contract allows and provides valid reason for such modification;
- It is made without additional cost to the consumer;
- The consumer is informed in a clear and comprehensive manner of the modification; and
- In certain cases referred to in Article 19(2), the consumer is informed reasonably in advance on a durable medium of the features and time of the modification, the right to terminate the contract under Article 19(2), or the possibility of maintaining the digital content or service without such modification under Article 19(4).

Article 19(2) deals with situations where a modification negatively impacts the consumer's access or use of the digital content or service, unless the negative impact is minor. In such circumstances, the consumer is entitled to terminate the contract within 30 days of the later of when the information is received or the time of the modification. The procedures set out in Articles 15 to 18 above apply in this event.

Article 19(4) provides for a second possibility, stating that Articles 19(2) and 19(3) on termination of a contract do not apply where the trader enables the consumer to maintain the digital content or service without modification and it remains in conformity.

Article 20 provides for a right of redress for the trader where the failure of supply or lack of conformity is a result of an act or omission by a person in previous links in the transaction chain (e.g. a supplier), entitling the trader to pursue remedies as determined by national law.

Enforcement

Article 21 provides that Member States must ensure that adequate and effective means are in place to ensure compliance with the Directive. It allows for one or more of the following to be enabled to bring enforcement action before the courts or other competent administrative body:

- Public bodies or their representatives;
- Consumer organisations having a legitimate interest in protecting consumers;;
- Professional organisations having a legitimate interest in acting; and / or
- Not-for-profit bodies, organisations or associations active in the field of protecting the GDPR rights and freedoms of data subjects.

Article 22 further provides that any contractual term which excludes, derogates from or varies the effect of national measures transposing the Directive to the consumer's detriment must not be binding on the consumer. This applies where the failure of supply or lack of conformity has not been brought to the trader's attention by the consumer, or where a modification of the digital content or service is not brought to the consumer's attention by the trader. The Article also clarifies that this does not prevent the trader from offering more protection than what is provided for in the Directive to the consumer.

Transposition, Application and Review

Article 24 requires Member States to transpose the Directive (adopt and publish the necessary measures) by 1 July 2021, and to apply such measures from 1 January 2022. This is a standard

feature of Directives stating when the rules they set out actually enter into force or operation (as opposed to the Directive itself).

Article 25 obliges the European Commission to review the application of the Directive not later than 12 June 2024 and report to the European Parliament, the Council of the EU and the European Economic and Social Committee. The Directive explicitly states that this report must examine, *inter alia*, the case for harmonising rules applicable to contracts for the supply of digital content and services not covered by the Directive.

Articles 26 and 27 are standard provisions of EU Directives, bringing the Digital Content Directive into force 20 days after its publication in the EU's Official Journal and addressing it to its Member States. For clarity, further to Article 24 described above, this means the direction to Member States to enact the rules the Directive sets out enters into force and does not mean that the provisions of the Directive themselves have applied to traders and consumers 20 days after adoption. However, its provisions may apply between a trader or consumer and the State (a concept known as vertical direct effect) once the date of application has passed and there is no transposition. In these circumstances, the Directive does not apply between a trader and a consumer (known as horizontal direct effect).³⁹

The Sale of Goods Directive

This section provides background information in relation to [Directive \(EU\) 2019/771](#) of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods [‘the Sale of Goods Directive’], amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing [Directive 1999/44/EC](#). The Sale of Goods Directive complements the Digital Content Directive in forming part of the EU's [digital single market strategy](#).

Article 1 of the Sale of Goods Directive sets out that the purpose of the Directive is:

“... to contribute to the proper functioning of the internal market while providing for a high level of consumer protection, by laying down common rules on certain requirements concerning sales contracts concluded between sellers and consumers, in particular rules on the conformity of goods with the contract, remedies in the event of a lack of such conformity, the modalities for the exercise of those remedies, and on commercial guarantees.”

Article 2 provides for relevant definitions of terms used in the Directive.

Article 3 provides for the scope of the Directive. Article 3.1 provides that the Directive applies to sales contracts between a consumer and a seller.

Article 3.3 provides that the Directive does not apply to the supply of digital content or digital services, unless these are incorporated or inter-connected with the goods themselves, necessary for them to perform their functions and provided under the sales contract.

Article 3.4 provides that the Directive does not apply to any physical medium used exclusively to carry digital content (such as CDs, DVDs, etc.).

³⁹ A summary of the concept of direct effect is available on EurLex at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:I14547>.

Article 3.5 provides that Member States may exclude from national legislation second-hand goods sold at public auction, and live animals.

Article 3.7 provides that Member States may allow consumers to choose a specific remedy if the goods' lack of conformity becomes apparent within 30 days of delivery, or maintain specific rules on guarantees for hidden defects.

Article 4 provides that the Directive is a maximum harmonisation measure. Maximum harmonisation is a principle of EU law. Where a measure is subject to maximum harmonisation the measure when transcribed into national law cannot go beyond what is set out in the EU legal instrument, even where it would provide greater protection.

Articles 5, 6 and 7 provide for conformity requirements in respect of goods. These provide that sellers must ensure goods delivered to the consumer conform with the sales contract by:

- complying with what was contractually agreed, e.g. fit the description, type, quantity, quality and possessing the features required by the contract, being fit for the agreed purposes etc.;
- complying with objective conformity criteria, i.e. be fit for the purposes for which similar goods are normally used;
- correspond to the sample or model shown to the consumer;
- be delivered with the accessories, instructions and packaging that the consumer can reasonably expect;
- possess the qualities and features that the consumer may reasonably expect; and
- in the case of digital goods, inform and supply the consumer with all updates needed to keep them in conformity for the duration that the consumer may reasonably expect, unless the digital element of the goods is supplied continuously, in which case updates should be provided throughout the period of supply.

Article 8 provides that where incorrect installation of the goods has been carried out by the seller, or by the consumer due to following defective installation instructions provided by the seller, this shall amount to a lack of conformity of the goods.

Article 10 provides that sellers are liable for any lack of conformity which becomes apparent within 2 years of delivery. For goods with digital elements sellers are liable for any lack of conformity which becomes apparent within 2 years of delivery, unless the digital element is to be supplied continuously for a longer period, in which case the seller is liable throughout the period of supply. Article 10 also provides that Member States may legislate for a longer period of seller liability than the 2 years set out in the Directive.

Article 11 relates to the burden of proof. It provides that during the first year, any lack of conformity shall be presumed to have existed at the time when the goods were delivered, unless this presumption is incompatible with the nature of the goods or lack of conformity. Article 11 also provides that Member States, in legislating for this period during which the presumption arises, may provide that a presumption applies in respect of a period of two years from when the goods were delivered.

Article 12 provides that Member States may stipulate that to benefit from consumer rights the customer must inform the seller within 2 months of detecting the defect

Article 13 provides for remedies which the consumer shall be entitled to where goods are defective. These include:

- choice between repair and replacement of the goods, free of charge, within a reasonable time and without any major inconvenience. The seller can give an alternative remedy if the one chosen is impossible or involves disproportionate costs for the seller;
- a proportionate reduction in price;
- termination of the contract, except if the defect is only minor.

Article 14 provides that repairs or replacements shall be carried out free of charge, within a reasonable period of time from when the seller is informed of the defect and without any significant inconvenience to the consumer.

Article 17 relates to commercial guarantees. It provides that commercial guarantees:

- are binding on the guarantor under the conditions laid down in the guarantee statement and associated advertising, whichever is more advantageous to the consumer;
- must be provided to the consumer in plain, intelligible language and a way that it is accessible for future reference; and
- include:
 - confirmation the consumer is entitled by law to remedies from the seller for any defects free of charge
 - name and address of the guarantor
 - the procedure for implementing, and the terms of, the guarantee.

Article 19 provides that Member States shall put in place adequate and effective means to ensure compliance with the Directive.

Article 20 provides that Member States shall inform consumers of their rights under the Directive and how these may be enforced.

Article 21 provides that contracts to the detriment of the consumer that purport to exclude national measures transposing this Directive shall not be binding on consumers.

Article 24 provides for the deadline by which the measures in the Directive are to be transposed into national legislation. It provides for Member States to publish and adopt measures by 1 July 2021, with the Directive applying to contracts concluded after 1 January 2022.⁴⁰

Article 25 provides that the European Commission is required to submit a report to the European Parliament, the Council and the European Economic and Social Committee by 12 June 2024 on implementation of the Directive.

⁴⁰ At the time of writing, Ireland is one of seven Member States that is yet to have introduced measures transposing the Sale of Goods Directive. See <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32019L0771>.

The Omnibus Directive

This section provides background information in relation to [Council Directive \(EU\) 2019 \(2161\) of 27 November 2019 amending Council Directive 93/13/EEC⁴¹ and Directives 98/6/EC⁴², 2005/29/EC⁴³ and 2011/83/EU⁴⁴ as regards the better enforcement and modernisation of Union consumer protection rules \[2019\] OJ L 328/7](#) [‘the Omnibus Directive’].

The Commission Proposal⁴⁵ to introduce the Omnibus Directive emerged from a 2017 ‘Fitness Check’⁴⁶ completed at the same time as an evaluation of the Consumer Rights Directive 2011/83/EU⁴⁷. These found that the four applicable Directives were fit for overall purpose, but also emphasised the “importance of better applying and enforcing the rules and modernising them in line with developments in the digital sphere.”⁴⁸

In his 2017 State of the Union Address, Commission President Jean Claude Juncker announced the ‘New Deal for Consumer’, aimed at strengthening the enforcement of EU consumer law amid a growing risk of EU-wide infringements. The proposal is a key part of the ‘New Deal’ and had several objectives including creating more effective, proportionate and inhibitive penalties for widespread cross-border infringements, providing individual remedies for consumers and enhancing transparency for consumers in online marketplaces.⁴⁹

Notably, only articles 1, 3 and 4 of the Omnibus Directive will be transposed into the Consumer Rights Bill 2022.

⁴¹ [Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts \[1993\] OJ L 95/29](#)

⁴² [Council Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers \[1998\] OJ L 80/27](#)

⁴³ [Council Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation \(EC\) No 2006/2004 of the European Parliament and of the Council \(‘Unfair Commercial Practices Directive’\) \[2005\] OJ L 149/22](#)

⁴⁴ [Council Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance \[2011\] OJ L 304/64](#)

⁴⁵ [Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules \[2018\] COM/2018/0185](#)

⁴⁶ This was a follow-up to the REFIT Fitness Check of EU Consumer and Marketing law, published on 23 May 2017. A fitness check is defined by the European Commission as a comprehensive policy evaluation to assess whether the regulatory framework for a policy sector is fit for purpose.

⁴⁷ [Council Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance \[2011\] OJ L 304/64](#)

⁴⁸ See Explanatory Memorandum of Commission Proposal [2018] COM/2018/0185.

⁴⁹ *Ibid.*

Article 1 of the Omnibus Directive amends Directive 93/13/EEC, by inserting a new Section 8b, which provides that Member States will lay down rules on penalties for infringements of national laws, whilst taking account of non-exhaustive and indicative criteria to ensure that measures are implemented. These include the following:

- the nature, gravity, scale and duration of the infringement;
- action taken to mitigate or remedy damage, previous infringements;
- financial benefits or losses avoided by seller/supplier;
- penalties imposed for similar cross border infringements where information available;
- any other applicable aggravating/mitigating factors.

The section also provides for the possibility of fines or legal proceedings or both with a maximum limit of 4% of the annual turnover of the trader in the relevant State, or where turnover figures are unavailable, fines will be a maximum of €2 million. There is an obligation on Member States to notify the Commission of national rules and measures and any amendments made.

Article 2 will not be transposed by the Bill. It deals with changes to Directive 98/6/EC and inserts a new article 6(a) into that Directive dealing with rules for how Member States should label price reductions in terms of transparency. It also replaces article 8 with a new article, which mirrors the non-exhaustive and indicative criteria outlined under article 1. It also requires Member States to notify the Commission of national rules and measures and any amendments made.

Article 3 deals with amendments to Directive 2005/29/EC [‘the Unfair Commercial Practices Directive’] introducing new definitions and replacing previous ones. It replaces the definition of a ‘product’ under article 2(c) of the Unfair Commercial Practices Directive and inserts new definitions for ‘ranking’ and ‘online marketplace’. Article 3 (2) amends article 3 (5) & (6) replacing provisions which allow Member States to enact legislation to prohibit aggressive or misleading selling practices and noting that the Commission must be notified together with any changes.

It also adds an additional paragraph (c) to article 6(2) relating to marketing of identical goods where there is difference in composition. Article 3(4) amends article 7(4) of the Unfair Commercial Practices Directive in several ways including introducing new provisions relating to online marketplaces, online search functions and consumer reviews. It inserts a new article 11(a) concerning access to redress and provides that Member States may determine the conditions for the application and effects of those remedies. Article 13 is replaced with new text setting out the framework for penalties in line with the criteria and conditions set out under article 1 above.

Article 4 will be transposed and deals with amendments to Directive 2011/83/EU [‘the Consumer Rights Directive’]. Primarily, these relate to the replacement of existing definitions together with the introduction of various new definitions relating to digital services and online marketplaces, including conditions and the right of withdrawal. It also includes the insertion of a new article 6(a) regarding additional specific information requirements for contracts concluded on online marketplaces. This includes setting out the framework for penalties in line with the criteria and conditions set out under article 1 above.

Articles 5, 6 and 7 will not be transposed by the Bill.

Article 5 requires the Commission to provide a single digital gateway for citizens seeking information on their consumer rights or on out-of-court dispute resolution benefit.

Article 6 provides that by 28 May 2024, the European Commission is required to submit a report to the European Parliament and the Council regarding the application of the Directive.

Article 7 provides for the deadline by which the measures in the Directive are to be transposed into national legislation. It provides for Member States to publish and adopt measures by 28 November 2021, with the Directive applying from 28 May 2022.

Table 3. Transposition of Omnibus Directive

Article	Action
1	Transposed by the Consumer Rights Bill.
2	Not transposed by the Consumer Rights Bill. Member State requirement.
3	Transposed by the Consumer Rights Bill.
4	Transposed by the Consumer Rights Bill.
5	Not transposed by the Consumer Rights Bill. European Commission requirement.
6	Not transposed by the Bill Rights Bill. European Commission requirement.
7	Not transposed by the Consumer Rights Bill. Member state requirement.

Source: L&RS analysis of the Omnibus Directive

Principal provisions of the Bill

This section of the Bill Digest examines the main provisions of the Bill, which contains 13 Parts, 173 sections and 6 Schedules. Given the length of the Bill and the time between publication and Second Stage debate, it is not possible to cover all provisions of the Bill in this section. Rather, as the title suggests, this section will focus on the principal provisions, setting out a general outline of the main sections of the Bill.

Parts 10 to 13 provide for technical and consequential amendments arising from the Bill and as such are not discussed below. A summary of Parts 10 to 13 is provided in Table 2 above.

Part 1: Preliminary and General

Part 1 of the Bill contains 9 sections providing for preliminary and general matters relating to the Bill. Section 1 relates to the short title and commencement of the Bill. Section 3 relates to regulations made under the Bill. Section 8 relates to repeals and revocations of legislation. Section 9 relates to savings to allow for the continued application of legislation that has been repealed or revoked, in specific circumstances. Sections 1, 3, 8 and 9 are standard provisions and for that reason are not discussed below. A synopsis of each section of the Bill is given in Table 2 above.

Interpretation

Section 2 of the Bill provides for the definitions of various terms within this Bill. These include:

- “commercial guarantee”, in relation to a sales contract, means any undertaking by a trader or producer to a consumer (in addition to the trader’s legal obligation to supply goods in conformity with the sales contract) to reimburse the price paid or to repair, replace or service goods in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before, the conclusion of the sales contract;
- “compatibility” means the ability of digital content, digital services or goods to function with hardware or software with which digital content, digital services or goods of the same type is or are normally used without the need to convert the digital content, digital service, goods, hardware or software;
- “consumer” means an individual acting for purposes that are wholly or mainly outside that individual’s trade, business, craft or profession;
- “delivery” means voluntary transfer of possession from one person to another;
- “digital content” means data which are produced and supplied in digital form, including in particular computer programs, applications, video files, audio files, music files, digital games, e-books and other e-publications;
- “digital service” means—
- (a) a service that allows a consumer to create, process, store or access data in digital form, or
- (b) a service that allows the sharing of or any other interaction with data in digital form uploaded or created by a consumer or other users of that service, and includes in particular video and audio sharing and other file hosting, social media, and word processing and games offered in the cloud computing environment;
- “distance contract” means a contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, and with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;

- “durable medium” means any instrument which enables a consumer or a trader to store information addressed personally to that person in a way that is accessible for future reference, for a period of time adequate for the purposes of the information, and which allows the unchanged reproduction of the information stored;
- “electronic communications service” means a service normally provided for remuneration via electronic communications networks, which encompasses, with the exception of a service providing, or exercising editorial control over, content transmitted using electronic communications networks and services, the following types of service—
 - (a) a publicly available electronic communications service that provides an internet access service,
 - (b) an interpersonal communications service, and
 - (c) a service consisting wholly or mainly in the conveyance of signals such as a transmission service used for the provision of a machine-to-machine service and for broadcasting;
- “functionality” means the ability of goods, digital content or digital services to perform their functions having regard to their purpose;
- “goods” means any tangible movable items (other than money and any item sold by way of execution or otherwise by authority of law) and includes—
 - (a) any tangible movable items that incorporate, or are inter-connected with, digital content or a digital service in such a way that the absence of that digital content or digital service would prevent the goods from performing their functions, and
 - (b) water, gas and electricity where they are supplied in a limited volume or set quantity;
- “goods with digital elements” means any tangible movable items that fall within paragraph (a) of the definition of “goods”;
- “internet access service” means a publicly available electronic communications service that provides access to the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used;
- “interoperability” means the ability of goods, digital content or a digital service to function with hardware or software different from those with which goods, digital content or digital services of the same type are normally used;
- “interpersonal communications service” means a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipients and does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service;
- “Minister” means the Minister for Enterprise, Trade and Employment;
- “number-based interpersonal communications service” means an interpersonal communications service which connects with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which enables communication with a number or numbers in national or international numbering plans;
- “off-premises contract” means any of the following contracts between a trader and a consumer:
 - (a) a contract concluded in the simultaneous physical presence of the trader and the consumer in a place which is not the business premises of the trader;

- (b) a contract for which an offer was made by the consumer in the simultaneous physical presence of the trader and the consumer in a place which is not the business premises of the trader;
- (c) a contract concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer;
- (d) a contract concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer;
- “ownership” means the general property in goods and not merely a special or limited property;
- “producer” means a manufacturer of goods, an importer of goods into the European Union or any person purporting to be a producer by placing the person’s name, trademark or other distinctive sign on the goods and includes any person acting in the name, or on behalf, of the producer;
- “service” means any service or facility (other than digital content, a digital service and a service provided under a contract of employment or apprenticeship) and includes in particular—
 - (a) a service or facility for—
 - (i) financial or other professional services,
 - (ii) amusement, cultural activities, entertainment, instruction, recreation or refreshment,
 - (iii) accommodation,
 - (iv) communication, including electronic communication,
 - (v) transport, travel, parking or storage,
 - (vi) the care and maintenance of persons, animals or things, or
 - (vii) the construction, maintenance or repair of buildings,
 - (b) the supply of—
 - (i) water, gas or electricity where it is not supplied in a limited volume or set quantity, or
 - (ii) district heating,and
 - (c) any rights, benefits, privileges, obligations or facilities that are, or are to be, provided, granted or conferred in the course of a service;
- “trader” means—
 - (a) a natural person, or
 - (b) a legal person, whether—
 - (i) privately owned,
 - (ii) publicly owned, or
 - (iii) partly privately owned and partly publicly owned,who is acting for purposes relating to the person’s trade, business, craft or profession, and includes any person acting in the name, or on behalf, of the trader.

Making of contract

Section 4(1) provides that subject to certain specified enactments, a contract to which any of Parts 2 to 6 applies may be made in writing, by word of mouth or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Section 4(2) provides for the specified enactments set out in subsection (1). These include:

- section 103 to section 109 of the Bill [off-premises contracts and distance contracts];
- sections [30](#), [32](#), [36](#), [57](#), [58](#) and [84](#) of the 1995 Act [credit agreements, credit-sale agreements and hire purchase agreements];
- Regulations 8, 9 and 13 of the [European Communities \(Consumer Credit Agreements\) Regulations 2010](#) (S.I. No. 281 of 2010); and
- any other enactment that makes provision in relation to the making of a contract.

Contract terms may be more favourable to consumer

Section 5 provides that the Bill shall not be interpreted as precluding in a contract, terms that are more favourable to the consumer than the rights and remedies that are set out in the Bill. This will allow for the inclusion in contracts of terms that may be more favourable to the consumer than those provided for under the Bill.

Powers of court in relation to remedies under Parts 2 to 4

Section 6 provides that where proceedings come before the District Court, Circuit Court or High Court, relating to a contract to which any of Parts 2 to 4 applies, the court shall have the power to make any of the following orders:

- an order providing for the repair or replacement of goods;
- an order providing for a reduction in the price of goods, digital content, a digital service or a service;
- an order providing for a remedy for bringing digital content, a digital service or a service into conformity with the contract under which it is supplied; and
- any incidental or ancillary order as it thinks fit.

Representations purporting to restrict rights of consumer: offences

Section 7 provides for an offence relating to making a representation that suggests that a right or the exercise of a right conferred by any of Parts 2 to 4, or an obligation or a liability arising under any of those Parts, is restricted or excluded otherwise than as provided for in the Bill.

Subsection (2) set out the types of activities that come under this offence. These include:

- displaying on a premises a notice that includes any such representation;
- publishing or causing to be published an advertisement which includes any such representation;
- supplying goods, digital content or a digital service that displays any such representation; and
- furnishing or causing to be furnished a document including any such representation.

Subsection (3) specifies certain representations that come under subsection (1).

Subsection (4) provides that a “representation” includes “any oral, written, visual, descriptive or other representation by a trader, including any commercial communication, marketing or advertising,” and “a notice or other document used or relied on by a trader in connection with a contract with a consumer.”

The penalty for this offence is set out in section 142.

Part 2: Sales Contracts

Part 2 of the Bill contains 6 Chapters and 37 sections, providing for the implementation of the Sale of Goods Directive. Chapter 1 [sections 10 to 13] provides for standard provisions relating to the interpretation and application of Part 2 and for that reason is not discussed below. A synopsis of each section of the Bill is given in Table 2 above.

Consumer rights in sales contracts

Chapter 2 of Part 2 provides for consumer rights in respect of sales contracts. These include:

- A right to terminate a sales contract where the trader has no right to sell the goods (section 14);
- A right to the goods being in conformity with the sales contract (section 15); and
- A right to receive the goods free from charge or other encumbrance (section 16).

Section 20 provides that sections 14, 16, 17, 18 and 19 will be implied terms in every sales contract.

Requirements for conformity with a sales contract

Section 17 provides for subjective requirements for conformity with a sales contract, transposing Article 6 of the Sale of Goods Directive. These requirements include:

- that they are of the description, type, quantity and quality, and possess the functionality and features, specified in the sales contract;
- that they are fit for purpose;
- that they are delivered with the necessary accessories and instructions specified in the sales contract; and
- that they are supplied with updates as specified in the sales contract.

Subsections (2) and (3) provides for information requirements relating to distance contracts and off-premises contracts. Subsection (4) provides that spare parts and an adequate after-sales service is required to be made available by the trader for the period stated in any advertisement or, where no period is stated, for a reasonable period.

Section 18 transposes Article 7 of the Sale of Goods Directive and provides that goods under a sales contract must meet the following objective requirements for conformity:

- that they are fit for all the purposes for which goods of the same type would normally be used, taking into account relevant legal, technical or industry standards;
- that they are of the quality and correspond to any description of a sample that was made available by the trader prior to the conclusion of the sales contract;
- that they are delivered with any accessories and instructions that the consumer may reasonably expect to receive; and
- that they are of the quantity and possess the relevant qualities and features, (such as durability, functionality, compatibility and security) for goods of the same type, given the nature of the goods and any public statement made particularly in advertising or on labelling.

Subsection (2) provides more detail as to what is meant by the durability of goods in subsection (1)(d).

Subsection (3) provides for when a trader will not be bound by any public statement referred to in subsections (1)(d) or (2)(c).

Subsections (4), (5) and (6) provide for requirements for traders in respect of the supply of updates in relation to sales contracts for the sale of goods with digital elements to maintain conformity.

Subsections (7) and (8) provide for circumstances where the trader will not be liable for a lack of conformity, such as:

- where the consumer fails to install the update; and
- where at the time of the conclusion of the sales contract, the consumer was informed of a deviation from subsections (1), (4), (5) or (6) arising from a restriction resulting from a restriction resulting from a violation of an intellectual property right or any other right of a third person, which was accepted by the consumer.

Incorrect installation of goods

Section 19 transposes Article 8 of the Sale of Goods Directive. It provides that any lack of conformity arising from the incorrect installation of goods will be treated as a lack of conformity where incorrect installation of the goods has been carried out by the trader, or by the consumer due to following defective installation instructions provided by the trader.

Liability of trader under sales contract

Section 21 provides for the transposition of Article 10 of the Sale of Goods Directive. It provides for the liability of a trader to the consumer for any lack of conformity with the goods under the sales contract.

Subsection (2) provides for trader liability in respect of a lack of conformity where goods are being delivered on more than one occasion.

Subsection (3) provides for trader liability in respect of a lack of conformity arising in relation to a sales contract providing for a continuous supply of the digital content or digital service for a period specified in the sales contract.

Subsection (4) provides for trader liability in respect of a lack of conformity in relation to a sales contract with digital elements providing for an update to be supplied by the trader or any other person supplying the digital content or digital service under a sales contract for the sale of goods with digital elements.

Subsection (5) provides that the right to a remedy in respect of a lack of conformity will apply for 6 years and sets out when this 6 year period will commence.

Burden of proof under sales contract

Section 22 transposes Article 11 of the Sale of Goods Directive relating to the burden of proof in relation to lack of conformity issues. It provides that during the first 12 months from when the goods were supplied, any lack of conformity shall be presumed to have existed at the time when the goods were delivered, unless the contrary is proven, or this presumption is incompatible with the nature of the goods or lack of conformity. To rely on this presumption the consumer need only prove that the goods are not in conformity with the sales contract and that the lack of conformity with the sales contract became apparent during the relevant 12 month period.

It also provides that where a sales contract for the sale of goods with digital elements provides for the continuous supply of the digital content or digital service for a specified period, the burden of proof as to whether the digital content or digital service was in conformity with the sales contract

during that period shall be on the trader for any lack of conformity which becomes apparent during that period.

Consumer remedies in sales contracts

Chapter 3 of Part 2 provides for consumer remedies in sales contracts, transposing Articles 13, 14, 15 and 16 of the Sale of the Goods Directive. The remedies provided for include:

- a short-term right to terminate the sales contract (section 24);
- a right to repair or replacement of the goods (section 25);
- a right to a proportionate reduction in the price and to final termination of the sales contract (section 26);
- reimbursement within 14 days by the trader, using the same means of payment and without the imposition of any fees (section 31); and
- a general right to withhold payment where the trader fails to deliver goods in conformity with the sales contract (section 32).

Section 23 provides that the consumer may choose between repair or replacement unless the remedy chosen would be impossible for the trader to carry out or where compared to the alternative remedy, it would involve a disproportionate cost to trader taking into account the value of the goods, the significance of the lack of conformity and whether the provision of the alternative remedy would significantly inconvenience the consumer.

Section 34 provides that the rights in Chapter 3 and Chapter 4 do not affect the consumer's right to pursue other remedies, such as damages or an order of specific performance, insofar as the consumer is not entitled to recover twice for the same loss.

Price Reduction: sales contract

Section 27 provides for the transposition of Article 15 of the Sale of Goods Directive, which relates to the right to a proportionate reduction in the price to the decrease in the value of the goods received compared with the value of the goods had they been in conformity with the sales contract.

Obligations of consumer and trader in event of termination of sales contract

Section 28 provides for obligations on consumers where they exercise the right of termination of the sales contract under sections 14(2), 23(1), 26(2)(b), 29(1) or 37(2)(a). These obligations are in line with Article 16 of the Sale of Goods Directive.

The consumer is required to terminate the contract by sending a statement to the trader informing the trader of the decision to terminate the contract, and to return the goods to the trader at the trader's expense.

A consumer who fails to comply with these requirements will be liable in damages for any loss suffered by the trader arising from the failure.

Section 30 provides for obligations in respect of reimbursement by the trader of the price paid for goods and any costs incurred by the consumer in returning goods to the trader, where a sales contract has been terminated under sections 14(2), 23(1), 26(2)(b), 36, 37.

Remedies where contract also provides for supply of digital content etc.

Section 29 provides for circumstances where goods are provided to a consumer under a contract that also provides for the supply of digital content or a digital service. These remedies include termination or receipt of a reduction in price where a contract for sale of goods also provides for the supply of digital content.

Subsection (2) specifies that all circumstances will be taken into account when determining whether the value of the digital content, digital service or service to the consumer would be materially reduced in the absence of the goods and sets out specific factors that will be considered.

Subsection (3) provides that these remedies will not apply in respect of a contract for terminal equipment and a bundle of services which falls within the scope of Article 107 of [Directive \(EU\) 2018/1972](#) of the European Parliament and of the Council of 11 December 20182 establishing the European Electronic Communications Code (Recast).

Other rules in sales contracts

Chapter 4 of Part 2 provides for other rules in respect of sales contracts, including rules in relation to:

- the passing of risk in respect of the goods between the trader and the consumer, and the passing of risk to the consumer where a carrier has been commissioned by the consumer (section 35);
- the delivery of goods under the sales contract (section 36); and
- the delivery of goods in instalments (section 37).

Right of redress of trader

Section 38 provides for the transposition of Article 18 of the Sale of Goods Directive, which relates to the right of redress of a trader against a person in previous links of the chain of transactions, where that person is responsible for a lack of conformity with the sales contract.

Exclusion or limitation of liability of trader (Part 2)

Section 39 provides that a trader's liability under the following provisions may not be contractually excluded or restricted:

- a) section 14 (right to terminate sales contract where trader has no right to sell);
- b) section 15 (goods to be in conformity with sales contract);
- c) section 16 (goods to be free from charge and other encumbrance);
- d) section 17 (subjective requirements for conformity of goods with sales contract);
- e) section 18 (objective requirements for conformity of goods with sales contract);
- f) section 19 (incorrect installation of goods);
- g) section 20 (implied terms of sales contract);
- h) section 21 (liability of trader under sales contract);
- i) section 22 (burden of proof);
- j) section 35 (passing of risk);
- k) section 37 (instalment deliveries);
- l) section 43 (right of action pursuant to commercial guarantee);
- m) section 46 (rights of recipient of gift);
- n) section 47 (rights of certain users of motor vehicle which is not in conformity with sales contract).

It also provides that any term which purports to exclude or restrict a trader's liability in such fashion, will not be binding on the consumer.

Subsections (3) and (4) provide more detail as to what does and does not amount to "excluding or restricting the trader's liability".

Subsection (5) provides for an offence where a trader breaches the requirement in subsection (1).

Commercial guarantees

Chapter 5 of Part 2 provides for the transposition of Article 17 of the Sale of Goods Directive relating to commercial guarantees. It includes provisions relating to:

- liability for a commercial guarantee (section 40);
- liability of a trader for another guarantor's commercial guarantee (section 41);
- liability under a commercial guarantee to subsequent consumers (section 42); and
- right of action pursuant to a commercial guarantee (section 43).

Section 44 provides for commercial guarantees to be provided on a durable medium, in plain language and is required to include the following information:

- a clear statement that the consumer is entitled by law to remedies from the trader free of charge in the event of a lack of conformity of the goods with the sales contract and that those remedies are not affected by the commercial guarantee;
- the name and address of the guarantor;
- the procedure to be followed by the consumer to obtain the implementation of the commercial guarantee;
- the designation of the goods to which the commercial guarantee applies;
- and the conditions of the commercial guarantee.

Section 45 provides that a commercial guarantee cannot exclude or limit the rights of the consumer, impose additional obligations beyond those set out under the sales contract, or purport to make the guarantor the sole authority in respect of determining the conformity of goods with the sales contract or whether the consumer is otherwise entitled to make a claim under a commercial guarantee. Subsection (2) provides that any such provision will not be binding on a consumer. Subsection (3) provides for an offence where a guarantor includes such provisions in a commercial guarantee.

Other third party rights

Chapter 6 of Part 2 provides for the rights of a recipient of a gift and the rights of certain users of a motor vehicle.

Section 46 provides that when a consumer gives goods acquired under a sales contract to another consumer as a gift, that consumer will have the same entitlements to rights and remedies under Part 2 as the consumer who is a party to the sales contract.

Section 47(1) provides that where a person uses a motor vehicle with the consent of the consumer, and that motor vehicle was purchased under a sales contract, where that motor vehicle is not in conformity with the sales contract and the lack of conformity renders it a danger to the public, that person may bring action for damages against the trader for the lack of conformity as if they were the consumer.

Section 47(2) provides for a definition of a "motor vehicle" as:

- "... a vehicle intended or adapted for propulsion by mechanical means, including—
- (a) a bicycle or tricycle with an attachment for propelling it by mechanical power,
 - (b) a vehicle the means of propulsion of which is electrical or partly electrical and partly mechanical, and

(c) such other type of vehicle as may be prescribed.”

Section 47(3) provides that the Minister may make regulations to expand the range of types of vehicle that come under this definition.

Part 3: Digital Content Contracts and Digital Service Contracts

Part 3 of the Bill contains 3 Chapters and 26 sections, providing for the implementation of the Digital Content Directive. Chapter 1 [sections 48 and 49] provides the standard provisions relating to the interpretation and application of Part 3 and for this reason is not discussed below. Section 56 provides that sections 50 and 53 to 55 are to be implied terms in every digital content contract and digital service contract. A synopsis of each section of the Bill is provided in Table 2 above.

Consumer rights in digital content contract or digital service contract

Chapter 2 of Part 3 provides for consumer rights in respect of contracts for digital content or digital services. Section 50 provides for a right to supply of digital content or digital service by the trader in accordance with the contract.

Section 51 transposes Article 5 of the Digital Content Directive. Section 51(1) provides that the supply of the digital content or digital service must be in accordance with the contract. Section 51(2) further provides that they must be supplied without undue delay unless the parties to the contract have agreed otherwise. Sections 51(3) and 51(4) respectively provide that where the contract requires continuous supply for a period, or supply on more than one occasion, of the digital content or digital service the trader must supply it for that period or on each of those occasions.

Section 51(5) provides that a trader is deemed to supply digital content or a digital service to a consumer where:

- The digital content or any means for accessing or downloading digital content is made available or accessible to the consumer or a physical or virtual facility chosen by the consumer for that purpose.
- The digital service is made accessible to the consumer or a physical or virtual facility chosen by the consumer for that purpose.

Section 51(6) provides that a consumer is not deemed to have chosen a physical or virtual facility:

- Where the facility is under the trader’s control or contractually linked to the trader; or
- The facility was the only facility offered by the trader.

Section 51(7) provides that a trader who fails to supply digital content or a digital service is liable for that failure and the consumer has the right to remedies under section 60.

Section 52 transposes Article 6 of the Digital Content Directive. Section 52(1) requires digital content or digital services provided by a trader to be in conformity with the digital content contract or digital service contract. Section 52(2) further provides that the content or service is in conformity with the contract if it complies with the requirements of sections 53 and 54 and does not fall to be treated as not being in conformity under section 55.

Section 52(3) provides that where a contract is not in conformity, the consumer has the right to remedies specified in Chapter 3 of Part 3.

Section 52(4) relates to contracts for a continuous supply of digital content or a digital service, providing that service interruptions that are more than negligible or recur, constitute a lack of conformity with the contract and entitle the consumer to remedies under Chapter 3 of Part 3.

Section 52(4) provides that failures to comply with requirements under the [Data Protection Act 2018](#) or the General Data Protection Regulation also constitute a lack of conformity and entitle the consumer to remedies under Chapter 3 of Part 3.

Subjective and Objective Requirements for Conformity

Section 53 transposes Article 7 of the Digital Content Directive. Section 53(1) provides for the following subjective requirements for conformity in a digital content contract or digital service contract, that such digital content or digital service:

- Be of the description, quantity and quality, and possess the functionality, compatibility, interoperability, accessibility, continuity, security and other features specified in the contract;
- Be fit for any particular purpose for which it is required that is made known to the trader prior to concluding the contract and accepted by the trader;
- Be supplied with all accessories, instructions and customer assistance as specified in the contract; and
- Be updated as specified in the contract.

Section 53(2) provides that the information that the trader is required to provide to the consumer in a distance or off-premises contract under sections 103, 104 or 106 must form part of the contract. Section 53(3) further provides that the digital content or digital service supplied under a distance or off-premises contract must comply with any term deriving from this information in addition to the requirements in subsection (1).

Section 53(4) further provides that where a digital content contract or digital service contract provides for a continuous supply of digital content or a digital service over a period specified in the contract, this must comply with the requirements in subsections (1) and (2) during that period.

Section 54 transposes Article 8 of the Digital Content Directive. Section 54(1) requires that the digital content or digital service supplied under a digital content contract or digital service contract must also meet the following objective requirements:

- It must be fit for all purposes for which it would normally be used, taking into account relevant legal rules, technical standards, or in the absence of such standards, applicable sector-specific codes of conduct;
- Comply with the trial version or preview made available to the consumer before the conclusion of the contract;
- Be supplied with any accessories or instructions, including on the installation and integration of the digital content or digital service, that the consumer can reasonably expect to receive; and
- Be of the quantity, and possess the qualities and performance features normal for similar digital content or digital services, that the consumer may reasonably expect given the nature of such content or services and taking into account any public statement by or on behalf of the trader or anyone in a previous link in the transaction chain.

Section 54(2) further provides that the trader is not bound by a public statement if they can show that:

- They were not, or could not have reasonably been, aware of the statement in question,
- That the public statement was corrected before the conclusion of the contract, or
- That the consumer could not have been influenced by the public statement.

Section 54(3) provides that unless the parties agree otherwise, the trader must supply the most recent version of the digital content or service. Section 54(4) also provides that during the relevant period, defined by section 54(9), the trader must inform the consumer of and supply any updates necessary for the digital content or digital service to be in conformity. The relevant period relates to the period of continuous supply specified in the contract, or the period the consumer can reasonably expect where a contract provides for a single act or a series of individual acts of supply.

Section 54(5) provides that where a trader complies with subsection (4) they are not liable for a lack of conformity owing to the lack of that update unless the consumer failed to install the update within a reasonable time after being informed of availability, or incorrectly installed the update, due to shortcomings in the instructions provided by the trader.

Section 54(6) obliges the trader to ensure conformity where the contract is for a continuous supply of digital content or a digital service.

Sections 54(7) and 54(8) relate to deviations from the conformity requirements under subsections (1) to (4). Subsection (7) provides that there is no lack of conformity where the trader informs the consumer that a particular characteristic deviates from any of those requirements and the consumer expressly and separately accepts this. Subsection (8) places the burden of proof on the trader to show this in the event of a dispute.

Section 55 transposes Article 9 of the Digital Content Directive, providing that any lack of conformity resulting from the incorrect integration of the digital content or digital service into the consumer's digital environment is treated as a lack of conformity with the digital content contract or digital service contract for the purposes of Part 3 if:

- The digital content or digital service was integrated by the trader or a person acting on their behalf, or
- The digital content or digital service was intended to be integrated by the consumer and the incorrect integration was due to shortcomings in the integration instructions provided by the trader.

Third party rights

Section 57 entitles the consumer to a remedy under section 61 for lack of conformity where there is a restriction on digital content or digital service due to a violation of third party rights, in particular intellectual property rights, which prevents or limits its use in accordance with sections 53 or 54. This section is without prejudice to section 54 described above.

Liability of trader and burden of proof

Section 58 transposes Article 11 of the Digital Content Directive. Section 58(1) provides that the trader is liable to the consumer for any failure to supply the digital content or digital service under section 51. It also provides that the trader is liable for:

- Any lack of conformity with the digital content contract or digital service contract where the contract is for a single act of supply or a series of individual acts of supply, and includes any lack of conformity resulting from a violation of a third party's intellectual property rights or other rights (section 58(2)).

- Any lack of conformity caused by an update which exists at the time of the supply or installation of the update, or caused by the failure to supply an update by the trader in accordance with section 54(4) (section 58(3)).
- Any lack of conformity with a digital content contract or digital service contract for continuous supply of digital content or a digital service for a period that occurs or becomes apparent during that period (section 58(4)).

Section 58(5) further provides that the consumer has a right to a remedy for 6 years from:

- The supply of the digital content or digital service in the case of contracts where there is a single act of supply or series of such acts, and
- In the case of continuous supply for a specified period, the time at which the lack of conformity occurs or becomes apparent during that period.

Section 58(6) provides that in the case of a failure to supply digital content or a digital service, the right to a remedy applies for six years from when the trader was required to supply the digital content or digital service.

Section 59 transposes Article 12 of the Digital Content Directive. Subsection (1) provides that the burden of proof on whether the digital content or digital service was supplied and that the trader was in conformity with the digital content contract or digital service contract is on the trader.

Subsections (2) and (3) set out different timeframes depending on the form of supply:

- Subsection (2), relating to digital content contracts or digital services contracts that relate to a single act of supply, or a series of individual acts of supply, of digital content or a digital service, provides for a burden of proof on the trader where the lack of conformity becomes apparent during a period of 12 months from the supply of that service.
- Subsection (3), relating to contracts of continuous supply over a period, provides for a burden of proof on the trader where the lack of conformity becomes apparent during that period.

Section 59(4) provides that the burden of proof on conformity does not apply if the trader shows that the digital environment of the consumer was not compatible with the technical requirements of the digital content or digital service and clearly and comprehensively informed the consumer of such requirements before the conclusion of the contract. There is an obligation on the consumer to cooperate with trader in ascertaining whether the digital environment is compatible under section 59(5).

Section 59(7) relates to instances where the consumer fails to cooperate and the trader informed them of the technical requirements of the digital content or digital service clearly and comprehensively, the burden of proof shifts to the consumer.

Section 59(8) clarifies that none of the provisions in section 59 can prevent a consumer from exercising a remedy after the expiry of 12 months beginning with the date of supply of the digital content or service.

Consumer remedies in digital content contract or digital service contract

Section 60 transposes Article 13 of the Digital Content Directive. Section 60(1) provides for the consumer's right to terminate the contract where a trader fails to supply digital content or a digital service under a contract in accordance with section 51 and fails to comply with a subsequent request from the consumer to supply the digital content or digital service without undue delay or within an additional period agreed by the parties.

Section 60(2) provides that subsection (1) does not apply and the consumer may terminate the contract immediately without a request to supply the content where:

- A trader has declared that they will not supply the digital content or digital service or it is clear that the trader will not do so, or
- The consumer and trader have agreed that it is essential for the consumer that the digital content or digital service is supplied by a particular date and time but the trader fails to do so.

Section 60(3) requires the consumer to exercise the right to terminate the contract in accordance with section 66 and the trader must comply with obligations under section 67.

Article 14 of the Digital Content Directive is transposed by sections 61 to 63 of the Bill.

Section 61 provides for a right of the consumer to have the digital content or service brought into conformity with the contract. This is subject to subsection (2), which provides that this right will not apply if it is impossible to bring it into conformity or doing so would impose disproportionate costs on the trader taking all circumstances of the case into account.

Subsection (3) requires the trader to bring the digital content or digital service into conformity free of charge, within a reasonable time after being informed of the lack of conformity by the consumer and without significant inconvenience to the consumer.

Subsection (4) stipulates that the reasonable time for bringing the digital content or digital service into conformity must be the shortest possible time for remedying it, having regard to its nature and complexity, the nature and severity of the lack of conformity and the effort needed to bring it into conformity.

Section 62 provides for a right to a price reduction or termination of the contract for the consumer and applies where:

- Bringing the digital content or service into conformity is either impossible or imposes disproportionate costs on the trader under section 61(2);
- The consumer has exercised their right for the digital content or service to be brought into conformity and the trader has not done so;
- The some or different lack of conformity appears despite the attempts of the trader to bring the digital content or service into conformity;
- The lack of conformity is so serious as to justify an immediate price reduction or termination of the contract; or
- The trader has declared, or it is clear from the circumstances, that they will not bring the digital content or service into conformity within a reasonable time or without inconvenience to the consumer.

Subsection (2) clarifies that if the digital content or service is supplied in exchange for a price, then the consumer is entitled to a price reduction.

Subsection (3) further clarifies that the consumer only has the right to terminate the contract if the lack of conformity is not minor. Subsection (6) places the burden of proof on the trader to show that a lack of conformity is minor for the purposes of subsection (3).

Subsection (4) provides that where there is no payment of a price, the consumer only has the right to terminate the contract.

Subsection (5) provides that regard must be given to the nature and severity of the lack of conformity in determining if a lack of conformity is serious enough to justify an immediate price reduction or termination. This includes whether:

- The consumer cannot maintain confidence in the trader's ability to bring the digital content or service into conformity, and
- Where the consumer's ability to make use of the digital content or digital service is severely affected and they cannot be reasonably expected to trust that the trader can remedy it.

Section 63 provides that the right to a price reduction under section 62(2)(a) may either be a reduction in the price that the consumer is required to pay or, where payment is already made, a reimbursement of the excess amount paid in accordance the reduction of value under subsection (3).

Subsection (3) provides that the reduction in price shall be proportionate to the decrease in value of the digital content or service compared to its value if in conformity. Subsection (4) further provides that in contracts for a continuous supply of digital content or services, the price reduction shall apply for the period in which it was not supplied in conformity. Subsection (5) provides that reimbursement by the trader must be in accordance with section 68.

Obligations of the consumer and trader

Section 66 transposes Articles 15 and 17 of the Digital Content Directive relating to the obligations of the consumer. Subsection (1) states that the section applies to the termination of a digital content or digital service contract under section 50(1), 60(1) or (2), 62(2)(b) or 64(3).

Subsection (2) requires the consumer to inform the trader of the decision to terminate by means of a statement expressing the decision to terminate the contract (Article 15 of the Directive).

Subsection (3) requires that after termination, the consumer must not use the digital content or service or make it available to a third party;

Subsection (4) provides that where the digital content or digital service is supplied on a tangible medium, the consumer must return that medium to the trader without undue delay;

Subsection (5) provides that the consumer is not liable to pay for any use of the digital content or digital service in the period before termination during which it was not in conformity;

Subsection (6) provides that if the consumer fails to comply with subsections (3) or (4) (using the digital content or digital service, making available to another person or failing to return it) they are liable for any loss or damage suffered by the trader as a result. Subsection (7) clarifies that such liability in damages is without prejudice to other remedies available to the trader.

Section 67 transposes Article 16 of the Directive on trader's obligations. Subsection (1) requires that the trader must reimburse the customer in accordance with section 68 (time limits and means of reimbursement). Subsection (2) further provides that the digital content or service is provided for a period of time under the contract, they must reimburse the consumer for the proportionate part of the price paid for the period it was not in conformity and any period paid for in advance had the contract not been terminated.

Subsection (3) provides that the trader may request the return of a tangible medium by the consumer without undue delay. Subsection (4) further provides that this must be done within 14 days of being informed of the consumer's decision to terminate. The trader is also liable for the cost of the return.

Subsection (5) prohibits the trader from using any content that was provided or created by the consumer when using the digital content or digital service supplied by the trader. This is subject to subsection (6), which permits the use of content that is not personal data and the content:

- a) has no utility outside the context of the digital content or digital service,
- b) relates only to the consumer's activity when using the digital content or digital service,
- c) has been aggregated with other data by the trader and cannot be disaggregated or can be disaggregated only with disproportionate effort, or
- d) has been generated jointly by the consumer and others, and the other consumers are able to continue to make use of the content.

Subsection (7) allows the consumer to request digital content (excluding personal data) from the trader which was provided or created by the consumer when using the digital content or digital service. Subsection (8) provides that the trader is not required to make content falling within categories a) to c) above available, and subsection (9) requires that the digital content must be provided free of charge, without hindrance from the trader, within a reasonable time and in a commonly used and machine-readable format.

Subsection (10) allows the trader to prevent further use of the digital content or digital service by the consumer by making it inaccessible or disabling the consumer's account.

Section 68 transposes Article 18 of the Directive and provides that where a trader is required to reimburse the consumer under section 63(5) or 67(1), they must do so:

- Without undue delay and within 14 days of the consumer's decision to exercise the right to a price reduction or termination;
- Using the same method of payment unless the consumer expressly agrees otherwise and incurs no fees from such a reimbursement; and
- Without the imposition of any fee on the consumer for the reimbursement.

Subsection (2) provides that where a tangible medium is involved, the trader may withhold reimbursement until it is returned, or on their request, the consumer provides evidence of its return. Under subsection (3), the trader is also liable for any loss or damage suffered by the consumer if they fail to comply with the obligation to reimburse the consumer.

Withholding of payment

Although not contained in any of the Articles of the Digital Content Directive, Recital 15 to the Directive affirms the right of Member States to include further provisions on consumer's withholding their obligations in the event of a lack of conformity:

"Member States should also remain free, for example, to regulate the rights of parties to withhold the performance of their obligations or part thereof until the other party performs its obligations. For example, **Member States should be free to regulate whether a consumer, in cases of a lack of conformity, is to be entitled to withhold payment of the price or part thereof until the trader has brought the digital content or digital service into conformity**, or whether the trader is to be entitled to retain any reimbursement due to the consumer upon termination of the contract until the consumer

complies with the obligation provided for in this Directive to return the tangible medium to the trader.”⁵⁰ <emphasis added>

Section 69(1) makes such provision for a general right on the consumer to withhold payment of any outstanding part of the price until the trader has fulfilled their obligations under Part 3. Subsection (2) further provides that where there is a lack of conformity, the price withheld must be proportionate to the decrease in value of the digital content or service. Subsection (2) provides that the consumer may exercise this right by means of a statement to the trader expressing the consumer’s decision to withhold payment until the trader has fulfilled their obligations.

Other Provisions

Section 71 transposes Article 22 of the Digital Content Directive. Subsection (1) prohibits a term of the contract from excluding or restricting the trader’s liability under the following sections:

- (a) section 50 (right to supply digital content or digital service);
- (b) section 51 (duty to supply digital content or digital service);
- (c) section 52 (conformity with digital content contract or digital service contract);
- (d) section 53 (subjective requirements for conformity with digital content contract or digital service contract);
- (e) section 54 (objective requirements for conformity with digital content contract or digital service contract);
- (f) section 55 (incorrect integration of digital content or digital service);
- (g) section 57 (third party rights);
- (h) section 58 (liability of trader);
- (i) section 59 (burden of proof).

Subsection (2) provides that any such term that purports to or has the effect of excluding or limiting liability of the trader under any of the provisions in subsection (1) is not binding on the consumer.

Subsection (3) further clarifies that “excluding or restricting the trader’s liability” includes:

- Excluding or limiting a right or remedy under the specified provisions;
- Making such a right or remedy, or its enforcement, subject to a restrictive or onerous condition;
- Allowing a trader to put a person at a disadvantage as a result of pursuing such a right or remedy;
- Excluding or restricting rules of evidence or procedure; or
- Preventing an obligation arising or limiting its extent.

Subsection (5) also provides that a trader who contravenes the prohibition set out in subsection (1) commits an offence.

Section 72 transposes Article 20 of the Digital Content Directive and provides for a right of redress for a trader against a person constituting a previous link on the transaction chain, where the failure to supply the digital content or service or its lack of conformity with the contract resulted from an act or omission of that person.

⁵⁰ [Directive \(EU\) 2019/770](#) of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, [2019] OJ L136/1, Recital 15.

Part 4: Service Contracts

Unlike Parts 2 and 3 of the Bill, Part 4 does not transpose an EU Directive. Rather, it updates the existing [Part IV](#) of the [Sale of Goods and Supply of Services Act 1980](#). Part 4 consists of 3 Chapters and 22 sections. Chapter 1 [sections 74 and 77] provides for the standard provisions relating to the interpretation and application of Part 4 and for this reason is not discussed below.

Chapter 2: Consumer rights in service contracts

Chapter 2 sets out the consumer rights applicable to service contracts. Further, section 82 requires that the following are implied terms in every service contract:

- Section 78(2)(b) to (6);
- Section 80; and
- Section 81.

Section 78(1) requires that where a contract is concluded, the trader must supply the service to the consumer under the contract. Subsection (2)(a) further provides that for an off-premises contract, the trader must provide the service at such time or within the period specified in information provided under sections 103, 104 or 106, or where no time period is specified at a time or period agreed with the consumer. Subsection (2)(b) provides that where a service contract is not an off-premises or distance contract, then the trader must supply the service at such time or within such period as may be agreed with the consumer. Subsection (3) requires that where no time period is specified, the service must be provided within a reasonable time.

Subsection (4) requires the trader to supply the service for the period of the contract where the contract is for a continuous supply of the service, while subsection (5) requires that they supply the service on each occasion where the contract is for a service to be provided on more than one occasion.

Subsection (6) provides that if a trader fails to supply a service then the consumer is entitled to terminate the contract in accordance with section 84. Subsection (7) provides that where there is a short-term interruption in supply that is more than negligible and recurs, then section 84 does not apply, the service is deemed not to be in conformity and the consumer has the right to have the service brought into conformity under section 85, or to a price reduction or termination under section 86.

Subjective and objective requirements for conformity

Section 79(1) requires that the service is provided by a trader in conformity with the contract. Subsection (2) provides that a service is in conformity if it complies with the subjective and objective conformity requirements under sections 80 and 81 respectively. Subsection (3) further provides that where a service is not in conformity, the consumer is entitled to the remedies set out in Chapter 3 of Part 4.

Section 80(1) sets out the subjective requirements for conformity with a service contract. As well as services supplied under a service contract, it also applies any goods or digital content produced by or resulting from the service. The service must:

- (a) comply with the terms of the service contract;
- (b) comply with any oral or written statement to the consumer on the service or the trader on which the consumer relied upon when entering the contract or on any subsequent decision made in relation to the service;

- (c) be reasonably fit for any purpose that the consumer made known to the trader before or at the conclusion of the contract and the trader accepted this;
- (d) be of a nature and quality that can reasonably be expected to achieve a result that the consumer made known to the trader before or on the conclusion of the contract and the trader accepted this; and
- (e) for off-premises and distance contracts, comply with any additional terms imposed by sections 103, 104 or 106.

Subsection (2) provides that the requirement concerning a written or oral statement is such that it is subject to any qualifying statement from the trader and any change to that statement subsequently agreed by the consumer and the trader. Further provision for the trader to ensure that the service complies with subsection (1) for the period of a contract for continuous supply (subsection (3)) and for supply on more than one occasion (subsection (4)).

Section 81 provides for the objective conformity requirements for service contracts, which require the trader to:

- Have the necessary skill to supply the service,
- To supply the service with reasonable skill and care, and
- To supply the service in accordance with any applicable laws.

Subsection (1) also provides that:

- Any materials used must also be sound, reasonably fit for purpose and correspond to the trader's description.
- The service must also comply with any public statement made by the trader or anyone on their behalf, or anyone in a previous link in the transaction chain, unless the trader can show they were unaware of it, the public statement was corrected at the time the contract was concluded or that it could not have influenced the consumer's decision.

Subsection (2) provides that where a trader purports to supply a service to a higher standard of care or skill than that specified in subsection (1)(b), then they must exercise a higher standard of care and skill in supplying the service. Subsection (3) refers to standards of care and skill set by a body or public authority, providing that the trader must apply these if they are, or purport to be, a member of the professional body. Similarly, subsection (4) requires that the trader abide by a code of practice if they are, or purport to be, bound by that code.

As with the subjective requirements, further provision is made for the trader to ensure that the service complies with subsection (1) for the period of a contract for continuous supply (subsection (5)) and for supply on more than one occasion (subsection (6)). Finally, subsection (7) provides a definition for 'code of practice'.

Chapter 3: Consumer remedies in service contracts

Right to terminate the contract

Section 84(1) provides that the consumer has the right to terminate the service contract if the trader fails to provide the service and fails to comply with a subsequent request from the consumer to supply the service within an additional period.

Subsection (2) provides for a further right for the consumer to immediately terminate the contract where:

- The trader has declared they will not supply the service, or it is clear from the circumstances that they will not do so;

- The supply of the service in accordance with section 78 is essential taking all relevant circumstances into account; or
- The consumer informed the trader at the time of or before the conclusion of the contract that the supply of the service by a specified date was essential and the trader failed to supply it.

Subsection (3) requires that where a consumer wishes to exercise the right to terminate the contract, they must do so in accordance with section 88 and the trader must comply with their obligations under section 89.

Right to have the service brought into conformity

Section 85(1) provides for a right for the consumer to have the service brought into conformity with the service contract. Subsection (2) provides that subsection (1) does not apply where it is impossible to bring the service into conformity.

Subsection (3) requires the trader to ensure the service is brought into conformity free of charge, within a reasonable time and without significant inconvenience to the consumer. Subsection (4) provides that reasonable time must be the shortest possible time necessary for remedying the lack of conformity, having regard to the nature and complexity of the service, the nature and severity of the lack of conformity and the effort needed to bring it into conformity. Subsection (5) further provides that significant inconvenience is to be determined by having regard to the nature of the service, the purpose for which the consumer requires it and any other relevant circumstances.

Subsection (7) clarifies that the trader's obligation to bring the service into conformity includes the removal of goods for repair or replacement by the trader at their cost. This applies where bringing the service into conformity requires the removal or replacement of goods installed in a manner consistent with their nature and purpose before the lack of conformity became apparent.

Price reduction or termination

Section 86(2) provides for a right for the consumer to a price reduction under section 87 or termination of the contract under section 88 in any of the following circumstances (set out in subsection (1)):

- (f) The trader does not have the necessary skill to provide the service;
- (g) It is impossible to bring the service into conformity (as specified in section 85(2));
- (h) The trader has declared, or it is clear from the circumstances, that they will not bring the service into conformity within reasonable time and without significant inconvenience to the consumer;
- (i) The trader fails to remedy the lack of conformity within a reasonable time, without significant inconvenience to the consumer, or free of charge;
- (j) The same or a different lack of conformity appears despite the trader's attempt to bring the service into conformity;
- (k) The lack of conformity is so serious as to justify an immediate price reduction or termination of the contract;
- (l) The service, or any goods produced by or resulting from the service, are unsafe.

Subsection (3) also provides that the question of whether the right to a price reduction or termination of the contract applies or the consumer is required to accept further attempts by the trader to bring the service into conformity must be objectively determined by:

- The type and value of the service;
- The nature and significance of the lack of conformity; and

- Whether the consumer can reasonably be expected to maintain confidence in the trader's ability to bring the service into conformity, particularly if the same lack of conformity occurs more than once.

Subsection (4) provides that in objectively determining if the lack of conformity is so serious as to justify an immediate termination of the contract, regard must be had to the nature and severity of the lack of conformity, in particular whether it is such that the consumer cannot reasonably be expected to:

- Maintain confidence in the ability of the trader to bring the service into conformity, and
- Trust that the trader would remedy a lack of conformity where the ability of the consumer to make normal use of the service, or any goods or digital content produced by / resulting from the service, is severely affected.

Subsections (5) and (6) respectively provide that the right to terminate the contract only applies if the lack of conformity is not minor and, in the event of a dispute, the burden of proof is placed on the trader to show otherwise.

Section 87 sets out the requirements in relation to the right to a price reduction under section 86(1). Subsection (2) provides that the right of the consumer under the section is to require the trader to either:

- Reduce the price the consumer is required to pay; or
- Reimburse the price already paid by the consumer.

Subsection (3) also provides that the reduction must be proportionate to the decrease in the value of the service in comparison to its value had it been in conformity. Subsection (4) further provides that for contracts where there is a continuous supply of a service, the reduction shall be proportionate to the period for which the service was not in conformity. Subsection (5) provides that where there is a right to reimbursement under subsection (2)(b), the trader must reimburse the consumer in accordance with section 90.

Obligations of the consumer and trader

Section 88 sets out the obligations of the consumer where they decide to terminate the contract for failure to supply the service under sections 84(1) or (2) and section 86(2)(b). Subsection (2) provides that a consumer must inform the trader by means of a statement expressing the decision to terminate.

Subsection (3) provides that a consumer who exercises the right to terminate is obliged to make any goods or material supplied under the service contract available to the trader for collection, and must not use, or make available to another person, any digital content or services supplied under the service contract.

Subsection (4) provides that a consumer is not required to make the goods available for collection, or return of the goods to the trader, if such collection or return would cause disproportionate inconvenience to the consumer or would damage their property. Under subsection (5), the requirement to make the goods available for collection also does not apply if the trader and consumer agree that the consumer returns the goods and the trader bears the consumer's costs.

Subsection (6) relates to liability, providing that the consumer who otherwise fails to make the goods or material available for collection is liable for any resulting loss or damage incurred by the trader.

Section 89 sets out the trader's obligations. Subsection (1) provides that where a consumer exercises the right to terminate under sections 84(1) or (2) or 86(2)(b), the trader is obliged to reimburse the consumer in accordance with section 90 for all payments made under the contract. Subsection (2) further provides that where the contract is for a service supplied over a specified period, the trader is only obliged to reimburse the proportionate amount for the period it was not in conformity and for any remaining period paid for in advance.

Section 90 relates to time limits and the means of reimbursement by the trader. Under subsection (1) where the trader owes a reimbursement to the consumer for a price reduction (section 87) or following the termination of a contract (section 89), the trader must reimburse the consumer without undue delay and within 14 days since being informed of the consumer's exercise of their right. In making the reimbursement, the trader must use the same means of payment used by the consumer to make the payment unless the consumer agrees otherwise. The trader may not impose any fees on the consumer in relation to the reimbursement.

Under subsection (2), a trader who fails to reimburse a consumer in accordance with section 90 is liable in damages for any resulting loss or damage suffered by the consumer.

Right to withhold payment

Section 91(1) provides for a right for the consumer to withhold payment where a trader has failed to comply with an obligation under Part 4 until they have fulfilled that obligation. The section further provides that the part of the price withheld by the consumer must be:

- Proportionate to the decrease in the value of the service where there is a lack of conformity (subsection (2)); or
- Proportionate to the price payable for the period a service was not supplied where there is a failure to supply the service (subsection (3)).

Subsection (4) further provides that the consumer must inform the trader of the exercise of this right by means of the statement to the trader informing them of their decision.

Part 5: Consumer Information and Cancellation Rights

Part 5 of the Bill replaces the [European Union \(Consumer Information, Cancellation and Other Rights\) Regulations 2013](#).⁵¹ It consists of 6 Chapters and 30 sections. Chapter 1 (sections 96 to 100) sets out provisions in relation to interpretation and application and for this reason is not discussed in detail. The Chapter does, however, exclude contracts or groups of contracts with a value / cumulative value of less than €50 from the scope of Part 5 (section 98), prohibits the waiver of rights conferred by Part 5 (section 99) and provides that the burden of proof rests on the trader to show they complied with any requirements set out in Chapters 2 and 3.

Chapters 2 and 3 relate to consumer information, respectively setting out the requirements with regard to on-premises contracts and off-premises contracts respectively.

⁵¹ S.I. No. 484 of 2013.

Chapter 2: Consumer information for on-premises contract

Section 101(1) requires the trader to provide the information specified in Schedule 2 in a clear and comprehensive manner, if that information is not already apparent from the context, before a consumer is bound by an on-premises contract or corresponding offer. Section 101(2) expressly excludes contracts for day-to-day transactions which are performed immediately on conclusion of the contract. Section 101(3) provides that a trader who fails to comply with section 101(1) is guilty of an offence. Section 102 empowers the Minister to make regulations that specify further information requirements.

Chapter 3: Consumer information for off-premises contract

Requirements for an off-premises contract

Section 103(1) provides that before binding the consumer into an off-premises contract or any corresponding offer, the trader must provide the consumer with the information specified in Schedule 3 and where there is a right to cancel, the model cancellation form in Part 2 of Schedule 4. Section 103(8) provides that where there is a failure to provide information in respect of clauses (g) and (n) of Schedule 3 (relating to delivery and return costs respectively), the consumer is not liable for the charges and costs specified in those clauses. Section 103(9) further provides that a failure to do this is an offence.

Section 103(2) provides that the trader is deemed to have provided clauses (m) to (o) of Schedule 3 if they have done so by means of the model instructions on the right to cancel in Part 1 of Schedule 4.

Section 103(3) also provides that information set out in clauses (b) (identity incl. legal name and trading identity), (d) (address, phone number, email and other communication details) and (e)(i) (place of business) may be provided in relation to auctioneers acting on behalf of traders, in which instance the information set out in clauses (c) (identity and geographical address) and (e)(ii) (place of business if someone else acting on their behalf) is provided in relation to the trader.

Section 103(4) sets out the requirements on how the information is provided, stating that it must be:

- given on paper or, if the consumer agrees, on another durable medium,
- legible, and
- in plain and intelligible language.

Section 103(5) requires that the cancellation form must be given in paper or, with the agreement of the customer, on another durable medium.

Section 103(7) requires that the information in Schedule 3 forms part of the contract and cannot be altered without express agreement of the trader and consumer. Section 103(10) expressly excludes section 103 from applying to off-premises contracts for repairs or maintenance.

Requirements for off-premises contracts for repairs and maintenance

Section 104 of the Bill relates to the information requirements for off-premises contracts for repairs and maintenance. Section 104(1) sets out three requirements for the section to apply:

- the consumer explicitly requests the services of the trader for the purpose of carrying out repairs or maintenance,
- the trader and the consumer immediately perform their obligations under the contract, and
- the payment to be made by the consumer under the contract does not exceed €200.

Under section 104(2), the trader must provide certain information to the consumer, including:

- a) The main characteristics of the service, to the extent appropriate to the medium and to the service;
- b) The identity of the trader, including the trader's trading name and legal identity;
- c) Where the trader acts on behalf of another trader, the identity and geographical address of that other trader;
- d) the geographical address of the trader and certain contact information;
- e) the total price of the service including taxes, or if this cannot be provided in advance, the manner in which the price is calculated;
- f) where a right to cancel exists, the conditions, time limit and procedures for exercising that right,
- g) where the right to cancel under section 112 does not apply, a statement that the consumer does not benefit from this right or, where applicable, the circumstances in which the consumer loses that right.

Under section 104(3), the trader is also required to provide the information referred to in section 103(1)(a), (the information specified in Schedule 3) in the copy or confirmation of the contract, and where the right to cancel exists, the model cancellation form set out in Part 2 of Schedule 4.

Section 104(4) provides that where the trader provides the model instructions on the right to cancel set out in Part 1 of Schedule 4, they are deemed to have complied with the duties imposed by:

- Section 104(2)(f) on the conditions, time limit and procedures for exercising the right to cancel under section 115, and
- Section 104(3)(a) in relation to clauses (m) to (o) of Schedule 3, which relate to the conditions, time limit and procedures for exercising the right under section 112, the bearing of the cost of returning the goods by the consumer, and the payment of reasonable costs to the trader if the customer exercises to cancel after making a request under section 119.

Section 104(5) requires that the information in section 104(2)(b) to (e) must be provided on paper, or if the consumer agrees, any other durable medium. It must also be legible and be in plain and intelligible language. Section 104(6) further provides that the information in sections 104(2)(a), (f) and (g) need not be provided by the trader on paper or another durable medium if the consumer expressly agrees to this.

Further requirements under section 104 require that the contact information provided under section 104(2)(d) must enable the consumer to contact the trader quickly and communicate efficiently with them. Section 104(8) provides that the information under sections 104(2) and 104(3)(a) forms part of the contract and cannot be altered without the express agreement of the trader and consumer. Section 104(9) provides that a trader who contravenes sections 104(2) or (3) is guilty of an offence.

Chapter 4: Consumer information for distance contract

Information requirements for distance contract

Section 106 sets out the main information requirements for a distance contract, with sections 107 and 108 respectively setting out further requirements for contracts concluded on online marketplaces or by electronic means (in relation to package travel or passenger transport services).

Section 106(1) requires that before a consumer is bound by a distance contract or any corresponding offer, the trader must make available:

- In clear and intelligible language, the information set out in Schedule 3 and
- where there is a right to cancel, the model cancellation form set out in Part 2 of Schedule 4.

Similar to off-premises contracts above, Section 106(2) provides that the trader may also provide the information set out in clauses (m) to (o) in Schedule 3 by means of the instructions on cancellation set out in Part 1 of Schedule 4. Section 106(3) sets out similar provisions in relation to information provided about auctioneers where one is involved.

Section 106(6) sets out what clauses in Schedule 3 must be prioritised on a means of distance communication where that means allows limited time or space to display the information, with the remaining clauses and model cancellation form provided in an appropriate way. The clauses to be prioritised are:

- Clause (a) – the main characteristics of the goods, digital content, digital service or service.
- Clause (b) – the identity of the trader, including the trader’s trading name and legal identity;
- Clause (f) - the total price of the goods, digital content, digital service or service (incl. taxes), where the price cannot reasonably be calculated in advance, the manner in which it is to be calculated;
- Clause (g) - where applicable, all freight, delivery or postal charges and any other additional costs, or where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- Clause (h) - in the case of a contract of indeterminate duration or a contract containing a subscription, either the total costs per billing period, the total monthly costs where a fixed rate applies, or the manner in which the price is to be calculated if they cannot be calculated in advance; and
- Clause (t) - the duration of the contract or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating it.

Section 106(7) provides that a trader who calls a consumer with a view to concluding a distance contract must provide their identity, the identity of the other trader if the call is made on their behalf and the commercial purpose of the call.

Section 106(8) further provides that where the distance contract is concluded through a trading website, the trader must ensure that the website clearly and legibly indicates any delivery restrictions that apply and which means of payment are accepted and the information required under Schedule 3 and Part 2 of Schedule 4.

Similar to off-premises contracts, section 106(9) requires that the information in Schedule 3 cannot be altered without the express agreement of the trader and consumer, that the consumer is not liable for costs or charges in clauses (g) and (n) of Schedule 3 (relating to delivery and return of goods respectively).

Sections 106(10) and (11) respectively provide that the consumer is not liable for delivery or return costs in clauses (g) and (n) if the trader has not provided this information, and that if the trader contravenes any of the information requirements in sections 106(1), (6), (7) or (8), they are guilty of an offence.

Chapter 5: Right to cancel distance contract or off-premises contract

Chapter 5 relates to the right of the consumer to cancel a distance or off-premises contract. Sections 110 and 111 are standard provisions on application and interpretation of the Chapter and are not discussed below. A synopsis of these sections is given in Table 2 above.

Right to cancel

Section 112 provides for a right for the consumer to cancel a distance or off-premises contract during the cancellation periods without giving a reason for the cancellation. Section 112(2) clarifies that the consumer does not incur any costs or liability for the cancellation other than the following:

- Non-standard delivery under section 117(2);
- Direct cost of returning goods under section 118(5);
- Diminished value of goods under section 118(6)(b); and
- Services, digital services, gas, water, electricity or district heating supplied during the cancellation period.

Section 113 provides for the duration of the cancellation period, prescribing different periods for different forms of contract.

Section 113(2) provides for a cancellation period of 14 days from the conclusion of the contract for the following:

- service contracts,
- digital service contracts,
- contracts for the supply of digital content not supplied on a tangible medium,
- contracts for the supply of water, gas or electricity not supplied in limited volume or set quantity; or
- contracts for the supply of district heating.

Section 113(3) provides for a separate cancellation period of 30 days where the contract was concluded in the context of an unsolicited visit to the consumer's home, or an excursion organised, by the trader. This applies for the above contracts with the exception of contracts for the supply of district heating.

Section 113(4) provides for a cancellation period of 14 days for sales contracts, starting from when the consumer obtains physical possession of the goods.

In the case of sales contracts involving multiple goods in one order (section 113(5)), or multiple lots or pieces (section 113(6)), the 14 day cancellation period begins when the consumer receives the last of the goods / last lot or piece. In contrast, section 113(7) provides that in cases where the sales contract involves regular delivery of goods, the cancellation expires 14 days after the first of the goods are received.

Section 113(8) provides for a separate cancellation period of 30 days for sales contracts concluded in the context of an unsolicited visit to the consumer's home, or an excursion organised, by the trader. This begins at the same points in each of the circumstances provided for in subsections (5) to (7).

Section 114 provides for a further cancellation period of 12 months following the date the cancellation period would have expired under section 113 where a trader omits information on the right to cancel the contract as required by clause (m) of Schedule 3. Sections 114(2) and 114(3) respectively provide that if the trader provides the information within 12 months of the date the cancellation period would have expired, then the original cancellation period (14 days or 30 days

as applicable) applies from the date the information is received by the consumer. Section 114(4) clarifies that this information must still be provided as required by sections 103 (off-premises contracts), 104 (off-premises contracts for repair or maintenance) or 106 (distance contracts).

Section 115 provides that where a consumer wishes to cancel a distance or off-premises contract they must exercise the right before the expiry of the cancellation period. Section 115(2) sets out two ways in which the consumer may exercise this right; 1) by using either the model cancellation form in Part 2 of Schedule 4, or 2) by making any other unequivocal statement setting out his or her decision to cancel. Section 115(3) also provides that the trader may give the option to submit the form or statement on their website. The trader must reply with an acknowledgement without undue delay under section 115(4) and places the burden of proof on the consumer to show the right to cancel was exercised in the event of a dispute.

Trader's obligations

Section 117 sets out the obligations of a trader in the event of a cancellation by a consumer:

- 117(1): To reimburse the consumer for all payments, including any payment for delivery.
- 117(2): A trader is only required to reimburse the cost of the least expensive type of standard delivery where a consumer has expressly opted for a more expensive delivery.
- 117(3): Reimbursement must take place without undue delay and no later than 14 days after the trader is informed of the consumer's decision to cancel.
- 117(4): For sales contracts, a trader may withhold reimbursement until either the goods are received back or the consumer has provided evidence the goods are sent back.
- 117(5): Unless the consumer expressly agrees otherwise, a trader must reimburse the consumer with the same means of payment as the initial transaction.
- 117(6): Where a different means of reimbursement is agreed, the trader must ensure that the consumer does not incur any fees as a result.
- 117(7) and 117(8): Obligations on the use of content created by a consumer while using digital content or a digital service by a trader following cancellation.

Section 117(11) provides that a trader who contravenes the obligations set out in sections 117(1) to (8) is guilty of an offence.

Section 117(12) provides that the trader is liable for any loss or damage suffered by the consumer as a result of a failure to reimburse under section 117.

Consumer obligations

Sections 118(1) and 118 (2) provide that a trader is obliged to collect goods at their own expense if:

- a) they have offered to collect them, or
- b) in the case of off-premises contracts, the nature of the goods means they cannot be sent back by post.

Section 118(3) provides that where the trader is not required to collect the goods, then the consumer is required to send the goods back or hand them over to the trader or a person authorised by the trader to receive them. Section 118(4) provides that the goods must be returned or handed back without undue delay and not later than 14 days after informing the trader of cancellation of the contract. Section 118(5) also clarifies that the consumer is required to bear the costs of returning the goods unless the trader has either:

- a) agreed to bear these costs, or

- b) failed to inform the consumer under clause (n) of Schedule 3 that the consumer must bear those costs.

Section 118(6) requires the consumer to take reasonable care of the goods prior to return and is liable for any diminished value of the goods resulting from the handling of the goods beyond that necessary to establish their nature, characteristics and functioning. Section 118(7) exempts the consumer from liability under this requirement if the trader failed to provide the consumer with the information on the right to cancel required by clause (m) of Schedule 3.

Section 118(8) provides that the consumer is liable for any loss or damage suffered by the trader resulting from failure to return the goods under section 118. Section 118(9) further provides that where the cancellation involves the cancellation of a contract for a digital content not supplied on a tangible medium, or a digital service, the consumer is required to cease using the service or make it available to any third person.

Part 6: Unfair Terms in Consumer Contracts

Part 6 of the Bill contains two Chapters and 15 sections, setting out conditions and requirements around the use of unfair terms in consumer contracts. Chapter 1 [sections 126-128] provides for standard interpretation and application provisions and so is not discussed below. A synopsis of each section of the Bill is given in Table 2 above.

Unfair Terms in Consumer Contracts

Chapter 2 of Part 6 provides for the conditions and requirements around the use of unfair terms in consumer contracts.

Section 130 deals with the meaning of 'unfair' and subsection 2 provides a list of matters that must be considered when assessing if a term is unfair. These are:

- “(a) the nature of the subject matter of the consumer contract,
- (b) whether the term of the consumer contract complies with the requirements referred to in section 134(2),
- (c) all of the circumstances relating to the conclusion of the consumer contract, and
- (d) the other terms of the consumer contract or of any other contract (including a consumer contract) on which it is dependent.”

Section 130(3) sets out a list of criteria that must be considered when assessing whether a consumer contract complies with the requirement of good faith:

- “(a) the strength of the bargaining positions of the parties,
- (b) whether the consumer had an inducement to agree to the term,
- (c) whether the goods were, or the digital content, digital service, service or other subject matter of the contract was, sold or supplied to the special order of the consumer, and
- (d) the extent to which the trader has—
 - (i) dealt fairly and equitably with the consumer, and
 - (ii) taken the consumer’s legitimate interests into account.”

Sections 132 and 133 respectively provide for a “black list” and “grey list” of unfair terms. Section 132(1) provides that the following terms are always unfair if the object or effect is any of the following:

- a) to exclude or limit the liability of a trader for the death of or personal injury to a consumer arising from an act or omission of the trader,
- b) to require a consumer to pay for goods that have not been delivered or digital content, a digital service or a service that has not been supplied,
- c) to impose on a consumer a burden of proof that, according to the applicable law, would otherwise be on a trader,
- d) to exclude or hinder a consumer’s right to take legal action or exercise a legal remedy, including by requiring the consumer to take a dispute to an arbitration procedure that is not governed by law,
- e) to require a consumer to bear his or her own costs in respect of any arbitration,
- f) to give a trader the exclusive right to determine whether goods are, or digital content, a digital service or a service is, in conformity with the contract,
- g) to give a trader the exclusive right to interpret any term of the contract,
- h) to grant the trader a shorter notice period to terminate the contract than the notice period required of the consumer, or
- i) to confer exclusive jurisdiction for disputes arising under the contract on a court in the place where a trader is domiciled unless the consumer is also domiciled in that place.

The section makes further provision for subsection (1)(a) above, relating to terms that exclude or the limit liability of the trader for the death of, or personal injury to, a consumer arising from an act or omission of the trader, to not apply in certain contracts or circumstances as follows:

- Section 132(2): to not apply to consumer contracts in so far as it is an insurance contracts (including a contract to pay annuity on human life) or consumer contracts in so far as they relate to contracts for the transfer of interests in land;
- Section 132(3): to not apply to occupier’s liability to a person who obtains access to a premises for recreational purposes, where that person suffers loss or damage due to the dangerous state of the premises and the access did not relate to the occupier’s trade, business, craft or profession;
- Section 132(4): to not affect the validity of any discharge or indemnity given by a person in consideration of the receipt by that person of compensation in settlement of any claim that the person has.

Section 132(5) further provides that for the purposes of subsection (1)(a), a consumer is not deemed to have voluntarily accepted any risk merely because he or she agreed to or knew about a term in the consumer contract that purported to exclude the trader’s liability for death or personal injury. Section 132(6) clarifies that ‘personal injury’ has the same meaning as it does in the Civil Liability Act 1961.

Section 133(1) provides that Part 1 of Schedule 5 to the Bill contains an “indicative and non-exhaustive list” of terms of consumer contracts that are presumed to be unfair, which is itself subject to the provision of Part 2 of the Schedule. Section 133(3) allows for a term in the list to be assessed for unfairness under section 130. Sections 133(4) and (5) provide that the Minister may make regulations for further terms of consumer contracts to be added to the list.

Consumer contract terms to be transparent

Section 134 provides that a trader must ensure that contract terms are transparent. Subsection 3 sets out the matters that must be considered when assessing the transparency of a term of a consumer contract:

- “(a) the nature of the subject matter of the contract,
- (b) the means by which the contract is communicated and presented to the consumer,
- (c) the other terms of the contract or of any other contract on which it is dependent,
- (d) compliance with any obligations relating to the provision of information to the consumer imposed by an enactment (including this Act) which require to be complied with before the conclusion of the consumer contract, and
- (e) all the circumstances relating to the conclusion of the contract.”

Part 7: Proceedings and Penalties

Part 7 of the Bill contains 7 sections [sections 141 to 147], providing for penalties for offences under the Bill and other ancillary matters relating to proceedings brought in respect of offences under the Bill. Sections 141, 143, 144 and 145 are standard provisions and for that reason are not discussed below. A synopsis of each section of the Bill is given in Table 2 above.

Offences: penalties

Section 142(1)(a) provides that on summary conviction the punishment is a class A fine (maximum €5,000) or imprisonment for a term not exceeding 12 months, or both. Section 142(1)(b) provides that on conviction on indictment the punishment is a fine not exceeding €60,000 or imprisonment for a term not exceeding 18 months, or both.

Subsection (2) provides for an indicative and non-exhaustive list of factors to be considered by a court when sentencing a person convicted of an offence under Parts 5 or 6 of the Bill. These factors include:

- the nature of the infringement;
- any action taken by the trader to mitigate the harm suffered by the consumer;
- any previous infringements;
- the financial benefits or losses avoided by the trader due to the infringement;
- any penalties imposed in cross-border cases for the same infringement; and
- other aggravating or mitigating factors.

Convicted traders liable to compensate consumers for loss or damage

Section 146(1) provides that where a trader is convicted of an offence under the Bill, the relevant authority that brought the proceedings, may on behalf of a consenting aggrieved consumer, apply for a compensation order requiring the trader to pay an amount calculated by the court as compensation to that consumer for loss or damage arising from the offence.

Subsection (2) provides that a compensation order may be instead of or in addition to any fine or penalty already imposed.

Subsection (3) provides that the compensation is limited to the court's jurisdiction in tort⁵² and cannot exceed the amount that the consumer would be entitled to if they had brought an action for damages under sections 34, 73 or 95.

Subsection (4) prohibits the making of an application under section 146 where the aggrieved consumer has brought an action under section 34, 73 or 95 in respect of the same failure to comply.

Subsection (5) provides that if an action is commenced under section 34, 73 or 95 following the making of a compensation order, and damages are awarded in respect of the same failure to comply then the compensation order will be treated as in satisfaction of the portion of the awarded damages to which it is equal.

Subsection (6) provides that where the trader fails to comply with a compensation order within the time provided, or where no time is provided in the order, within 30 days of the order being made, the aggrieved consumer may enter judgment in the court where the conviction was entered.

Subsection (7) provides that judgment entered under subsection (6) is enforceable in the same manner a judgment rendered in civil proceedings in that court.

Prosecution of summary offences

Section 147 provides for the authorities that may prosecute summary proceedings under the various Parts of the Bill. Subsection (1) provides that the CCPC may bring summary proceedings under Parts 2 or 3. Subsection (2) provides that the CCPC and the CCR may bring summary proceedings under Parts 4 or 5. Subsection (3) provides that the CCPC, the CCR and the Central Bank may bring summary proceedings under Part 6.

Part 8: Amendment of Consumer Credit Act 1995

Part 8 of the Bill contains 3 sections (148 - 150) which set out several amendments to the *Consumer Credit Act 1995*, as it relates to hire-purchase agreements. A synopsis of each section of the Bill is given in Table 2 above.

Amendment of section 2 of the 1995 Act

Section 148 amends section 2(1) of the 1995 Act by inserting several new definitions as follows:

“ ‘Act of 2022’ means the *Consumer Rights Act 2022*;

‘commercial guarantee’, in relation to a hire-purchase agreement, means any undertaking by an owner or producer to a hirer (in addition to the owner's legal obligation to supply goods in conformity with the agreement) to reimburse the price paid or to repair, replace or service goods in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before, the conclusion of the hire-purchase agreement;

⁵² The monetary jurisdiction of the District Court for tort cases is €15,000. The monetary jurisdiction of the Circuit Court for tort cases is limited to cases where the claim does not exceed €75,000. The monetary jurisdiction of the High Court for tort cases are for those in excess of €75,000.

‘compatibility’ means the ability of goods to function with hardware or software with which goods of the same type are normally used without the need to convert the goods, hardware or software;

‘delivery’ means voluntary transfer of possession from one person to another;

‘digital content’ has the meaning assigned to it by the *Act of 2022*;

‘digital service’ means—

(a) a service that allows a hirer to create, process, store or access data in digital form, or

(b) a service that allows the sharing of or any other interaction with data in digital form uploaded or created by a hirer or any other user of the service, and includes in particular video and audio sharing and other file hosting, social media and word processing and games offered in the cloud computing environment;

‘functionality’ means the ability of goods to perform their functions having regard to their purpose;

‘goods’ has the meaning assigned to it by the *Act of 2022*;

‘goods with digital elements’ has the meaning assigned to it by the *Act of 2022*;

‘guarantor’ means—

(a) an owner,

(b) a producer, or

(c) any other person who provides a commercial guarantee in relation to goods let under a hire-purchase agreement;

‘producer’ means—

(a) a manufacturer of goods,

(b) an importer of goods into the European Union, or

(c) any person purporting to be a producer by placing the person’s name, trade mark or other distinctive sign on the goods, and includes any person acting in the name, or on behalf, of the producer;”.

Section 150 of the Act inserts new sections 73A to 73X into the *Consumer Credit Act 1995*, providing for requirements in relation to hire-purchase agreements, including requirements on subjective and objective conformity requirements, the provisions on the liability of the owner and the burden of proof and sets out the remedies available to the hirer.

Part 9: Amendment of Consumer Protection Act 2007

Part 9 of the Bill contains 18 sections (152-169) which provide for numerous amendments to the *Consumer Protection Act 2007*, relating to misleading commercial practices. A synopsis of each section of the Bill is given in Table 2 above.

Misleading Commercial Practice

Section 154 inserts a new section 44A into the 2007 Act setting out the terms for what constitutes a misleading commercial practice. A commercial practice is considered misleading if it meets the following conditions:

“(a) unless justified by legitimate and objective factors, it involves any marketing of goods in a Member State as being identical to goods marketed in other Member States where the goods have significantly different composition or characteristics, and

(b) the marketing would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make.”

In determining whether a commercial practice is misleading, the commercial practice should be considered within its factual context and taking account of all its aspects and circumstances.

Section 158 deletes section 67(g) of the 2007 Act and inserts new paragraphs (o) – (t) which set out what is considered a prohibited act or practice. Paragraphs (o) to (t) provide as follows:

“(o) a failure or refusal by a trader to provide a remedy to which a consumer has a right under section 23(1)(b), 26(2)(a), 29(1), 61(1), 62(2)(a), 85(1) or section 86(2)(a) of the Act of 2022,

(p) where a consumer is entitled to reimbursement under section 31, 68 or 90 of the Act of 2022, a failure or refusal by a trader to reimburse the consumer,

(q) any contravention of Part 5 of the Act of 2022,

(r) the use by a trader in a consumer contract (within the meaning of the Act of 2022) of a term that is unfair under section 132 of that Act,

(s) the use by a trader in a consumer contract (within the meaning of the Act of 2022) of a term that is presumed to be unfair under section 133 of that Act,

(t) the use by a trader in a consumer contract (within the meaning of the Act of 2022) of a term that is not transparent in contravention of section 134(1) of that Act.”

Section 159 amends section 71 of the 2007 Act substituting a new subsection 1 which provides for what is excluded from a prohibited act or practice within the context of civil proceedings. These are:

- a contravention of section 59(2) (regarding weighing facilities in grocery retail);
- a contravention of section 60(1) (regarding preventing the reading of prices);
- a trader using in a consumer contract (within the meaning of the Act of 2022) a term that is unfair under section 132 of that Act;
- a trader using in a consumer contract (within the meaning of the Act of 2022) of a term that is presumed to be unfair under section 133 of that Act;
- a trader using in a consumer contract (within the meaning of the Act of 2022) of a term that is not transparent in contravention of section 134(1) of that Act.

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