



Retail Ireland submission to the Joint Committee on Agriculture, Food and the Marine on the Agricultural and Food Supply Chain Bill 2022

June 2022

Retail Ireland would like to thank the Committee for affording us this opportunity to submit the views of retailers as part of the pre-legislative scrutiny process of the on the Agricultural and Food Supply Chain Bill 2022

Retail Ireland is the representative body for the entire retail sector in Ireland. Our members include Ireland's main retail brands, including major supermarket groups, department stores, DIY, electrical retailers, clothing and fashion retailers, symbol groups, forecourts and specialist retailers. Retail is Ireland's largest industry and largest employer, with a presence in every city, town and village, right across the country.

Retailers in Ireland worked closely and effectively with the Competition and Consumer Protection Commission and their suppliers to embed the Grocery Goods Regulations introduced in 2016, and more recently have engaged with the Unfair Trading Practice Enforcement Authority to ensure compliance with the Unfair Trading Practices Regulations. As such, retailers have done extensive work to prepare for the introduction of this legislation.

Retail Ireland and its members recognise the need to ensure fairness and sustainability in the agri-food supply chain and can see the benefits in addressing gaps between the European Union (Unfair Trading Practices in the Agricultural and Food Supply Chain) Regulations, 2021 and the repealed Consumer Protection Act, 2007 (Grocery Goods Undertakings) Regulations 2016.

However, it is worth noting that the Regulations are still relatively new and, as highlighted in the research presented to the UTP seminar hosted by the Department of Agriculture, Food and the Marine on the 5 April, many suppliers are still not fully aware of the provisions and protections that are in place under the UTPs.

Given this context, it is vital that current UTP obligations are afforded the necessary time to bed in. If there is to be any consideration given to changing the UTP list in the future, this should be done only when it can be fully informed by an appraisal of the effectiveness of the established regulatory obligations and with adequate time for a full consultation with all relevant stakeholders.

It is also important to note, particularly given the context of rising inflation and increases to the cost of living, that fair but also robust competition throughout the food supply chain is vital in delivering value for money, choice, and quality to Irish consumers. Working with partners across the supply chain, the retail sector has demonstrated its ability to do this over the last decade. It is crucial that nothing is done to undermine its ability to do the same over the course of the next ten years.

Please find below some specific observations regarding the legislation currently under consideration by the Committee. Retail Ireland is happy to follow up if there are any queries relating to the positions outlined in this submission.

HEAD 9

Section 9 (1) (c) and (d) say: *Without prejudice to the generality of section 8, the particular functions of the Office shall be to: (c) collect, analyse and report on publicly available price and market data in the agricultural and food supply chain; (d) publish regular analysis and reports on price and market information or contingency issues in regard to the agricultural and food supply chain.*

Grocery retailers have already been advised that there will be a requirement to report on the price paid for mince and butter, and feedback has been provided on and how this would work from a practical perspective. If it is envisaged that more products will fall under the scope of this, it will be important to engage with retail (and producers etc.) to ensure an understanding of the logistics around this. With regards to 9 (c) which references *publicly available price and market data*, again, engagement with industry on this would be welcome, to ensure like-for-like comparisons are used, and the confidentiality of market sensitive data is maintained.

HEAD 10 and HEAD 12

In relation to the Board, section 10. (1) states that *The Office shall have a Board which shall consist of the following members: (a) a chairperson; and (b) five ordinary members, of which two shall be primary producers.* In addition, section 12. (3) states that *the quorum for a meeting of the Board shall be 3.*

Retail Ireland views the purpose of the Office as providing (amongst other things) independent governance on and compliance with the provisions of the Bill. Specifying, as a starting point, that 40% of the ordinary members of the Board will comprise of primary producers, seriously reduces the balance of the Board particularly in circumstances where the Chairman is designated by the Minister (Head 11(1)), the Chairman has a second or casting vote (Head 12 (6)), the quorum for a board meeting is 3 (Head 12 (3)), and each board member has a vote notwithstanding any conflict or perceived conflict.

To represent all parts of the supply chain fairly and ensure balance, it is important that the Board has experienced representatives of retail, wholesale, farmers, processors etc. We suggest that a representative of the retail sector should constitute at least one of the ordinary members of the board. Consumer interest and consumer protection is also key. It is important that the voice of the consumer is also represented. In addition, we would suggest that a quorum should need to consist of at least one ordinary member (i.e., that a chairperson and two primary producers cannot constitute a quorum).

HEAD 20

20 (3) states: *When preparing the strategy statement, the Board may consult such persons as it considers appropriate.*

Retail Ireland suggests that the retail industry should be consulted on relevant matters contained in the strategy.

HEAD 21

21 (5) states: *Without prejudice to the generality of subsection (4), the Office shall- (a) publish an annual report detailing the number of complaints received and the number of investigations opened or closed during the previous year, and (b) for each closed investigation the report shall summarise a description of the complaint, the outcome of the investigation and where applicable, the decision taken, subject to the confidentiality provisions of Regulation 38.*

21 (6) states: *The Office may publish details of its decisions relating to (a) prohibitions of unfair trading practices, or where the buyer was required to bring such prohibited trading practices to an end, or (b) the imposition, or initiation of proceedings for the imposition of fines and other penalties, and interim measures relating to unfair trading practices.*

Retail Ireland would ask that, if buyers are to be named in this report, they should be given fair notice of this and an opportunity to comment.

HEAD 38

Head 38 covers the scope of the Office to investigate complaints and provides that:

'(2) Suppliers may address complaints to the Office where:

a) The supplier is established in the state, or

b) Where the buyer is suspected to have engaged in a prohibited practice is established in the State.'

The 2021 Regulations similarly specify that they apply to:

'Sales where either the supplier or the buyer, or both, are established in the Union'.

Retail Ireland believes that both definitions create difficulties in respect of jurisdiction for the Office and/or of primacy in terms of similar unfair trade practices legislation enacted in other member states or non-member states. We would appreciate clarity around what powers of enforcement is it anticipated the Office will have in a scenario where a supplier is established in the State, but the buyer is established outside the EU. Using the UK as a specific example, are any issues of precedence anticipated with local UTP provisions (the Groceries Supply Code of Practice) where the buyer and sales are in the UK.

HEAD 39

Section 3a)

This section describes the activities or practices that the Minister may specify as unfair trade practices but does not yet appear definitive in terms of what will be legislated within the Bill. This includes the Black and Grey practices identified in the current 2021 Regulations under points (3) (a) (i) to (xiv) although it is noted that:

- Point (3) (a) (i) and (ii) only prohibit late payment, and do not refer to the maximum payment terms of 30 and 60 days incorporated in the 2021 Regulations.
- These points do not include the provisions contained in the 2021 Regulations on payments and allowances, albeit they are referred to later in the Head.

Points 3 (a) (xv) to (xxxii) are additional to the requirements in the 2021 Regulations and it is noted that there is duplication within these points and with earlier provisions (for example (xx) & (xiii) or (xxv) & (xxiii)).

The Bill as drafted has lost the clear distinction between 'black' prohibited practices and 'grey' practices that may be mutually agreed between supplier and retailer. So, for example, whilst it would clearly be unacceptable for agreement on a promotion to be obtained by duress, mutually agreed promotions will be to the benefit of all parties in the supply chain including the consumer.

In a post Brexit world, it is vitally important to ensure a level playing field still exists with Northern Ireland and the rest of the UK, where the ability to agree promotions and advertising and marketing is permitted under the UK's Groceries Supply Code of Practice. Respecting freedom of contract is key to continue to allow flexibility to all players in this market.

More generally, it is also crucial that due time is afforded to allow the new provisions to bed in and be fully appraised before any consideration is given to any further material changes. A failure to do this risks the introduction of counterproductive amendments, which that could ultimately be to the detriment of all, including the consumer.

With the above points in mind, we would recommend:

- The provisions in section 3a) are reviewed to remove duplication / overlap
- Clarity is provided on whether 30- and 60-day maximum payment terms will continue to be mandated by the Bill
- The provisions are grouped as either Black or Grey similarly to the current UTP
- Consideration is given to whether certain clauses are overly restrictive potentially undermining competition and / or hampering positive working relationships (in particular 3a xv, xvi, xvii, xviii, xxi and xxiv)

Section 3 (d)

This section says the Minister may *'specify the turnover disparity between buyers and suppliers at which a trading practice becomes unfair and may set the thresholds relating to same'*

Clarity would be welcomed in relation to this section and how it relates to the existing UTP Regulations. We note that the UTP Regulations afford protection for any supplier of agricultural and food products with graduated turnover limits of up to €350 million subject to the supplier's turnover being lower than the buyer's turnover within the stated categories.

Suppliers with turnover exceeding €350 million are large suppliers with significant bargaining power and this is recognised as such by the EU when determining turnover thresholds. The purpose of the UTPs is to protect smaller, primary producers and not larger multi-national corporations. Retail Ireland believes there is no justification in any move to increase turnover thresholds and would welcome confirmation that these will remain unchanged.

Head 58

Head 58 provides the power to impose levies to meet the expenses of the Office incurred in the discharge of its functions under the Bill.

Given the scope of the Bill will extend to all organisations within the end-to-end supply chain, we would welcome clarity on how the Minister anticipates a levy be equitably apportioned and recovered. Additionally, how will the Minister provide assurance that value for money is achieved in respect of the utilisation of the levy by the Office?

Head 62

Head 62 covers the potential for buying organisations to submit additional voluntary codes of practice for approval by the Office. From experience of other industries, voluntary codes of practice are usually created in the absence of statutory or regulator provision mandating minimum standards in respect of a particular activity or market. We would ask that the Minister provide further details of the circumstances envisaged where a voluntary code could be relevant in addition to the mandatory provisions that will be included in the final Bill.