



**STATEMENT OF OFFICIALS OF DEPARTMENT OF ENTERPRISE, TRADE AND
EMPLOYMENT TO MEETING OF JOINT COMMITTEE ON ENTERPRISE,
TRADE AND EMPLOYMENT 13TH OCTOBER 2021**

**PRE-LEGISLATIVE SCRUTINY OF SCHEME OF CONSUMER RIGHTS BILL
2021**

Thank you Chair, and thanks also to the Committee for the opportunity to discuss the Scheme of the Bill. I'm joined by my colleagues Emily de Grae, Marie Dempsey and Emma Hanrahan. We very much welcome the opportunity to contribute to the Committee's scrutiny of the Scheme and to assist you in any way we can. I intend to outline the context for introducing the Scheme and then set out its main provisions after which we look forward to hearing the member's views and answer questions.

Introduction and Context

This Scheme gives effect to two EU Directives on contracts for the sale of goods and contracts for the supply of digital content and digital services. In order to implement parts of a third EU Directive, namely the Better Enforcement and Modernisation Directive of 2019, the Scheme also proposes to revoke and replace the 1995 Unfair Terms in Consumer Contracts Regulations and the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013. It also updates and consolidates the existing legislation on consumer rights and remedies. Finally, it also makes amendments to the Consumer Protection Act 2007, an element of which will be to strengthen the enforcement powers of the Competition and Consumer Protection Commission.

A comprehensive, consolidated Consumer Rights Act along the lines proposed in the Scheme provides a legislative framework that is more appropriate to present-day conditions and requirements, simpler to understand, creates clearer rules for businesses, and strengthens consumers' rights.

The Scheme of the Bill now under scrutiny by the Committee was approved for drafting by the Government on 20th April 2021.

Main Provisions of the Scheme

Chair, as my speaking time is limited to eight minutes, it is my intention to summarise the main provisions of the Scheme.

The Scheme contains 10 parts in all. With limited exception, Parts 2, 3, 5 and 6 transpose maximum harmonisation Directives which give Member States little discretion as to their implementation.

- Part 1 deals with matters common to legislation namely: citation and commencement; interpretation; application; regulations; repeals and amendments. It also contains generally applying provisions including those related to the making of contracts; preventing traders from attempting to restrict the statutory rights of a consumer; and the jurisdiction of court to order remedies.
- Part 2 focuses on the rights of consumers under sales contracts and on the remedies available to consumers where goods do not conform to those rights. It gives effect to the Sale of Goods Directive (2019/771). It incorporates the provisions applying to consumer sales contracts in the Sale of Goods Act 1893. It also gives effect to Article 18 (Delivery of goods) and Article 20 (Passing of risk in goods) of Consumer Rights Directive (2011/83/EU) as well as the delivery provisions at sections 30 and 31 of the Sale of Goods Act 1893. Part 2 also deals with consumer guarantees.
- Part 3 gives effect to the Digital Content Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services. Its provisions set out the rights that apply under such contracts and the remedies that apply where digital content or digital services infringe upon those rights. As digital content and digital services are relatively new, consumer contracts for their supply have not previously been the subject of specific statutory regulation.
- Part 4 will replace Part IV of the Sale of Goods and Supply of Services Act 1980 for services contracts between a consumer and a trader. It deals with contracts for the supply of a non-digital service. It expands the rights of consumers in respect of such contracts and establishes a scheme of statutory remedies that will apply where a service does not conform to these rights.

- Part 5 re-enacts, with substantial amendments, the provisions on consumer information and cancellation rights in the Consumer Rights Directive 2011/83/EU as given effect by the S.I. No. 484/2013. The Part also implements the significant amendments to the Consumer Rights Directive made by the Better Enforcement and Modernisation Directive of 2019. As Part 5 deals with key aspects of consumer contract rights, its incorporation in the Scheme is in the interests of regulatory clarity and accessibility. Its incorporation in primary legislation also permits the application of some provisions to contracts previously excluded from the scope of the secondary legislation.
- Part 6 repeats consumer rights contained in the Consumer Rights Directive of 2011 and given effect in S.I. 484/2013 relating to payment fees, additional payments, charges for calls to customer helplines and inertia selling, in other words, the sending of unsolicited goods to potential customers in the hope of making a sale.
- Part 7 makes a number of important changes to the provisions of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27 of 1995), which transposed Directive 93/13/EEC. As the Directive is a minimum harmonisation instrument, Member States are free to extend its provisions to excluded terms and to add to the protections it provides. The changes made to the Regulations include –
 - extending the scope of the unfair terms provisions to include contract terms that have been negotiated between the consumer and trader,
 - strengthening the transparency requirements that apply to contract terms,
 - narrowing somewhat the exemption from assessment for unfairness of core contract terms, and
 - expanding the ‘grey list’ of consumer contract terms presumed to be unfair and introducing a ‘blacklist’ of terms that are automatically unfair.

The Part also gives effect to the new penalties’ provisions inserted in the Directive by the Better Enforcement and Modernisation Directive of 2019.

- Part 8 sets out the enforcement powers and penalties under the Scheme. The CCPC will have enforcement responsibilities for consumer contracts under all Parts of the Act. The Central Bank will continue to have an enforcement function under Part 7 in respect of unfair contract terms in consumer contracts with regulated financial services providers.

ComReg will continue to have an enforcement function under Parts 5 to 7 in respect of consumer contracts for electronic communication services.

- Part 9 contains the various amendments to the Consumer Protection Act 2007 required to transpose amendments to the Unfair Commercial Practice Directive (UCPD) made in the Better Enforcement and Modernisation Directive of 2019. These amendments will extend and enhance the enforcement measures available to the CCPC.
- Part 10 - provides for a number of amendments to other consumer protection enactments.

Notwithstanding that the Scheme is focused on consumer rights, it should not be seen as a measure that will harm businesses. Indeed, it will give a legislative framework to the terms and practices that responsible businesses already adopt in their dealings with customers and will ensure that those businesses which do not will face effective enforcement action.

I am happy to discuss the provisions of the Scheme in more detail and to respond to questions from Members of the Committee.

Thank you Chair.