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Consumer Rights Act 2022



Number 37 of 2022

CONSUMER RIGHTS ACT 2022

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Companies Act 2014 (No. 38)

Competition (Amendment) Act 2022 (No. 12)

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Competition and Consumer Protection Act 2014 (No. 29)

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Package Holidays and Travel Trade Act 1995 (No. 17)

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Number 37 of 2022

CONSUMER RIGHTS ACT 2022

An Act to amend and consolidate the law relating to rights and remedies in contracts between traders and consumers for the sale of goods and the supply of digital content and digital and other services, including by giving effect to Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019¹ on certain aspects concerning contracts for the supply of digital content and digital services, Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019² 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 and Articles 1, 3 and 4 of Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019³ amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules; to amend and consolidate the law relating to unfair terms in contracts between traders and consumers; to amend the Consumer Credit Act 1995 to make provision for rights and remedies in hire-purchase agreements and consumer-hire agreements; to amend section 12 (13) of the Competition and Consumer Protection Act 2014 ; to amend section 459 of the Companies Act 2014 ; and to provide for related matters.

[7th November, 2022]

Be it enacted by the Oireachtas as follows:

PART 1

Preliminary and general

Short title and commencement

1. (1) This Act may be cited as the Consumer Rights Act 2022.
- (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Interpretation

2. (1) In this Act—

“Act of 1995” means the Consumer Credit Act 1995 ;

“Act of 2007” means the Consumer Protection Act 2007 ;

“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 content contract” means a contract under which—

- (a) a trader supplies or undertakes to supply digital content to a consumer, and

(b) the consumer either or both:

(i) pays or undertakes to pay the price of the digital content;

(ii) provides or undertakes to provide personal data to the trader, other than where the personal data are processed by the trader only for the purpose of supplying the digital content in accordance with this Act or complying with any other legal requirement to which the trader is subject;

“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;

“digital service contract” means a contract under which—

(a) a trader supplies or undertakes to supply a digital service to a consumer, and

(b) the consumer either or both:

(i) pays or undertakes to pay the price of the digital service;

(ii) provides or undertakes to provide personal data to the trader, other than where the personal data are processed by the trader only for the purpose of supplying the digital service in accordance with this Act or complying with any other legal requirement to which the trader is subject;

“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;

“district heating” means the supply of heat (in the form of steam, hot water or otherwise) to multiple buildings from a central source of production through a transmission and distribution system for the purpose of heating;

“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;

“enactment” has the same meaning as it has in the [Interpretation Act 2005](#) ;

“financial service” means any service of a kind normally provided in the ordinary course of carrying on a banking business, an insurance business or a business of providing credit, personal pensions, an investment service or a payment service;

“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;

“personal data” has the same meaning as it has in the [Data Protection Act 2018](#) ;

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

“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, trade mark or other distinctive sign on the goods and includes any person acting in the name, or on behalf, of the producer;

“sales contract” (other than in Part 5) has the meaning assigned to it by section 11 (1);

“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;

“service contract” (other than in Part 5) means a contract (other than a sales contract and a contract for the sale of land (within the meaning of the Land and Conveyancing Law Reform Act 2009)) under which—

(a) a trader supplies or undertakes to supply a service to a consumer, and

(b) the consumer pays or undertakes to pay the price of the 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.

- (2) In *subsection (1)*, in the definitions of “digital content contract”, “digital service contract” and “service contract”, any reference to the consumer paying a price includes a reference to the consumer using by way of payment any facility by which payment is made.
- (3) It is for a trader claiming that an individual was not acting for purposes wholly or mainly outside that individual’s trade, business, craft or profession to show that the individual was not so acting.
- (4) A reference in this Act to the sale of goods includes a reference to the transfer of, or an undertaking to transfer, the ownership of those goods.
- (5) A reference in this Act to the supply of a service or a digital service includes a reference to the performance, rendering or provision of the service or of the digital service, as the case may be.
- (6) In *Parts 2 to 4*, a reference to a reasonable expectation shall be interpreted having regard objectively to the nature and purpose of the contract concerned, the circumstances of the case and the usages and practices of the parties to the contract.

Regulations

- 3.** (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.
- (2) The Minister may make different regulations under this Act for different classes or description of consumer, trader or contract.
- (3) Regulations under this Act may contain such incidental, supplementary and consequential provision as appears to the Minister to be necessary or expedient for the purposes of the regulations.

- (4) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done under it.

Making of contract

4. (1) Subject to the enactments specified in *subsection (2)*, a contract to which any of Parts 2 to 6 applies—

(a) may be made—

(i) in writing,

(ii) by word of mouth, or

(iii) partly in writing and partly by word of mouth,

or

(b) may be implied from the conduct of the parties.

- (2) The enactments referred to in *subsection (1)* are—

(a) sections 103 to 109,

(b) sections 30, 32, 36, 57, 58 and 84 of the Act of 1995,

(c) Regulations 8, 9 and 13 of the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010), and

(d) any other enactment that makes provision in relation to the making of a contract.

Contract terms may be more favourable to consumer

5. Nothing in this Act shall be construed as prohibiting the inclusion in a contract between a consumer and a trader of a term that is more favourable to the consumer than a right or remedy afforded to the consumer by or under this Act.

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

6. (1) In any proceedings relating to a contract to which any of Parts 2 to 4 applies, the court, in addition to any other power that it may have, shall have power—

- (a) to make an order for the provision of a remedy that is specified in *subsection (2)*, and
 - (b) to make such incidental or ancillary order as it thinks fit.
- (2) The remedies referred to in *subsection (1)(a)* are any of the following remedies—
- (a) the repair or replacement of goods,
 - (b) a reduction in the price of goods, digital content, a digital service or a service, and
 - (c) a remedy for bringing digital content, a digital service or a service into conformity with the contract under which it is supplied.
- (3) In this section, “court” means—
- (a) the District Court,
 - (b) the Circuit Court, or
 - (c) the High Court.

Representations purporting to restrict rights of consumer: offences

7. (1) *Subsections (2) and (3)* apply to any representation likely to be taken as indicating that—
- (a) a right or the exercise of a right conferred by any of *Parts 2 to 4*, or
 - (b) an obligation or a liability arising under any of those Parts,
- is restricted or excluded otherwise than in accordance with this Act.
- (2) It shall be an offence for a trader to do any of the following things in relation to a representation to which *subsection (1)* applies:
- (a) to display on any part of any premises a notice that includes any such representation;
 - (b) to publish or cause to be published an advertisement which contains any such representation;
 - (c) to supply goods bearing, or digital content or a digital service displaying in any form, any such representation;
 - (d) otherwise to furnish or to cause to be furnished a document including any such representation.

- (3) For the purposes of this section, the following shall be treated as a representation to which *subsection (1)* applies:
- (a) a representation to the effect that reimbursement will not be made for goods, digital content, a digital service or a service sold or supplied under a contract to which any of *Parts 2 to 4* applies (any such goods, digital content, digital service or service so sold or supplied being referred to in this section as “relevant items”) that are not in conformity with the contract concerned;
 - (b) a representation to the effect that reimbursement for relevant items that are not in conformity with the contract concerned will be made only in the form of credit notes or gift vouchers;
 - (c) a representation to the effect that relevant items that are not in conformity with the contract concerned will not be replaced, repaired, remedied or otherwise brought into conformity with the contract concerned; or
 - (d) a representation that is otherwise likely to be taken as indicating that—
 - (i) a right or the exercise of a right conferred by any of *Parts 2 to 4*, or
 - (ii) an obligation or a liability arising under any of those Parts,is restricted or excluded otherwise than in accordance with this Act.
- (4) In this section, “representation” includes—
- (a) any oral, written, visual, descriptive or other representation by a trader, including any commercial communication, marketing or advertising, and
 - (b) a notice or other document used or relied on by a trader in connection with a contract with a consumer.

Repeals and revocations

8. (1) The Acts specified in *column (3)* of *Part 1* of *Schedule 1* are repealed to the extent specified in *column (4)* of that Part of that Schedule.
- (2) The statutory instruments specified in *column (3)* of *Part 2* of *Schedule 1* are revoked to the extent specified in *column (4)* of that Part of that Schedule.

Savings

9. (1) Where, before the day on which section 12 (1) comes into operation, a contract was concluded to which Part 2 would apply if it had been concluded on or after that day—
- (a) the Sale of Goods Act, 1893 and the Sale of Goods and Supply of Services Act 1980 shall continue to have effect in relation to the contract as if the amendments made by Part 1 of Schedule 6 had not been made, and
- (b) the European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003 (S.I. No. 11 of 2003) shall continue to have effect in relation to the contract notwithstanding the revocation of those Regulations by Part 2 of Schedule 1.
- (2) Where, before the day on which section 75 (1) comes into operation, a contract was concluded to which Part 4 would apply if it had been concluded on or after that day, the Sale of Goods and Supply of Services Act 1980 shall continue to have effect in relation to the contract as if the amendments made by Part 1 of Schedule 6 inserting a new section 38A into that Act and amending section 47 of it had not been made.
- (3) Where, before the day on which section 97 (1) comes into operation, a contract was concluded to which Part 5 would apply if it had been concluded on or after that day, the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013) shall continue to have effect in relation to the contract notwithstanding the revocation of those Regulations by Part 2 of Schedule 1.
- (4) Where, before the day on which section 127 (1) comes into operation, a contract was concluded to which Part 6 would apply if it had been concluded on or after that day, the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27 of 1995) shall continue to have effect in relation to the contract notwithstanding the revocation of those Regulations by Part 2 of Schedule 1.
- (5) Where, but for section 150 (2), the amendment made by section 150 (1) would apply in relation to a hire-purchase agreement, sections 74 to 79 of the Act of 1995 shall continue to have effect in relation to the hire-purchase agreement notwithstanding the repeal of those sections of the Act of 1995 by Part 1 of Schedule 1.
- (6) Where, but for section 151 (2), the amendment made by section 151 (1) would apply in relation to a consumer-hire agreement, section 88 of the Act of 1995 shall continue to have effect in relation to the consumer-hire agreement as if the amendment made by section 151 (1) had not been made.

- (7) Where by virtue of this section an enactment continues to have effect in relation to a contract, hire-purchase agreement or consumer-hire agreement, the amendments of enactments made by *Parts 9 to 11* and *14* (and any repeal of an enactment by this Act which relates to any of those amendments) shall not have effect in the application of those enactments to the contract or, as the case may be, hire-purchase agreement or consumer-hire agreement.

PART 2

Sales contracts

Chapter 1

Interpretation and application (Part 2)

Interpretation (*Part 2*)

10. (1) In this Part—

“free of charge” means free of any costs necessarily incurred in remedying the lack of conformity of goods with the sales contract, including the cost of postage, carriage, labour or materials;

“guarantor” means a producer, trader or any other person who provides a commercial guarantee in relation to goods sold under a sales contract;

“relevant time” has the meaning assigned to it by *section 15 (4)*;

“Sale of Goods Directive” means Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019⁴ 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.

- (2) A reference in this Part to goods being in conformity with a sales contract is to be construed in accordance with *section 15 (2)*.

- (3) A word or expression used in this Part that is also used in the Sale of Goods Directive has, unless the context otherwise requires, the same meaning in this Part as it has in the Sale of Goods Directive.

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

Sales contracts

- 11.** (1) Subject to *subsections (2) to (7)*, “sales contract” means a contract under which—

- (a) a trader transfers, or undertakes to transfer, the ownership of goods to a consumer, and
- (b) the consumer—
 - (i) pays, or undertakes to pay, the price of the goods, or
 - (ii) transfers, or undertakes to transfer, ownership of goods to the trader in full or part payment of the price.
- (2) Any reference in the definition of “sales contract” in *subsection (1)* to the consumer paying a price includes a reference to the consumer using by way of payment any facility by which payment is made.
- (3) A sales contract may be concluded between one part-owner and another.
- (4) A sales contract includes a contract for the sale of goods to be produced or manufactured by the trader, including goods made to the consumer’s specifications.
- (5) A sales contract may be—
 - (a) a transaction under which the ownership of goods is transferred from a trader to a consumer (referred to in this section as a “sale”), or
 - (b) a transaction under which the ownership of goods is to be transferred from a trader to a consumer at a future time or subject to a condition that is to be fulfilled at a future time (referred to in this section as “an agreement to sell”).
- (6) An agreement to sell becomes a sale when the time elapses or the condition is met subject to which ownership of the goods is to be transferred.
- (7) A sales contract may be absolute or conditional.
- (8) For the purposes of *subsection (7)*, a sales contract is conditional if the trader retains ownership of the goods to which the sales contract relates until the conditions specified in the contract (whether for the payment of instalments or otherwise) are met.
- (9) For the avoidance of doubt, a contract is not a conditional sales contract if it is a hire-purchase agreement.
- (10) In this section, “hire-purchase agreement” has the same meaning as it has in the Act of 1995.

Application (*Part 2*)

- 12.** (1) Subject to *subsections (4) to (6)* and *sections 29, 33 and 39*, this Part applies to any contract specified in *subsection (2)* that is concluded between a trader and a consumer on or after the day on which this section comes into operation.
- (2) The contracts referred to in *subsection (1)* are—
- (a) a sales contract, including, in the case of a sales contract for the sale of goods with digital elements falling within *subsection (3)*, the elements of the contract that relate to the supply of the digital content or digital service, and
- (b) where a single contract (not being a contract for the sale of goods with digital elements) between a trader and a consumer includes elements constituting the sale of goods in combination with elements constituting—
- (i) the supply of digital content,
- (ii) the supply of a digital service, or
- (iii) the supply of a service,
- that contract so far as relating to the sale of goods.
- (3) A sales contract for the sale of goods with digital elements falls within this subsection where—
- (a) digital content or a digital service is supplied with goods under the contract (irrespective of whether the digital content or digital service is supplied by the trader or another person), and
- (b) 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.
- (4) *Chapter 5* of this Part applies only if there is a commercial guarantee in relation to the goods sold under the sales contract.
- (5) This Part does not apply to a contract—
- (a) intended to operate as a mortgage, pledge, charge or other security, or
- (b) made by deed for which the sole consideration is the consideration imported by the deed.
- (6) This Part (other than *Chapter 4*), does not apply to a tangible medium that serves exclusively as a carrier for digital content.

- (7) A reference in any of *Chapters 2 to 6* of this Part to a sales contract shall be construed as a reference to any contract to which this Part applies.
- (8) In the event of doubt as to whether the supply of incorporated or inter-connected digital content or an incorporated or inter-connected digital service forms part of a sales contract, the digital content or digital service shall be presumed to form part of the sales 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.
- (9) Nothing in this Part shall affect the entitlement of a consumer to terminate a contract under *section 65 (2)* or *93 (2)*.

Power of Minister to extend application of *Part 2*

- 13.** (1) Subject to *section 12* and *subsection (2)*, the Minister may by regulations provide for the application of this Part to the following class of contract, namely a contract for the sale of goods with digital elements under which the consumer—
- (a) does not pay or undertake to pay the price of the goods, and
- (b) provides or undertakes to provide personal data to the trader, other than where the personal data are 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.
- (2) The Minister may make regulations under *subsection (1)* only where the Minister is satisfied, after consultation with such persons as the Minister considers appropriate, that—
- (a) contracts of the class specified in *subsection (1)* are being concluded on a significant scale, and
- (b) the regulation of that class of contract would be in the interests of consumer protection and fair competition.
- (3) Regulations under *subsection (1)* may provide that the application of this Part to the class of contract specified in the regulations shall be subject to such modifications as may be specified in the regulations.

Chapter 2

Consumer rights in sales contracts

Right to terminate sales contract where trader has no right to sell

- 14.** (1) Where a sales contract is concluded between a trader and a consumer, the trader shall ensure that, at the time when the ownership of the goods is to be transferred under the sales contract, the trader has the right to sell the goods.
- (2) Where the trader does not have the right to sell goods in accordance with *subsection (1)*, the consumer shall have the right to terminate the sales contract.
- (3) Where the consumer has the right to terminate the sales contract under *subsection (2)* and wishes to exercise that right—
- (a) the consumer shall exercise that right in accordance with *section 28*, and
- (b) the trader shall comply with the obligations in *section 30*.
- (4) In case of dispute, it shall be for the trader to show that the trader has the right to sell the goods in accordance with *subsection (1)*.

Goods to be in conformity with sales contract

- 15.** (1) Where a sales contract is concluded between a trader and a consumer, the trader shall deliver goods to the consumer that are in conformity with the sales contract at the relevant time.
- (2) Goods are in conformity with the sales contract if the goods—
- (a) comply with the requirements of *sections 16 to 18*, and
- (b) do not fall to be treated as not being in conformity with the sales contract under *section 19*.
- (3) Where the goods delivered by the trader are not in conformity with the sales contract, the consumer shall have the right to the remedies specified in *Chapter 3* of this Part.
- (4) In this section, “relevant time”—
- (a) in relation to goods other than goods with digital elements, means the time at which—
- (i) the consumer, or a person nominated by the consumer for the purpose, acquires the physical possession of the goods, or
- (ii) the goods are delivered to a carrier who was commissioned by the consumer to deliver the goods (and who was not proposed by the trader for that purpose),
- and

(b) in relation to goods with digital elements, means the time at which, following delivery of the physical component of the goods to the consumer or a person nominated by the consumer for the purpose—

(i) the single act of supply of the digital content or digital service is performed, or

(ii) the continuous supply of the digital content or digital service for a period specified in the sales contract, or the period for which the contract subsists, begins,

in such a way that the digital content or digital service, or any means suitable for downloading or accessing it, has reached the sphere of the consumer and no further action by the trader is required in order to enable the consumer to use the digital content or digital service in accordance with the sales contract.

Goods to be free from charge and other encumbrance

16. (1) The trader shall ensure that—

(a) at the time when the ownership of goods is to be transferred under a sales contract, the goods are free from any charge or other encumbrance (other than a charge or other encumbrance which was disclosed to the consumer before the consumer entered into the sales contract), and

(b) the consumer shall enjoy quiet possession of the goods except so far as it may be disturbed by any person entitled to the benefit of any charge or encumbrance so disclosed.

(2) Where a sales contract shows, or the circumstances at the time the contract was concluded imply, that the trader and the consumer intend that the trader transfer only the limited title to the goods that the trader or a person other than the trader (a “third person”) may have—

(a) all charges or encumbrances known to the trader shall be disclosed by the trader to the consumer before the consumer enters into the sales contract, and

(b) the consumer’s quiet possession of the goods shall not be disturbed by—

(i) the trader or the third person, or

(ii) 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 before the sales contract was concluded.

- (3) The consumer under a sales contract shall have the right to the remedies specified in *Chapter 3* of this Part where—
- (a) the goods are not in compliance with *subsection (1)(a) or (b)*,
 - (b) the trader does not disclose all known charges or encumbrances in accordance with *subsection (2)(a)*,
 - (c) the consumer's possession of the goods does not comply with *subsection (2)(b)*, or
 - (d) a restriction resulting from a violation of any right of a third person, in particular an intellectual property right, prevents or limits the use of the goods in accordance with *section 17 or 18*.
- (4) In case of dispute, it shall be for the trader to show that—
- (a) the goods complied with the requirements of *subsection (1)(a) and (b)*,
 - (b) the trader disclosed all known charges or encumbrances in accordance with *subsection (2)(a)*, and
 - (c) the consumer's possession of the goods complied with *subsection (2)(b)*.

Subjective requirements for conformity with sales contract

- 17.** (1) The goods delivered under a sales contract shall—
- (a) be of the description, type, quantity and quality, and possess the functionality, compatibility, interoperability and other features, specified in the sales contract,
 - (b) be fit for any particular purpose for which the consumer requires them—
 - (i) that the consumer made known to the trader at the time of, or before, the conclusion of the sales contract, and
 - (ii) that the trader has accepted,
 - (c) be supplied with all accessories and instructions, including on installation of the goods, specified in the sales contract, and
 - (d) be updated as specified in the sales contract.
- (2) The information that the trader is required to provide to the consumer in a distance contract or an off-premises contract under *section 103*, *104* or *106* shall form part of the sales contract.

- (3) Goods sold under a sales contract that is a distance contract or an off-premises contract shall comply with any term of the contract deriving from the information referred to in *subsection (2)* that is additional to the requirements of *subsection (1)*.
- (4) Spare parts and an adequate after-sales service shall be made available by the trader—
- (a) in such circumstances as are stated in an offer, description or advertisement by the trader on behalf of the producer or on the trader's own behalf, and
- (b) for such period as is so stated or, if no period is so stated, for a reasonable period.

Objective requirements for conformity with sales contract

- 18.** (1) The goods delivered under a sales contract shall—
- (a) be fit for all of the purposes for which goods of the same type would normally be used, taking into account so far as relevant any enactment or rule of law, European Union law, technical standards or, in the absence of such technical standards, applicable sector-specific industry codes of conduct,
- (b) be of the quality and correspond to any description of a sample or model that the trader made available to the consumer before the conclusion of the sales contract,
- (c) be delivered along with any accessories, including packaging, installation instructions or other instructions, that the consumer may reasonably expect to receive, and
- (d) be of the quantity and possess the qualities and other features (including in relation to durability, functionality, compatibility and security) normal for goods of the same type that the consumer may reasonably expect given the nature of the goods and taking into account any public statement in relation to the goods made by, or on behalf of, the trader or any other person constituting a previous link in the chain of transactions relating to the sales contract, including the producer, particularly in advertising or on labelling.
- (2) In *subsection (1)(d)*, the reference to the durability of the goods is a reference to the ability of the goods to maintain their functions and performance through normal use and to possess the ability to do so which is normal for goods of the same type and which the consumer can reasonably expect having regard to—
- (a) the specific nature of the goods,
- (b) the possible need for reasonable maintenance of the goods,

- (c) any public statement on the durability of the goods made by or on behalf of any person constituting a link in the chain of transactions, and
 - (d) all other relevant circumstances, including the price of the goods and the intensity or frequency of the use made of the goods by the consumer.
- (3) The trader shall not be bound by any public statement referred to in *subsection (1)(d)* or *(2)(c)* if the trader shows that—
- (a) the trader was not, and could not reasonably have been, aware of the public statement in question,
 - (b) at the time of the conclusion of the sales contract, the public statement had been corrected in the same way as it had been made (or in a comparable way), or
 - (c) the decision of the consumer to buy the goods could not have been influenced by the public statement.
- (4) Where a sales contract for the sale of goods with digital elements provides for a single act of supply of the digital content or digital service, the trader shall ensure that the consumer is—
- (a) informed of the availability of, and
 - (b) supplied with,
- any update (including a security update) that is necessary for the goods to be in conformity with the sales contract for the period of time that the consumer may reasonably expect given the type and purpose of the goods and the digital elements, and taking into account the circumstances and nature of the sales contract.
- (5) Where a sales contract for the sale of goods with digital elements provides for a continuous supply of the digital content or digital service for a period exceeding two years, the trader shall ensure that the consumer is informed of the availability of, and supplied with, any update (including a security update) that is necessary for the goods to be in conformity with the sales contract during that period.
- (6) Where a sales contract for the sale of goods with digital elements provides for a continuous supply of the digital content or digital service for a period not exceeding two years, the trader shall ensure that the consumer is informed of the availability, and supplied with, any update (including a security update) that is necessary to maintain the goods in conformity with the contract for the period of two years beginning with the relevant time.

- (7) Where the consumer fails to install within a reasonable time an update supplied in accordance with *subsection (4), (5) or (6)*, the trader shall not be liable for any lack of conformity with the sales contract resulting solely from the failure to install the update—
- (a) if the trader informed the consumer of the need for the consumer to install the update (including the consequences of failing to do so), and
 - (b) the failure of the consumer to install the update, or the incorrect installation by the consumer of the update, was not due to shortcomings in the installation instructions provided to the consumer.
- (8) There shall be no lack of conformity with a sales contract under *subsection (1), (4), (5) or (6)* if at the time of the conclusion of the sales contract—
- (a) the consumer was specifically informed that a particular characteristic of the goods deviated from the requirements of the subsection concerned, including a lack of conformity with the sales contract caused by a restriction resulting from a violation of an intellectual property right or any other right of a third person, and
 - (b) the consumer expressly and separately accepted that deviation.
- (9) In case of dispute, it shall be for the trader to show that the consumer—
- (a) was specifically informed that a particular characteristic of the goods deviated from the requirements of *subsection (1), (4), (5) or (6)*, and
 - (b) expressly and separately accepted that deviation when concluding the sales contract.

Incorrect installation of goods

- 19.** Any lack of conformity with the sales contract resulting from the incorrect installation of the goods shall be regarded as a lack of conformity of the goods if—
- (a) the installation forms part of the sales contract and was carried out by the trader or under the trader's responsibility, or
 - (b) the installation, intended to be carried out by the consumer, was done by the consumer and the incorrect installation was due to shortcomings in the installation instructions provided to the consumer by the trader or, in the case of goods with digital elements, provided to the consumer by the trader or by the supplier of the digital content or digital service.

Implied terms of sales contract

20. *Sections 14* and *16 to 19* shall be implied into every sales contract and shall have effect as if they were terms of such a contract.

Liability of trader under sales contract

- 21.** (1) Subject to *subsections (2) to (4)*, the trader shall be liable to the consumer for any lack of conformity of the goods with the sales contract which exists at the relevant time.
- (2) Where a sales contract provides for the delivery of goods on more than one occasion during the period for which the sales contract subsists, the trader shall be liable to the consumer for a lack of conformity of the goods with the sales contract which exists on any of those occasions.
- (3) Where a sales contract for the sale of goods with digital elements provides for a continuous supply of the digital content or digital service for a period specified in the sales contract, the trader shall be liable for a lack of conformity of the digital content or digital service with the sales contract that occurs or becomes apparent during that period.
- (4) Where an update is 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, the trader shall be liable for any lack of conformity with the sales contract—
- (a) caused by the update which exists at the time of supply or installation of the update, or
- (b) caused by the failure of the trader to supply an update in accordance with *section 18* at the time when the update should have been supplied.
- (5) Subject to *subsections (2) and (4)*, where a sales contract for the sale of goods other than goods with digital elements provides for a continuous supply of digital content or a digital service for a period specified in the sales contract, the consumer's right to a remedy in respect of a lack of conformity with the sales contract for which the trader is liable under this section shall apply for the period of 6 years beginning with the relevant time.
- (6) Where a sales contract for the sale of goods with digital elements provides for a continuous supply of digital content or a digital service for a period specified in the sales contract, the consumer's right to a remedy in respect of a lack of conformity with the sales contract for which the trader is liable under this section shall apply for the period of 6 years beginning with the time at which the lack of conformity with the sales contract occurs or becomes apparent during the period so specified in the sales contract.

Burden of proof under sales contract

- 22.** (1) Subject to *subsection (2)*, where it becomes apparent during the period of 12 months beginning with the relevant time that goods supplied under a sales contract are not in conformity with the sales contract, the lack of conformity shall be presumed to have existed at the relevant time unless—
- (a) the contrary is proven, or
 - (b) such a presumption is incompatible with the nature of the goods or with the nature of the lack of conformity.
- (2) 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 period specified in the sales contract, 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 a lack of conformity which becomes apparent during that period.
- (3) For the purposes of relying on the presumption under *subsection (1)*, the consumer shall be required to prove only that—
- (a) the goods are not in conformity with the sales contract, and
 - (b) the lack of conformity became apparent during the period of 12 months beginning with the relevant time.
- (4) Nothing in this section shall prevent or restrict a consumer from exercising a remedy after the expiry of the period of 12 months beginning with the relevant time.

Chapter 3

Consumer remedies in sales contracts

Right to remedies under *sections 24 and 25*

- 23.** (1) Where goods are not in conformity with the sales contract at the relevant time, the consumer shall have the following rights—
- (a) the right to exercise the short-term right to terminate the sales contract in accordance with *section 24*, and
 - (b) subject to *subsections (2) and (3)*, the right to have the goods brought into conformity with the contract through repair or replacement in accordance with *section 25*.

- (2) The consumer may choose between the remedies of repair and replacement of the goods unless the remedy chosen by the consumer—
- (a) would be impossible for the trader to carry out, or
 - (b) compared to the alternative remedy, would impose disproportionate costs on the trader, taking all the circumstances into account, including—
 - (i) the value that the goods would have if there were no lack of conformity,
 - (ii) the significance of the lack of conformity, and
 - (iii) whether the alternative remedy could be provided without significant inconvenience to the consumer.
- (3) The trader may refuse to bring the goods into conformity with the sales contract if both repair and replacement—
- (a) are impossible for the trader to carry out, or
 - (b) compared to the alternative remedy, would impose disproportionate costs on the trader, taking all the circumstances into account, including those specified in *subsection (2)(b)(i) and (ii)*.

Short-term right to terminate sales contract

- 24.** (1) This section applies where the consumer has the short-term right to terminate the sales contract under *section 23 (1)*.
- (2) Subject to *subsection (4)*, the time limit for exercising the short-term right to terminate the sales contract expires at the end of the period of 30 days beginning with—
- (a) where the contract requires the trader to install the goods after their delivery or to take any other action to enable the consumer to use the goods, the completion of that installation or other action, or
 - (b) in any other case, the relevant time.
- (3) *Subsection (2)* does not prevent a consumer who has a right to terminate the sales contract from terminating it before the completion of the installation or other action or, as the case may be, the relevant time.

- (4) Where the goods are of a kind that can reasonably be expected to expire or deteriorate within a shorter period than 30 days, the time limit for exercising the short-term right to terminate the sales contract shall be the expiry of that shorter period.
- (5) In case of dispute, it shall be for the trader to show that a shorter period than 30 days applies to the consumer's right to terminate the sales contract under *subsection (4)*.
- (6) Where the consumer has the right to terminate the sales contract under this section and wishes to exercise that right—
 - (a) the consumer shall exercise that right in accordance with *section 28*, and
 - (b) the trader shall comply with the obligations in *section 30*.

Repair or replacement of goods

- 25.** (1) This section applies where goods are to be brought into conformity with the sales contract by repair or replacement.
- (2) The trader shall ensure that the repair or replacement of the goods is carried out—
- (a) free of charge,
 - (b) within a reasonable time after being informed by the consumer of the lack of conformity with the sales contract, and
 - (c) without significant inconvenience to the consumer, taking into account the nature of the goods and the purpose for which the consumer required the goods.
- (3) Subject to any provision made by regulations under *subsection (8)*, the reasonable time for completing the repair or replacement of the goods under *subsection (2)(b)* shall correspond to the shortest possible time necessary for completing the repair or replacement and shall be objectively determined having regard to—
- (a) the nature and complexity of the goods,
 - (b) the nature and severity of the lack of conformity with the sales contract, and
 - (c) the effort needed to complete the repair or replacement.
- (4) The consumer shall make the goods to be remedied by repair or replacement available to the trader.

- (5) The trader shall take back the replaced goods and the goods to be repaired at the trader's expense.
- (6) Where a repair requires the removal of goods that had been installed in a manner consistent with their nature and purpose before the lack of conformity with the sales contract became apparent, or where such goods are to be replaced, the trader's obligation to repair or replace the goods shall include—
- (a) the removal of the goods that are not in conformity with the sales contract and the installation of replacement goods or repaired goods, or
 - (b) bearing the costs of that removal and installation.
- (7) The consumer shall not be liable to pay for the normal use of the replaced goods during the period prior to their replacement.
- (8) The Minister may—
- (a) where he or she is satisfied that such regulations would be in the interests of consumer protection and fair competition, and
 - (b) after consultation with such persons as the Minister considers appropriate,
- by regulations specify the period in relation to a specific category of goods that is to be generally regarded as "reasonable" for the repair or replacement of that category of goods for the purposes of *subsections (2)(b) and (3)*.

Right to proportionate reduction in price or final termination of sales contract

- 26.** (1) This section applies where—
- (a) the consumer has exercised his or her right under *section 23 (1)(b)* and—
 - (i) the trader has refused to bring the goods into conformity with the sales contract in accordance with *section 23 (3)*, or
 - (ii) the trader has not completed the repair or the replacement of the goods or, where applicable, has not completed the repair or replacement in accordance with *section 25*,
 - (b) the same or a different lack of conformity of the goods with the sales contract becomes apparent despite the trader having attempted to bring the goods into conformity with the sales contract,

- (c) the lack of conformity of the goods with the sales contract is of such a serious nature as to justify an immediate reduction in the price or the termination of the sales contract, or
- (d) the trader has declared, or it is clear from the circumstances, that the trader will not bring the goods into conformity with the sales contract within a reasonable time or without significant inconvenience to the consumer.
- (2) Subject to *subsections (5) and (7)*, the consumer shall have—
- (a) the right to a proportionate reduction in the price in accordance with *section 27*, or
- (b) subject to *subsection (3)*, the right to exercise the final right to terminate the sales contract in accordance with *section 28*.
- (3) The consumer shall not have the right to exercise the final right to terminate the sales contract under *subsection (2)(b)* if the lack of conformity of the goods with the sales contract is minor.
- (4) In case of dispute, it shall be for the trader to show that the lack of conformity of the goods is minor.
- (5) Where *subsection (1)(b)* applies, it shall be objectively determined, taking all the circumstances into account (including the matters mentioned in *subsection (6)*), whether the consumer—
- (a) shall have the right specified in *paragraph (a) or (b) of subsection (2)*, or
- (b) shall be required to accept a further attempt or attempts by the trader to bring the goods into conformity with the sales contract.
- (6) The matters referred to in *subsection (5)* are—
- (a) the type and value of the goods,
- (b) the nature and significance of the lack of conformity of the goods with the sales contract, and
- (c) whether the consumer can reasonably be expected to maintain confidence in the ability of the trader to bring the goods into conformity with the sales contract, in particular where the same lack of conformity appears more than once.
- (7) For the purposes of *subsection (1)(c)*, it shall be objectively determined, having regard to the nature and severity of the lack of conformity of the goods with the sales contract (including the matters mentioned in *subsection (8)*), whether that lack of conformity is of such a serious nature as to justify the application of *subsection (2)*.

- (8) The matters referred to in *subsection (7)* are whether the lack of conformity with the sales contract is such that—
- (a) the consumer cannot maintain confidence in the ability of the trader to bring the goods into conformity with the sales contract,
 - (b) the ability of the consumer to make normal use of the goods is severely affected and the consumer cannot reasonably be expected to trust that this would be remedied by repair or replacement by the trader.
- (9) Where the consumer is entitled to exercise the right conferred by *subsection (2)(b)* by virtue of some (but not all) of the goods to which the sales contract relates not being in conformity with the sales contract, the consumer may exercise that right only in relation to—
- (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.

Price reduction: sales contract

- 27.** (1) This section applies where the consumer has the right under *section 26 (2)(a)* to a proportionate reduction in the price.
- (2) The right of the consumer under this section is the right—
- (a) to require the trader to reduce in accordance with *subsection (3)* the price the consumer is required to pay under the sales contract, or
 - (b) to receive from the trader a reimbursement of the price paid by the consumer in excess of the amount of the reduction applicable under *subsection (3)*.
- (3) The reduction in the price shall be 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.
- (4) Where the consumer has the right to reimbursement under *subsection (2)(b)*, the trader shall reimburse the consumer in accordance with *section 31*.

- (5) In a sales contract where the consumer transfers the ownership of goods to the trader in full or part payment of the price, the right of the consumer to a proportionate reduction in the price shall not apply if—
- (a) no agreed monetary value was ascribed by the parties to the goods to be transferred by the consumer at the time the sales contract was concluded, or
 - (b) the goods which the consumer has transferred, or is required to transfer, under the sales contract cannot be divided up so as to enable the trader to receive or retain only the reduced price.

Obligations of consumer in event of termination of sales contract

28. (1) This section applies where the consumer exercises any of the following rights—

- (a) the right to terminate a sales contract under *section 14 (2)* or *36 (5)*,
- (b) the short-term right to terminate a sales contract under *section 23 (1)* or *37 (2)*, or
- (c) the final right to terminate a sales contract under *section 26 (2)(b)* or *37 (2)(b)*.

(2) The consumer shall—

- (a) terminate the sales contract by means of a statement to the trader expressing the decision to terminate the sales contract, and
 - (b) return the goods delivered under the sales contract to the trader at the trader's expense.
- (3) If a consumer fails to comply with an obligation imposed by *subsection (2)*, he or she shall be liable in damages for any loss or damage suffered by the trader as a result of the failure.

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

29. (1) This section applies where goods are sold to a consumer under a contract that provides also for the supply of digital content, a digital service or a service.

(2) Where the conditions in *subsection (3)* are met, the consumer shall have the right—

- (a) to terminate the contract, or
- (b) to obtain a proportionate reduction in the price payable under the contract.

(3) The conditions referred to in *subsection (2)* are the following:

- (a) if the contract were a contract for the sale of goods only, the consumer would have the right under section 26 to obtain a proportionate reduction in the price or to terminate the contract;
 - (b) the value of the digital content, digital service or service to the consumer would be materially reduced in the absence of the goods.
- (4) In objectively 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 for the purposes of *subsection (3)(b)*, all the circumstances shall be taken into account, including—
- (a) the nature and purpose of the contract,
 - (b) the relative value of the different elements of the contract, and
 - (c) the nature and degree of the inter-dependence of the different elements of the contract.
- (5) Where the consumer exercises the right to terminate the contract under *subsection (2)*—
- (a) the consumer shall comply with the obligations in section 28 (2), and
 - (b) the trader with whom the consumer has that contract shall comply with the obligations in section 30.
- (6) *Subsection (3)* shall not apply to 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 2018⁵ establishing the European Electronic Communications Code (Recast).

Obligations of trader where sales contract terminated

- 30.** (1) This section applies where the consumer exercises—
- (a) the right to terminate a sales contract under section 14 (2) or 36 (5),
 - (b) the short-term right to terminate a sales contract under section 23 (1) or 37 (2)(a), or
 - (c) the final right to terminate a sales contract under section 26 (2)(b) or 37 (2)(b).
- (2) The trader shall upon receipt of the goods or, if the trader so chooses, of evidence provided by the consumer of having returned the goods, reimburse the consumer in accordance with section 31 for—
- (a) the price paid for the goods, and

- (b) any costs incurred by the consumer in returning the goods to the trader.
- (3) Where the consumer exercises the final right to terminate the sales contract under section 26 (2) (b) or 37 (2)(b), the reimbursement of the price to which the consumer is entitled under subsection (2) may be reduced in proportion to any depreciation in the value of the goods in excess of the depreciation that could reasonably be expected to result from their normal use.
- (4) In case of dispute as to the application of subsection (3), it shall be for the trader to show that the depreciation in the value of the goods exceeded that which could reasonably be expected to result from their normal use.
- (5) Where the consumer terminates a conditional sales contract within the meaning of section 11 before the price of the goods has been paid in full, the reimbursement of the price to which the consumer is entitled under subsection (2) shall be limited to that part of the price for the goods which has been paid by the consumer.
- (6) Subject to subsection (7), in a sales contract where the consumer transfers the ownership of goods to the trader in full or part payment of the price, the trader shall—
- (a) return those goods to the consumer, and
- (b) reimburse in accordance with section 31 any price paid by the consumer.
- (7) If the trader cannot return the goods to the consumer as required by subsection (6), the trader shall reimburse the consumer—
- (a) to the agreed monetary value ascribed to the goods by the parties at the time the sales contract was concluded, or
- (b) where no such monetary value was agreed, with a sum that is a reasonable and objectively justified exchange value of the goods at the time the sales contract was concluded.

Time limits and means of reimbursement by trader: sales contract

- 31.** (1) This section applies where the consumer has the right under section 27 (4), 30 (2) or (7) or 37 (4) to be reimbursed by the trader.
- (2) The trader shall reimburse the consumer—
- (a) without undue delay and in any event not later than 14 days after the date on which the trader received—
- (i) the goods back, or

- (ii) if the trader so chooses, evidence provided by the consumer of having returned the goods,
 - (b) using 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, and
 - (c) without the imposition of any fee on the consumer in respect of the reimbursement.
- (3) If a trader fails to comply with an obligation imposed by *subsection (2)*, the trader shall be liable in damages for any loss or damage suffered by the consumer as a result of the failure.

General right to withhold payment: sales contract

- 32.** (1) Subject to *subsection (2)*, where the trader fails to comply with the obligation to deliver goods that are in conformity with the sales contract at the relevant time, the consumer shall have the right to withhold payment of any outstanding part of the price until the trader has fulfilled the trader's obligation to deliver goods that are in conformity with the sales contract.
- (2) The part of the price withheld by the consumer under *subsection (1)* shall be 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 contract.
- (3) The consumer shall exercise the right to withhold payment under *subsection (1)* by means of a statement to the trader expressing the consumer's decision to withhold payment until the trader has fulfilled the trader's obligation to deliver goods that are in conformity with the sales contract.

Effect of termination of sales contract on ancillary contract

- 33.** (1) 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.
- (2) When a trader is informed by a consumer in accordance with *section 28* of the consumer's decision to terminate a sales contract, the trader shall inform any other trader with whom the consumer has an ancillary contract of its termination by *subsection (1)*.
- (3) Where an ancillary contract is terminated by *subsection (1)*—
- (a) the trader with whom the consumer has that contract shall comply with the obligations in *section 30*, and
 - (b) the consumer shall comply with the obligation in *section 28 (1)(b)*.

- (4) Where any security has been provided under an ancillary contract that is terminated by *subsection (1)*, it is to be treated as never having had effect and any property lodged with the trader or any other person (a “third party”) solely for the purposes of that security shall be returned immediately by the trader or third party.
- (5) In this section, “ancillary contract”, in relation to a sales contract concluded between a consumer and a trader (in this subsection referred to as the “principal contract”), means another contract concluded between that consumer and that trader, or that consumer and a third party, under which—
- (a) the trader, or
 - (b) 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.

Consumer’s right to pursue other remedies

- 34.** (1) The remedies provided for in this Chapter and *Chapter 4* of this Part do not affect the right of the consumer to pursue other remedies (without recovering twice for the same loss) where goods are not in conformity with the sales contract or the trader otherwise fails to comply with the requirements of this Part.
- (2) The other remedies referred to in *subsection (1)* include in particular any of the following remedies that may be available to the consumer—
- (a) claiming damages,
 - (b) relying on the lack of conformity with the sales contract against a claim under the sales contract by the trader for payment of the price,
 - (c) seeking to recover money paid to the trader for goods that do not comply with the requirements of this Part,
 - (d) 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
 - (e) 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***Passing of risk**

- 35.** (1) Where a sales contract is concluded between a trader and a consumer, goods remain at the trader's risk until the consumer, or a person nominated by the consumer for the purpose, acquires the physical possession of the goods.
- (2) *Subsection (1)* does not apply where the goods are delivered to a carrier who—
- (a) was commissioned by the consumer for the purpose of carrying the goods, and
 - (b) was not proposed by the trader for that purpose.
- (3) Where *subsection (2)* applies, the goods are at the consumer's risk upon delivery to the carrier.
- (4) *Subsection (3)* is without prejudice to the rights of the consumer against the carrier.

Delivery of goods under sales contract

- 36.** (1) Where a sales contract is concluded between a trader and a consumer, the trader shall deliver the goods to the consumer in accordance with the contract.
- (2) Unless the trader and the consumer have agreed otherwise, the trader shall deliver the goods by transferring the physical possession or control of the goods to the consumer without undue delay and in any event not later than 30 days after the conclusion of the sales contract.
- (3) If the trader does not deliver the goods—
- (a) at the time, or within the period, agreed with the consumer, or
 - (b) where no such time or period has been agreed between the trader and the consumer, in accordance with *subsection (2)*,
- the consumer shall call upon the trader to make the delivery within an additional period that is appropriate in the circumstances.
- (4) *Subsection (3)* does not apply where—
- (a) the trader has refused to deliver the goods,
 - (b) delivery of the goods within the period agreed with the consumer is essential, taking into account all the relevant circumstances at the time of the conclusion of the sales contract, or

(c) the consumer informed the trader at the time of, or before, the conclusion of the sales contract that delivery on or by a specified date was essential.

(5) Where the trader—

(a) has refused to deliver the goods,

(b) fails to deliver the goods within any additional period for delivery applicable under *subsection (3)*, or

(c) fails to deliver the goods—

(i) within the period agreed with the consumer under *subsection (4)(b)*, or

(ii) on or by the date specified by the consumer under *subsection (4)(c)*,

the consumer shall have the right to terminate the sales contract.

(6) Where the consumer has the right to terminate a sales contract under *subsection (5)* and wishes to exercise that right—

(a) the consumer shall exercise that right in accordance with *section 28*, and

(b) the trader shall comply with the obligations in *section 30*.

Instalment deliveries

37. (1) Unless otherwise agreed between the consumer and the trader, the consumer is not bound to accept delivery of the goods under a sales contract by instalments.

(2) Subject to *subsection (3)*, if the trader makes a delivery of goods that are not in conformity with the sales contract (referred to in this section as “non-conforming goods”) in respect of one or more instalments, the consumer may—

(a) if there are non-conforming goods in the first instalment of goods delivered under the sales contract, exercise the short-term right to terminate the contract under *section 23 (1)*, or

(b) in any other case, exercise the final right to terminate the contract under *section 26*.

- (3) The consumer may exercise the right to terminate the sales contract under *subsection (2)* only in relation to the instalment or instalments in respect of which there are non-conforming goods unless, after taking all the circumstances into account, it would not be reasonable to expect the consumer to accept and keep only the goods delivered in the instalment or instalments where the goods are in conformity with the sales contract.
- (4) Where, in accordance with *subsection (3)*, the consumer is entitled to exercise the right to terminate the sales contract only in relation to an instalment or instalments in respect of which there are non-conforming goods, the consumer shall be entitled to be reimbursed in accordance with *section 31* in respect of the non-conforming goods delivered in that instalment (or those instalments) only.
- (5) Where the consumer has the right to terminate the sales contract under *subsection (2)* and wishes to exercise that right—
- (a) the consumer shall exercise that right in accordance with *section 28*, and
 - (b) the trader shall comply with the obligations in *section 30*.

Right of redress of trader (*Part 2*)

- 38.** Where the trader is liable to the consumer because of a lack of conformity with the sales contract resulting from an act or omission (including an omission to provide updates to goods with digital elements in accordance with *section 18 (4) to (6)*) of a person constituting a previous link in the chain of transactions relating to the sales contract, the trader shall be entitled to pursue remedies against the person constituting a previous link in that chain of transactions who is liable for the lack of conformity.

Exclusion or limitation of liability of trader (*Part 2*)

- 39.** (1) A term of a sales contract or of any other contract between a consumer and a trader shall not exclude or restrict the trader's liability under any of the following provisions:
- (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 with sales contract);
 - (e) *section 18* (objective requirements for conformity 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 under sales contract);
 - (j) section 35 (passing of risk);
 - (k) section 36 (delivery of goods under sales contract);
 - (l) section 37 (instalment deliveries);
 - (m) section 46 (rights of recipient of gift);
 - (n) section 47 (rights of certain users of motor vehicle).
- (2) A term of a sales contract or of any other contract between a consumer and a trader which purports to, or has the effect of, excluding or restricting the liability of the trader under any of the provisions specified in *subsection (1)* shall not be binding on the consumer.
- (3) The references in *subsections (1)* and *(2)* to excluding or restricting the trader's liability include a reference to—
- (a) excluding or limiting a right or remedy in respect of a liability under a provision specified in *subsection (1)*,
 - (b) making such a right or remedy, or its enforcement, subject to a restrictive or onerous condition,
 - (c) allowing a trader to put a consumer at a disadvantage as a result of pursuing such a right or remedy,
 - (d) excluding or restricting rules of evidence or procedure, or
 - (e) preventing an obligation arising or limiting its extent.
- (4) An agreement in writing to submit present or future disputes to an ADR procedure within the meaning of the European Union (Alternative Dispute Resolution for Consumer Disputes) Regulations 2015 (S.I. No. 343 of 2015) is not to be regarded as excluding or restricting any liability for the purposes of this section.

(5) A trader who contravenes *subsection (1)* commits an offence.

Chapter 5

Commercial guarantees

Liability for commercial guarantee

- 40.** (1) A commercial guarantee shall be binding on the guarantor under the conditions specified in the commercial guarantee statement and in any associated advertising available at the time of, or before, the conclusion of the sales contract.
- (2) Without prejudice to the generality of *subsection (1)*, where a producer offers the consumer a commercial guarantee of durability for specified goods for a specified period of time—
- (a) the producer shall be liable directly to the consumer during the entire period of the commercial guarantee of durability for the repair or the replacement of the goods in accordance with *section 25*, and
- (b) the producer may offer more favourable conditions to the consumer in the commercial guarantee statement on the durability of the goods.
- (3) If some or all of the conditions specified in the commercial guarantee statement are less advantageous to the consumer than those specified in the associated advertising, the commercial guarantee shall be binding under the more advantageous conditions specified in the advertising relating to the commercial guarantee, unless, before the conclusion of the sales contract, the associated advertising was corrected to reflect the same, or comparable, conditions to those specified in the commercial guarantee statement.

Liability of trader for other guarantor's commercial guarantee

- 41.** (1) Where in relation to a sales contract a trader gives a consumer a commercial guarantee provided by another guarantor, the trader shall, unless the trader expressly indicates the contrary when the guarantee is given to the consumer, be liable to the consumer for the observance of that guarantee as if the trader were the guarantor.
- (2) Notwithstanding *subsection (1)*, where the trader gives the trader's own commercial guarantee to a consumer, it shall be presumed, unless the contrary is proved, that the trader is not liable to the consumer under any commercial guarantee from another guarantor which the trader has given to the consumer.
- (3) The liability of a trader to a consumer under this section is without prejudice to the rights conferred on the consumer under *section 40*.

Liability under commercial guarantee to subsequent consumers

42. Where—

(a) a commercial guarantee is provided to a consumer in relation to goods sold under a sales contract, and

(b) during the period for which the commercial guarantee subsists the goods are acquired by another consumer,

that other consumer shall be entitled to rely on the commercial guarantee against the guarantor under section 40, or against the trader under section 41, as if he or she were the consumer to whom the guarantee was provided.

Right of action pursuant to commercial guarantee

43. (1) Without prejudice to section 40, a consumer may maintain an action against a guarantor, or a person liable for the observance of the guarantor's guarantee under section 41, who fails to comply with the terms of a commercial guarantee in relation to a sales contract as if that person had sold the goods to which the sales contract relates to the buyer and had committed a breach of warranty.

(2) Where an action is brought by a consumer under *subsection (1)*, a court may order the guarantor or other person liable for the observance of the guarantee under section 41 to pay damages to the consumer.

(3) In any case in which a producer or trader is liable in damages under *subsection (2)*, the court may, on such terms as the court may deem just, afford the guarantor or other person liable for the observance of the guarantee under section 41 the opportunity of performing the obligations under the guarantee to the satisfaction of the court within such time as may be specified by the court.

Provision and content of commercial guarantee statement

44. (1) Where a commercial guarantee is provided in relation to goods sold under a sales contract, the commercial guarantee statement shall be provided to the consumer on a durable medium no later than the time of delivery of the goods.

(2) The commercial guarantee statement shall be expressed in concise, plain, intelligible language and shall include the following:

- (a) 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;
 - (b) the name and address of the guarantor;
 - (c) the procedure to be followed by the consumer to obtain the implementation of the commercial guarantee;
 - (d) the designation of the goods to which the commercial guarantee applies; and
 - (e) the conditions of the commercial guarantee.
- (3) A failure to comply with *subsection (1)* or *(2)* shall not affect the binding nature of the commercial guarantee for the guarantor.

Exclusion or limitation of rights of consumer under commercial guarantee

- 45.** (1) A commercial guarantee that is provided in relation to a sales contract shall not—
- (a) in any way exclude or limit the rights of the consumer under any enactment (including this Chapter) or rule of law,
 - (b) impose obligations on the consumer that are additional to his or her obligations under the sales contract, or
 - (c) purport to make the guarantor or any person acting on the guarantor's behalf the sole authority to decide whether goods are in conformity with the sales contract or whether the consumer is otherwise entitled to make a claim under the commercial guarantee.
- (2) Any provision of a commercial guarantee that is contrary to *subsection (1)* shall not be binding on the consumer.
- (3) A guarantor who gives a commercial guarantee which contravenes *subsection (1)* commits an offence.

Chapter 6

Other third party rights

Rights of recipient of gift

46. Where a consumer who is a party to a sales contract gives goods acquired under the contract to another consumer as a gift, that other consumer shall be entitled to exercise all rights and remedies under this Part on the same terms as the consumer who is a party to the sales contract.

Rights of certain users of motor vehicle

47. (1) Where—

(a) a consumer purchases a motor vehicle under a sales contract,

(b) the motor vehicle is not in conformity with the sales contract, and

(c) the lack of conformity would render the motor vehicle a danger to the public, including any person travelling in the motor vehicle,

any person who uses the motor vehicle with the consent of the consumer and suffers loss as a result of that lack of conformity may maintain an action for damages in respect of that lack of conformity against the trader who sold the motor vehicle as if he or she were the consumer.

- (2) In this section, “motor vehicle” means a vehicle intended or adapted for propulsion by mechanical means, including—

(a) a bicycle or tricycle with an attachment for propelling it solely by mechanical power or solely by electrical power, whether or not the attachment is being used, and having a maximum design speed of no less than 6 kilometres per hour,

(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.

- (3) The Minister may make regulations under *subsection (2)(c)* only where the Minister is satisfied, after consultation with the Minister for Transport and such other persons as he or she considers appropriate, that it is necessary in the interests of consumer protection to do so.

PART 3

Digital content contracts and digital service contracts

Chapter 1

Interpretation and application (Part 3)

Interpretation (*Part 3*)

48. (1) In this Part—

“Digital Directive” means Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019⁶ on certain aspects concerning contracts for the supply of digital content and digital services;

“digital environment” means hardware, software and any network connection used by the consumer to access or make use of digital content or a digital service;

“free of charge” means free of any costs necessarily incurred in remedying the lack of conformity of digital content or a digital service with the digital content contract or digital service contract, including the cost of labour and materials;

“integration” means the linking and incorporation of digital content or a digital service with the components of the consumer’s digital environment in order for the digital content or digital service to be used in accordance with sections 53 to 55;

“number-independent interpersonal communications service” means an interpersonal communications service which does not connect with publicly assigned numbering resources, namely, a number in national or international numbering plans, or which does not enable communication with a number in national or international numbering plans;

“price” means money or a digital representation of value that is due in exchange for the supply of digital content or a digital service.

- (2) A reference in this Part to digital content or a digital service being in conformity with a digital content contract or digital service contract is to be construed in accordance with section 52 (2).
- (3) A word or expression used in this Part that is also used in the Digital Directive has, unless the context otherwise requires, the same meaning in this Part as it has in the Digital Directive.
- (4) A court shall construe this Part in a manner that gives effect to the Digital Directive, and for this purpose the court shall have regard to the provisions of the Digital Directive, including its preamble.

Application (*Part 3*)

49. (1) Subject to *subsections (3) to (7)* and sections 65, 70, 71 and 72, this Part applies to any contract specified in *subsection (2)* that is concluded between a trader and a consumer on or after the day on which this section comes into operation.

- (2) The contracts referred to in *subsection (1)* are—
- (a) a digital content contract,
 - (b) a digital service contract,
 - (c) where a single contract between a trader and a consumer relates to—
 - (i) the supply of digital content or a digital service (the supply of such content or such a service or, as the case may be, both such content and such a service being referred to in this subsection as the “digital supply”), and
 - (ii) the supply of other goods or a service,that contract so far as relating to the digital supply, and
 - (d) any contract where the digital content or digital service which the trader supplies or undertakes to supply to the consumer is developed in accordance with the consumer’s specifications.
- (3) This Part (other than *sections 51* and *60*) applies to any tangible medium which serves exclusively as a carrier of digital content.
- (4) This Part does not apply to any of the following contracts between a trader and a consumer:
- (a) a service contract;
 - (b) a contract for the supply of an electronic communications service (other than a contract for the supply of a number-independent interpersonal communications service);
 - (c) a contract for the supply of healthcare;
 - (d) a contract for the supply of a gambling service;
 - (e) a contract for the supply of a financial service;
 - (f) a contract under which—
 - (i) a trader supplies software under a free and open-source licence, and

- (ii) the consumer does not pay a price and any personal data provided by the consumer, other than the personal data that was processed for the purpose of supplying the digital content or digital service, is processed by the trader only for the purpose of improving the security, compatibility or interoperability of that software;
 - (g) a contract for the supply of digital content where the digital content is made available to the general public other than by signal transmission as part of a performance or event, including digital cinematographic projections;
 - (h) a contract for digital content provided by a public sector body in accordance with the European Union (Open Data and Re-use of Public Sector Information) Regulations 2021 (S.I. No. 376 of 2021).
- (5) For the purposes of *subsection (4)(a)*, it is immaterial whether digital forms or means are used by a trader—
- (a) to produce the output of the service to which the contract relates, or
 - (b) to deliver or transmit the service to a consumer.
- (6) This Part does not apply to digital content or a digital service which is—
- (a) incorporated in or inter-connected with goods with digital elements, and
 - (b) supplied with the goods under a sales contract,
- irrespective of whether the digital content or digital service is supplied by a trader or any other person.
- (7) In determining for the purposes of *subsection (6)* whether the supply of incorporated or inter-connected digital content or an incorporated or inter-connected digital service forms part of a sales contract, the digital service or digital content shall be presumed to form part of the sales contract whether or not the consumer is required to consent to a licensing agreement with a person other than the trader in order to access the digital content or digital service concerned.
- (8) A reference in *Chapter 2* or *3* of this Part to both a digital content contract and a digital service contract shall be construed as a reference to any contract to which this Part applies.
- (9) Nothing in this Part shall affect the entitlement of a consumer to terminate a contract under *section 29 (2)* or *93 (2)*.
- (10) In this section—

“gambling service” means a service that involves wagering a stake with pecuniary value in games of chance (including those with an element of skill, such as lotteries, casino games, poker games and betting transactions) by electronic means or any other technology for facilitating communication at the individual request of a recipient of such a service;

“healthcare” has the same meaning as it has in the European Union (Application of Patients’ Rights in Cross-Border Healthcare) Regulations 2014 (S.I. No. 203 of 2014).

Chapter 2

Consumer rights in digital content contracts and digital service contracts

Right to supply digital content or digital service

- 50.** (1) Where digital content or a digital service is to be supplied under a digital content contract or digital service contract, the trader shall ensure that the trader has the right to supply the digital content or digital service to the consumer at the time at which it is to be supplied.
- (2) Without prejudice to any enactment or rule of law affecting the validity of the digital content contract or digital service contract, where the trader does not have the right to supply the digital content or digital service in accordance with *subsection (1)*, the consumer shall have the right to terminate the digital content contract or digital service contract.
- (3) Where the consumer has the right to terminate the digital content contract or digital service contract under *subsection (2)* and wishes to exercise that right—
- (a) the consumer shall exercise that right in accordance with *section 66*, and
- (b) the trader shall comply with the obligations in *section 67*.
- (4) In case of dispute, it shall be for the trader to show that the trader had the right to supply the digital content or digital service.

Duty to supply digital content or digital service

- 51.** (1) Where a digital content contract or digital service contract is concluded between a trader and a consumer, the trader shall supply the digital content or digital service to the consumer in accordance with the contract.
- (2) Where a digital content contract or digital service contract is concluded between a trader and a consumer, the trader shall, except where the parties have agreed otherwise, supply the digital content or the digital service to the consumer without undue delay after the conclusion of the contract.

- (3) Where a digital content contract or digital service contract provides for a continuous supply of the digital content or digital service for a period specified in the contract, the trader shall supply the digital content or digital service to the consumer for that period.
- (4) Where a digital content contract or digital service contract provides for the supply of the digital content or digital service on more than one occasion during the period for which the contract subsists, the trader shall supply the digital content or digital service to the consumer on each of those occasions.
- (5) A trader shall be deemed to supply digital content or a digital service in accordance with this section where—
- (a) the digital content or any means that is suitable for accessing or downloading the digital content is made available or accessible to—
 - (i) the consumer, or
 - (ii) a physical or virtual facility chosen by the consumer for that purpose,or
 - (b) the digital service is made accessible to—
 - (i) the consumer, or
 - (ii) a physical or virtual facility chosen by the consumer for that purpose.
- (6) A consumer shall not be deemed to have chosen a physical or virtual facility under *subsection (5)* if—
- (a) the facility is under the trader's control or is contractually linked to the trader, or
 - (b) the facility was the only facility offered by the trader to receive or access the digital content or digital service.
- (7) Where a trader fails to supply digital content or a digital service to the consumer in accordance with this section—
- (a) the trader shall be liable for that failure, and
 - (b) the consumer shall have the right to the remedies specified in *section 60*.

Digital content or digital service to be in conformity with digital content contract or digital service contract

- 52.** (1) Where a digital content contract or digital service contract is concluded between a trader and a consumer, the trader shall supply digital content or a digital service to the consumer that is in conformity with the digital content contract or digital service contract.
- (2) Digital content or a digital service is in conformity with the digital content contract or digital service contract if the digital content or digital service—
- (a) complies with the requirements of *sections 53* and *54*, and
 - (b) does not fall to be treated as not being in conformity with the digital content contract or digital service contract under *section 55*.
- (3) Where the digital content or digital service supplied by the trader is not in conformity with the digital content contract or digital service contract concerned, the consumer shall have the right to the remedies specified in *Chapter 3* of this Part.
- (4) Where a digital content contract or digital service contract provides for a continuous supply of the digital content or digital service for a period specified in the contract—
- (a) a short-term interruption of the supply of the digital content or digital service—
 - (i) that, having regard to the type and purpose of the digital content or digital service and the circumstances and nature of the contract, is more than negligible, or
 - (ii) that recurs,shall be deemed to constitute a lack of conformity with the digital content contract or digital service contract, and
 - (b) the consumer shall have the right to the remedies specified in *Chapter 3* of this Part.
- (5) Where a failure to comply with—
- (a) any requirement imposed by or under the *Data Protection Act 2018*, or
 - (b) any requirement imposed by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016⁷ 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 (General Data Protection Regulation),

constitutes a lack of conformity of the digital content or digital service with the digital content contract or digital service contract, the consumer shall have the right to the remedies specified in *Chapter 3* of this Part.

Subjective requirements for conformity with digital content contract or digital service contract

- 53.** (1) Digital content or a digital service supplied under a digital content contract or digital service contract shall—
- (a) be of the description, quantity and quality, and possess the functionality, compatibility, interoperability, accessibility, continuity, security and other features, specified in the digital content contract or digital service contract,
 - (b) be fit for any particular purpose for which the consumer requires it—
 - (i) that the consumer made known to the trader at the time of, or before, the conclusion of the digital content contract or digital service contract, and
 - (ii) that the trader has accepted,
 - (c) be supplied with all accessories, instructions, including on the installation or integration of the digital content or digital service, and customer assistance as specified in the digital content contract or digital service contract, and
 - (d) be updated as specified in the digital content contract or digital service contract.
- (2) The information which the trader is required to provide to the consumer in a distance contract or an off-premises contract under *section 103*, *104* or *106* shall form part of the digital content contract or digital service contract.
- (3) Digital content or a digital service supplied under a digital content contract or digital service contract that is a distance contract or an off-premises contract shall comply with any term of the contract deriving from the information referred to in *subsection (2)* that is additional to the requirements of *subsection (1)*.
- (4) Where the digital content contract or digital service contract provides for a continuous supply of digital content or a digital service for a period specified in the contract, the digital content or digital service shall comply with the requirements of *subsections (1)* and *(2)* during that period.

Objective requirements for conformity with digital content contract or digital service contract

- 54.** (1) Digital content or a digital service supplied under a digital content contract or digital service contract shall—

- (a) be fit for all of the purposes for which digital content or digital services of the same type would normally be used, taking into account so far as relevant any enactment or rule of law, European Union law, technical standards or, in the absence of such technical standards, applicable sector-specific codes of conduct,
 - (b) comply with any trial version or preview of the digital content or digital service that the trader made available to the consumer before the conclusion of the digital content contract or digital service contract,
 - (c) be supplied along with any accessories and instructions, including on the installation or integration of the digital content or digital service, that the consumer may reasonably expect to receive, and
 - (d) be of the quantity, and possess the qualities and performance features (including in relation to functionality, compatibility, accessibility, continuity and security) normal for digital content or digital services of the same type that the consumer may reasonably expect given the nature of the digital content or digital service and taking into account any public statement in relation to the digital content or digital service made by, or on behalf of, the trader or any other person constituting a previous link in the chain of transactions relating to the digital content contract or digital service contract, particularly in advertising or on labelling.
- (2) The trader shall not be bound by any public statement referred to in *subsection (1)(d)* if the trader shows that—
- (a) the trader was not, and could not reasonably have been, aware of the public statement in question,
 - (b) at the time of the conclusion of the digital content contract or digital service contract, the public statement had been corrected in the same way as it had been made (or in a comparable way), or
 - (c) the decision of the consumer to acquire the digital content or digital service could not have been influenced by the public statement.
- (3) Unless the parties have agreed otherwise, digital content or a digital service shall be supplied in the most recent version available at the time of the conclusion of the contract.
- (4) The trader shall ensure that during the relevant period the consumer is—
- (a) informed of the availability of, and
 - (b) supplied with,

any update (including a security update) that is necessary for the digital content or digital service to be in conformity with the digital content contract or digital service contract.

(5) Where—

- (a) the consumer fails to install within a reasonable time an update supplied by the trader in accordance with *subsection (4)*,
- (b) the trader informed the consumer of the availability of the update and the consequences of a failure of the consumer to install it, and
- (c) the failure of the consumer to install the update, or the incorrect installation of the update by the consumer, was not due to shortcomings in the installation instructions provided by the trader,

the trader shall not be liable for any lack of conformity with the digital content contract or digital service contract resulting solely from the failure to install the relevant update.

(6) Where the digital content contract or digital service contract provides for a continuous supply of digital content or a digital service for a period specified in the contract, the trader shall ensure that the digital content or digital service is in conformity with the contract during that period.

(7) There shall be no lack of conformity with the digital content contract or digital service contract under *subsection (1) or (4)* if, at the time of the conclusion of the contract—

- (a) the consumer was specifically informed that a particular characteristic of the digital content or digital service deviated from the requirements of the subsection concerned, including a lack of conformity with the contract caused by a restriction resulting from a violation of an intellectual property right or any other right of a third person, and

(b) the consumer expressly and separately accepted that deviation.

(8) In case of dispute, it shall be for the trader to show that the consumer—

- (a) was specifically informed that a particular characteristic of the digital content or digital service deviated from the requirements of *subsection (1) or (4)*, and

(b) expressly and separately accepted that deviation when concluding the contract.

(9) In this section, “relevant period”, in relation to a digital content contract or digital service contract, means—

- (a) where the contract provides for a continuous supply of the digital content or digital service for a period specified in the contract, that period, or
- (b) where the contract provides for a single act of supply or a series of individual acts of supply of the digital content or digital service, such period as the consumer may reasonably expect, given the type and purpose of the digital content or digital service and taking into account the circumstances and nature of the digital content contract or digital service contract.

Incorrect integration of digital content or digital service

55. Any lack of conformity with a digital content contract or digital service contract resulting from the incorrect integration of the digital content or digital service into the consumer's digital environment shall be treated as a lack of conformity with the digital content contract or digital service contract for the purposes of this Part if—

- (a) the digital content or digital service was integrated by the trader or a person acting on behalf of the trader, or
- (b) 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.

Implied terms of digital content contract or digital service contract

56. Sections 50 and 53 to 55 shall be implied into every digital content contract or digital service contract and shall have effect as if they were terms of such a contract.

Third party rights

57. Without prejudice to section 54, where a restriction resulting from a violation of any right of a third person, in particular an intellectual property right, prevents or limits the use in accordance with sections 53 to 55 of digital content or a digital service supplied under a digital content contract or digital service contract, the consumer shall be entitled to pursue the remedies specified in *Chapter 3* of this Part.

Liability of trader under digital content contract or digital service contract

58. (1) Where a digital content contract or a digital service contract is concluded between a trader and a consumer, the trader shall be liable to the consumer for any failure to supply the digital content or digital service in accordance with section 51.

- (2) Where a digital content contract or digital service contract provides for a single act of supply, or a series of individual acts of supply, of digital content or a digital service, the trader shall be liable for any lack of conformity with the digital content contract or digital service contract, including any lack of conformity resulting from a violation of an intellectual property right or any other right of a third person, which exists at the time of supply of the digital content or digital service.
- (3) Where an update is supplied by the trader or a person other than the trader under a digital content contract or digital service contract that provides for a single act of supply, or a series of individual acts of supply, of digital content or a digital service, the trader shall be liable for any lack of conformity with the digital content contract or digital service contract—
- (a) caused by the update which exists at the time of supply or installation of the update, or
- (b) caused by the failure of the trader to supply an update in accordance with section 54 (4) at the time the update should have been supplied.
- (4) Where a digital content contract or digital service contract provides for a continuous supply of digital content or a digital service for a period specified in the contract, the trader shall be liable for a lack of conformity with the digital content contract or digital service contract that occurs or becomes apparent during that period.
- (5) The consumer's right to a remedy in respect of a lack of conformity with the digital content contract or digital service contract for which the trader is liable under this section shall apply for 6 years from—
- (a) in the case of a digital content contract or digital service contract which provides for a single act of supply of digital content or a digital service, or a series of such acts, the time of the supply of the digital content or digital service, and
- (b) in the case of a digital content contract or digital service contract which provides for a continuous supply of the digital content or digital service for a period specified in the contract, the time at which the lack of conformity occurs or becomes apparent during that period.
- (6) The consumer's right to a remedy in respect of a failure to supply digital content or a digital service under a digital content contract or digital service contract for which the trader is liable under this section, shall apply for 6 years from the time at which the trader was required to supply the digital content or digital service in accordance with section 51 .

Burden of proof under digital content contract or digital service contract

- 59.** (1) The burden of proof as to whether digital content or a digital service was supplied in accordance with section 51 shall be on the trader.

- (2) Subject to *subsection (4)*, where a digital content contract or digital service contract provides for a single act of supply, or a series of individual acts of supply, of digital content or a digital service, the burden of proof as to whether the digital content or digital service supplied by the trader was in conformity with the contract at the time of supply shall be on the trader for a lack of conformity with the digital content contract or digital service contract which becomes apparent during the period of 12 months beginning with the supply of the digital content or digital service.
- (3) Subject to *subsection (4)*, where the digital content contract or digital service contract provides for the continuous supply of digital content or a digital service for a period specified in the contract, the burden of proof as to whether the digital content or digital service was in conformity with the contract during that period shall be on the trader for a lack of conformity with the contract which becomes apparent during that period.
- (4) *Subsections (2) and (3)* shall not apply where the trader—
- (a) shows that the digital environment of the consumer is not compatible with the technical requirements of the digital content or digital service, and
 - (b) informed the consumer of such requirements in a clear and comprehensible manner before the conclusion of the contract.
- (5) Subject to *subsection (6)*, the consumer shall co-operate with the trader, to the extent reasonably possible and necessary, to ascertain whether the cause of the lack of conformity with the digital content contract or digital service contract of the digital content or digital service at the times specified in *section 58 (1) to (4)* lay in the consumer's digital environment.
- (6) The obligation on the consumer to co-operate under *subsection (5)* shall be limited to the technically available means which are least intrusive for the consumer.
- (7) Where—
- (a) the consumer fails to co-operate as required by *subsection (5)*, and
 - (b) the trader informed the consumer of the technical requirements of the digital content or digital service in a clear and comprehensible manner before the conclusion of the digital content contract or digital service contract,
- the burden of proof as to whether the lack of conformity with the contract existed at the times specified in *section 58 (1) to (4)* shall be on the consumer.

- (8) Nothing in this section shall prevent or restrict a consumer from exercising a remedy after the expiry of the period of 12 months beginning with the date of supply of the digital content or digital service.

Chapter 3

Consumer remedies in digital content contracts and digital service contracts

Remedy for failure to supply digital content or digital service

60. (1) Where a trader—

- (a) fails to supply digital content or a digital service under a digital content contract or digital service contract in accordance with section 51, and
- (b) fails to comply with a subsequent request from a consumer to supply the digital content or digital service without undue delay or within such additional period as may be expressly agreed between the parties,

the consumer shall have the right to terminate the digital content contract or digital service contract.

(2) *Subsection (1)* shall not apply, and the consumer shall have the right to terminate the contract immediately (and without making a request referred to in *subsection (1)(b)*), where—

- (a) the trader has declared that the trader will not supply the digital content or digital service or it is equally clear from the circumstances that the trader will not do so, or
- (b) the consumer and the trader have agreed, or it is apparent from the circumstances at the time of the conclusion of the contract, that it is essential for the consumer that the digital content or digital service be supplied before a particular date and time and the trader fails to supply the digital content or digital service on or before that date and time.

(3) Where the consumer has the right to terminate the digital content contract or digital service contract under *subsection (1)* or *(2)* and wishes to exercise that right—

- (a) the consumer shall exercise that right in accordance with section 66, and
- (b) the trader shall comply with the obligations in section 67.

Right to have digital content or digital service brought into conformity with contract

61. (1) Subject to *subsection (2)*, where digital content or a digital service is not in conformity with the digital content contract or digital service contract, the consumer shall have the right to have the digital content or digital service brought into conformity with the contract in accordance with *subsection (3)*.

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

(a) it would be impossible to bring the digital content or digital service into conformity with the digital content contract or digital service contract, or

(b) bringing the digital content or digital service into conformity with the digital content contract or digital service contract would impose disproportionate costs on the trader taking into account all the circumstances of the case including in particular—

(i) the value that the digital content or digital service would have if there were no lack of conformity, and

(ii) the significance of the lack of conformity.

(3) The trader shall bring the digital content or digital service into conformity with the digital content contract or digital service contract—

(a) free of charge,

(b) within a reasonable time after being informed by the consumer of the lack of conformity with the digital content contract or digital service contract, and

(c) without significant inconvenience to the consumer, taking account of the nature of the digital content or digital service and the purpose for which the consumer required the digital content or digital service.

(4) The reasonable time for bringing the digital content or digital service into conformity with the contract under *subsection (3)(b)* shall be the shortest possible time necessary for remedying the lack of conformity of the digital content or digital service with the contract, having regard to—

(a) the nature and complexity of the digital content or digital service,

(b) the nature and severity of the lack of conformity, and

(c) the effort needed to bring the digital content or digital service into conformity with the digital content contract or digital service contract.

Right to proportionate reduction in price or termination of contract

62. (1) This section applies where—

- (a) by virtue of section 61 (2), the consumer does not have the right specified in section 61 (1),
 - (b) the consumer has exercised his or her right under section 61 (1) and the trader has not brought the digital content or digital service into conformity with the digital content contract or digital service contract in accordance with section 61 (3),
 - (c) the same or a different lack of conformity appears despite the trader's attempt to bring the digital content or digital service into conformity with the digital content contract or digital service contract,
 - (d) the lack of conformity is of such a serious nature as to justify an immediate reduction in the price or termination of the digital content contract or digital service contract, or
 - (e) the trader has declared, or it is clear from the circumstances, that the trader will not bring the digital content or digital service into conformity with the digital content contract or digital service contract within a reasonable time or without significant inconvenience for the consumer.
- (2) If under the digital content contract or digital service contract the digital content or digital service is supplied for the payment of a price, the consumer shall have the right—
- (a) to a proportionate reduction in the price in accordance with section 63, or
 - (b) subject to subsection (3), to terminate the contract in accordance with section 66.
- (3) The consumer shall have the right to terminate the contract under subsection (2) only if the lack of conformity with the contract is not minor.
- (4) If under the digital content contract or digital service contract the digital content or digital service is supplied other than for the payment of a price, the consumer shall have the right to terminate the contract in accordance with section 66.
- (5) In determining for the purpose of subsection (1)(d) whether the lack of conformity of the digital content or digital service with the digital content contract or digital service contract is of such a serious nature as to justify an immediate reduction in the price or termination of the contract, regard shall be had to the nature and severity of the lack of conformity, including whether that lack is such that—
- (a) the consumer cannot maintain confidence in the ability of the trader to bring the digital content or digital service into conformity with the contract, and

(b) the ability of the consumer to make normal use of the digital content or digital service is severely affected and the consumer cannot reasonably be expected to trust that it would be remedied by the trader's attempt to bring the digital content or digital service into conformity with the contract.

(6) In case of dispute, it shall be for the trader to show that the lack of conformity of the digital content or digital service with the digital content contract or digital service contract is minor for the purposes of *subsection (3)*.

Price reduction: digital content contract or digital service contract

63. (1) This section applies where the consumer has the right under *section 62 (2)(a)* to a proportionate reduction in the price.

(2) The right of the consumer under this section is the right—

(a) to require the trader to reduce in accordance with *subsection (3)* the price that the consumer is required to pay under the digital content contract or digital service contract, or

(b) to receive from the trader a reimbursement of the price paid by the consumer in excess of the amount of the reduction applicable under *subsection (3)*.

(3) The reduction in the price shall be proportionate to the decrease in the value of the digital content or digital service supplied to the consumer compared with the value that the digital content or digital service would have if it were in conformity with the digital content contract or digital service contract.

(4) Where the digital content contract or digital service contract provides that the digital content or digital service shall be supplied for a period specified in the contract in exchange for the payment of a price, the reduction in price shall apply to the period during which the digital content or digital service was not in conformity with the digital content contract or digital service contract.

(5) Where the consumer has the right to reimbursement under *subsection (2)(b)*, the trader shall reimburse the consumer in accordance with *section 68*.

Modification of digital content or digital service

64. (1) Where—

(a) the digital content contract or digital service contract provides that the digital content or digital service is to be supplied or made accessible to the consumer for a period specified in the contract, and

(b) the conditions specified in *subsection (2)* are met,

the trader may modify the digital content or digital service beyond what is necessary to maintain the digital content or digital service in conformity with the digital content contract or digital service contract.

(2) The conditions referred to in *subsection (1)* are—

(a) the digital content contract or digital service contract allows, and provides a valid reason for, such a modification,

(b) such a modification is made without additional cost to the consumer,

(c) the consumer is informed in a clear and comprehensible manner of the modification, and

(d) the consumer is informed reasonably in advance on a durable medium of the features and time of the modification and of—

(i) the right to terminate the digital content contract or digital service contract in accordance with *subsection (3)*, or

(ii) the possibility to maintain the digital content or digital service without such a modification in accordance with *subsection (4)(b)*.

(3) Subject to *subsection (4)*, the consumer shall have the right to terminate the digital content contract or digital service contract free of charge if the modification of the digital content or digital service negatively affects the consumer's access to, or use of, the digital content or digital service.

(4) The right of the consumer to terminate the digital content contract or digital service contract under *subsection (3)* shall not apply if—

(a) the negative effect of the modification on the consumer's access to, or use of, the digital content or digital service is minor, or

(b) the trader has enabled the consumer to maintain the unmodified digital content or digital service without additional cost, and the unmodified digital content or digital service remains in conformity with the digital content contract or digital service contract.

(5) In objectively ascertaining the effect of the modification of the digital content or digital service on the consumer's access to, or use of, the digital content or digital service, regard shall be had to—

(a) the nature and purpose of the digital content or digital service, and

- (b) the quality, functionality, compatibility and other main features normally found in digital content or a digital service of the same type.
- (6) Where the consumer has the right to terminate the digital content contract or digital service contract under *subsection (3)* and wishes to exercise that right—
- (a) the consumer shall exercise the right in accordance with *section 66* before the expiry of the period of 30 days beginning on whichever is the later of—
- (i) the day on which the consumer was informed of the modification, and
- (ii) the day on which the digital content or digital service was modified by the trader,
- and
- (b) the trader shall—
- (i) comply with the obligations under *section 67*, and
- (ii) make any reimbursement due to the consumer in accordance with *section 68*.
- (7) Where—
- (a) the trader has—
- (i) exercised the power conferred by *subsection (1)*, and
- (ii) enabled the consumer to maintain the unmodified digital content or digital service,
- and
- (b) that digital content or digital service does not satisfy the requirements of *sections 53 to 55*, the consumer shall be entitled to the remedies in *sections 61*, *62* and *69*.
- (8) This section shall not apply where a bundle of electronic communications services or a bundle of such services and terminal equipment within the scope of Article 107 of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018⁸ establishing the European Electronic Communications Code (Recast) includes elements of an internet access service or a number-based interpersonal communications service.

Remedies where contract also provides for sale of goods etc.

- 65.** (1) This section applies where digital content or a digital service is supplied to a consumer under a contract that provides also for—
- (a) the sale of goods, or
 - (b) the supply of a service.
- (2) Where the conditions in *subsection (3)* are met, the consumer shall have the right—
- (a) to terminate the contract, or
 - (b) to obtain a proportionate reduction in the price payable under the contract.
- (3) The conditions referred to in *subsection (2)* are the following:
- (a) if the contract were a contract for the supply of digital content or a digital service only, the consumer would have the right under *section 62* to obtain a proportionate reduction in the price or to terminate the contract;
 - (b) the value of the goods or service to the consumer would be materially reduced in the absence of the digital content or digital service.
- (4) In objectively determining for the purposes of *subsection (2)(b)* whether a reduction in the value of goods or a service is material, all the circumstances shall be taken into account, including in particular—
- (a) the nature and purpose of the contract,
 - (b) the relative value of the different elements of the contract, and
 - (c) the nature and degree of the inter-dependence of the different elements of the contract.
- (5) Where the consumer exercises the right to terminate a contract under *subsection (2)*—
- (a) the consumer shall comply with the obligations in *section 66 (3) and (4)*, and
 - (b) the trader with whom the consumer has that contract shall comply with the obligations in *section 67*.

- (6) This section shall not apply where a bundle of electronic communications services or a bundle of such services and terminal equipment within the scope of Article 107 of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018⁹ establishing the European Electronic Communications Code (Recast) includes elements of an internet access service or a number-based interpersonal communications service.

Obligations of consumer in event of termination of digital content contract or digital service contract

- 66.** (1) Subject to section 65 (4)(a), this section applies where a consumer has the right under section 50 (2), 60 (1) or (2), 62 (2)(b) or 64 (3) to terminate a digital content contract or digital service contract.
- (2) The consumer shall exercise the right to terminate a digital content contract or digital service contract by means of a statement to the trader expressing the decision to terminate the contract.
- (3) On and after the termination of the digital content contract or digital service contract, the consumer shall not use the digital content or digital service or make it available to any third person.
- (4) Where the digital content was supplied on a tangible medium, the consumer shall, on receipt of a request from the trader under section 67 (3), return the tangible medium to the trader without undue delay.
- (5) The consumer shall not be liable to pay for any use made of the digital content or digital service in the period prior to the termination of the digital content contract or digital service contract during which the digital content or the digital service was not in conformity with the contract.
- (6) If a consumer fails to comply with an obligation imposed by *subsection (3) or (4)*, he or she shall be liable in damages for any loss or damage suffered by the trader as a result of the failure.
- (7) The consumer's liability in damages under *subsection (6)* shall be without prejudice to any other remedy available under any enactment or rule of law to the trader.

Obligations of trader where digital content contract or digital service contract terminated

- 67.** (1) Subject to *subsections (2) and (4)*, where the consumer exercises the right under section 50 (2), 60 (1) or (2), 62 (2)(b) or 64 (3) to terminate a digital content contract or digital service contract, the trader shall reimburse the consumer in accordance with section 68 for all payments made under the contract.

- (2) Where the digital content contract or digital service contract provides for the supply of the digital content or digital service for a period specified in the contract in exchange for the payment of a price and the digital content or digital service was in conformity with the digital content contract or digital service contract for a period prior to the termination of the contract, the trader shall reimburse the consumer only for—
- (a) the proportionate part of the price paid corresponding to the period of time during which the digital content or digital service was not in conformity with the contract, and
 - (b) any part of the price paid by the consumer in advance for any period of the contract that would have remained had the contract not been terminated.
- (3) Where the consumer terminates a digital content contract or digital service contract under which digital content was supplied on a tangible medium, the trader may request that the consumer return the tangible medium to the trader without undue delay.
- (4) Where the trader makes a request under *subsection (3)*—
- (a) the request shall be made within 14 days of the day on which the trader was informed of the consumer's decision to terminate the contract, and
 - (b) the trader shall be liable for the cost of returning the tangible medium.
- (5) Subject to *subsection (6)*, the trader shall not use any content that was provided or created by the consumer when using the digital content or digital service supplied by the trader under the digital content contract or digital service contract.
- (6) The trader may use content such as is referred to in *subsection (5)* where the content is not personal data and the content—
- (a) has no utility outside the context of the digital content or digital service supplied by the trader,
 - (b) relates only to the consumer's activity when using the digital content or digital service supplied by the trader,
 - (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 other consumers are able to continue to make use of the content.

- (7) Subject to *subsection (8)*, the trader shall, at the request of the consumer, make available to the consumer any content (other than personal data), which was provided or created by the consumer when using the digital content or digital service supplied by the trader under the digital content contract or digital service contract.
- (8) The trader need not make available any content which falls within any of *paragraphs (a) to (c)* of *subsection (6)*.
- (9) The consumer shall be entitled to retrieve the digital content made available to him or her in accordance with *subsection (7)*—
- (a) free of charge,
 - (b) without hindrance from the trader,
 - (c) within a reasonable time, and
 - (d) in a commonly used and machine-readable format.
- (10) Without prejudice to *subsections (7) and (8)*, the trader may prevent any further use of the digital content or digital service by the consumer, in particular by making the digital content or digital service inaccessible to the consumer or disabling the user account of the consumer.

Time limits and means of reimbursement by trader: digital content contract or digital service contract

- 68.** (1) Subject to *subsection (2)*, where the trader is required by *section 63 (5)*, *64 (6)(b)(ii)* or *67 (1)* to reimburse the consumer, the trader shall carry out the reimbursement—
- (a) without undue delay and in any event before the expiry of the period of 14 days beginning on the date on which the trader was informed of the consumer's decision to exercise the right to a price reduction or to terminate the digital content contract or digital service contract,
 - (b) using the same means of payment as the consumer used to pay for the digital content or digital service, unless the consumer expressly agrees otherwise and provided that the consumer does not incur any fees as a result of such reimbursement, and
 - (c) without the imposition of any fee on the consumer in respect of the reimbursement.
- (2) Where the reimbursement relates to digital content supplied on a tangible medium, the trader may withhold the reimbursement until the trader has received—
- (a) the tangible medium back, or

- (b) if the trader so chooses, evidence provided by the consumer of having returned the tangible medium.
- (3) If a trader fails to comply with the obligation to reimburse the consumer in accordance with this section, the trader shall be liable in damages for any loss or damage suffered by the consumer as a result of the failure.

General right to withhold payment digital content contract or digital service contract

- 69.** (1) Subject to *subsection (2)*, where the trader fails to comply with the obligation to supply digital content or a digital service that is in conformity with the digital content contract or digital service contract, the consumer shall have the right to withhold payment of any outstanding part of the price until the trader has fulfilled the trader's obligation to supply digital content or a digital service that is in conformity with the digital content contract or digital service contract.
- (2) The part of the price withheld by the consumer under *subsection (1)* shall be proportionate to the decrease in the value of the digital content or digital service received by the consumer compared with the value that the digital content or digital service would have if it were in conformity with the contract.
- (3) The consumer shall exercise the right to withhold payment under *subsection (1)* by means of a statement to the trader expressing the consumer's decision to withhold payment until the trader has fulfilled the trader's obligation to supply digital content or a digital service that is in conformity with the digital content contract or digital service contract.

Effect of termination of digital content contract or digital service contract on ancillary contract

- 70.** (1) Where a consumer terminates a digital content contract or digital service contract in accordance with [section 66](#), any ancillary contract shall be automatically terminated without any cost to the consumer.
- (2) Where a trader is informed by a consumer in accordance with [section 66](#) of the consumer's decision to terminate a digital content contract or digital service contract, the trader shall inform any other trader with whom the consumer has an ancillary contract of its termination by *subsection (1)*.
- (3) Where an ancillary contract is terminated by *subsection (1)*—
- (a) the trader with whom the consumer has that contract shall comply with the obligations in [section 67](#), and
- (b) the consumer shall comply with the obligations in [section 66 \(3\)](#) and [\(4\)](#).

- (4) Where any security has been provided under an ancillary contract that is terminated by *subsection (1)*, it is to be treated as never having had effect and any property lodged with the trader or a person other than the trader (a “third party”) solely for the purposes of that security shall be returned immediately by the trader or third party.
- (5) In this section, “ancillary contract”, in relation to a digital content contract or digital service contract concluded between a consumer and a trader (in this subsection referred to as the “principal contract”), means another contract concluded between that consumer and that trader, or that consumer and a third party, under which—
- (a) the trader, or
 - (b) 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.

Exclusion or limitation of liability of trader (*Part 3*)

- 71.** (1) A term of a digital content contract or a digital service contract, or of any other contract between a consumer and a trader, shall not exclude or restrict the trader’s liability under any of the following provisions:
- (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* (digital content or digital service to be in 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 56* (implied terms of digital content contract or digital service contract);
 - (h) *section 57* (third party rights);
 - (i) *section 58* (liability of trader under digital content contract or digital service contract);

- (j) section 59 (burden of proof under digital content contract or digital service contract).
- (2) A term of a digital content contract or a digital service contract, or of any other contract between a consumer and a trader, which purports to, or has the effect of, excluding or restricting the liability of the trader under any of the provisions specified in *subsection (1)* shall not be binding on the consumer.
- (3) The references in *subsections (1)* and *(2)* to excluding or restricting the trader's liability include a reference to—
- (a) excluding or limiting a right or remedy in respect of a liability under a provision specified in *subsection (1)*,
 - (b) making such a right or remedy, or its enforcement, subject to a restrictive or onerous condition,
 - (c) allowing a trader to put a person at a disadvantage as a result of pursuing such a right or remedy,
 - (d) excluding or restricting rules of evidence or procedure, or
 - (e) preventing an obligation arising or limiting its extent.
- (4) An agreement in writing to submit present or future disputes to an ADR procedure within the meaning of the European Union (Alternative Dispute Resolution for Consumer Disputes) Regulations 2015 (S.I. No. 343 of 2015) is not to be regarded as excluding or restricting any liability for the purposes of this section.
- (5) A trader who contravenes *subsection (1)* commits an offence.

Right of redress of trader (*Part 3*)

- 72.** Where the trader is liable to the consumer because of—
- (a) any failure to supply the digital content or digital service under a digital content contract or digital service contract in accordance with section 51 , or
 - (b) a lack of conformity of the digital content or digital service with the digital content contract or digital service contract,

resulting from an act or omission of a person constituting a previous link in the chain of transactions relating to the digital content contract or digital service contract, the trader shall be entitled to pursue remedies against the person in the chain of transactions liable for the failure or, as the case may be, lack of conformity.

Other remedies

- 73.** (1) The remedies provided for in this Chapter do not affect the right of the consumer to pursue other remedies (without recovering twice for the same loss) where digital content or a digital service is not in conformity with the digital content contract or digital service contract or the trader otherwise fails to comply with the requirements of this Part.
- (2) The other remedies referred to in *subsection (1)* include in particular any of the following remedies that may be available to the consumer:
- (a) claiming damages;
 - (b) relying on the failure of the trader to comply with the requirements of this Part against a claim under the digital content contract or digital service contract by the trader for payment of the price;
 - (c) seeking to recover money paid to the trader for digital content or a digital service that does not comply with the requirements of this Part;
 - (d) having a lack of conformity of the digital content or digital service with the digital content contract or digital service contract remedied elsewhere and recovering from the trader all reasonable costs incurred in having the lack of conformity so remedied.

PART 4

Service contracts

Chapter 1

Interpretation and application (Part 4)

Interpretation (*Part 4*)

74. (1) In this Part—

“consumer-hire agreement” has the same meaning as it has in the Act of 1995;

“free of charge” means free of any costs necessarily incurred in remedying the lack of conformity of a service with the service contract, including the cost of labour and materials;

“hire-purchase agreement” has the same meaning as it has in the Act of 1995.

- (2) A reference in this Part to a service being in conformity with a service contract is to be construed in accordance with section 79 (2).

Application (Part 4)

75. (1) Subject to *subsection (3)* and sections 80 (1), 86 (1)(g), 88 and 92 to 94, this Part applies to any contract specified in *subsection (2)* that is concluded between a trader and a consumer on or after the day on which this section comes into operation.

(2) The contracts referred to in *subsection (1)* are—

(a) a service contract, and

(b) where a single contract between a trader and a consumer relates to the supply of a service and—

(i) the sale of goods,

(ii) the supply of digital content, or

(iii) the supply of a digital service,

that contract but only in so far as it relates to the supply of the service.

(3) This Part does not apply to—

(a) a contract for rental of accommodation for residential purposes concluded between a trader and a consumer, or

(b) goods supplied under a consumer-hire agreement or a hire-purchase agreement.

(4) A reference in *Chapter 2 or 3* of this Part to a service contract shall be construed as a reference to any contract to which this Part applies.

(5) Nothing in this Part shall affect the entitlement of a consumer to terminate a contract under section 29 (1) or 65 (2).

Power of Minister to restrict or extend application of Part 4

76. (1) Subject to section 75 and *subsection (3)*, the Minister may by regulations provide that this Part or any provision of this Part specified in the regulations—

- (a) shall not apply to a class or description of service so specified, or
 - (b) shall apply to a class or description of service so specified but only in the circumstances so specified.
- (2) Subject to *section 75* and *subsection (3)*, the Minister may by regulations provide for the application of this Part to the following class of contract, namely a contract between a trader and a consumer for the supply of a service under which the consumer—
- (a) does not pay or undertake to pay the price of the service, and
 - (b) provides or undertakes to provide personal data to the trader, other than where the personal data are processed by the trader in accordance with this Part or for the purpose only of complying with any other legal requirement to which the trader is subject.
- (3) The Minister may make regulations under *subsection (1)* only where the Minister is satisfied, after consultation with such persons as the Minister considers appropriate, that such regulations would be in the interests of consumer protection and fair competition.
- (4) The Minister may make regulations under *subsection (2)* only where the Minister is satisfied, after consultation with such persons as the Minister considers appropriate, that—
- (a) contracts of the class proposed to be specified in regulations under *subsection (2)* are being concluded on a significant scale, and
 - (b) the regulation of that class of contract would be in the interests of consumer protection and fair competition.
- (5) Regulations under *subsection (1)* or *(2)* may provide that the application of this Part to the class or description of service referred to in *subsection (1)* or, as the case may be, the class of contract referred to in *subsection (2)*, and specified in the regulations, shall be subject to such modifications as may be so specified.

Effect of Part on other enactments etc.

- 77.** (1) Nothing in this Part affects any enactment or rule of law that imposes additional or stricter obligations on a trader in relation to the supply of a service.
- (2) This Part is subject to—
- (a) any other enactment, and
 - (b) any international convention to which the State or the European Union is party,

that defines or limits the rights, obligations or liabilities arising in relation to a service.

Chapter 2

Consumer rights in service contracts

Supply of service

- 78.** (1) Where a service contract is concluded between a trader and a consumer, the trader shall supply the service to the consumer in accordance with the contract.
- (2) Subject to *subsections (3) to (5)*, the trader shall supply the service—
- (a) where the service contract is a distance contract or an off-premises contract—
- (i) at such time, or within such period, as may be specified in the information provided to the consumer under *section 103*, *104* or *106*, or
- (ii) where no time or period is so specified, at such time, or within such period, as may be agreed between the trader and the consumer,
- and
- (b) where the service contract is not a distance contract or an off-premises contract, at such time, or within such period, as may be agreed between the trader and the consumer.
- (3) Where no time or period is specified or agreed as mentioned in *subsection (2)*, the trader shall supply the service within a reasonable time following the conclusion of the service contract.
- (4) Where a service contract provides for the continuous supply of the service for a period specified in the contract, the trader shall supply the service to the consumer during that period.
- (5) Where a service contract provides for the supply of the service on more than one occasion during the period for which the contract subsists, the trader shall supply the service to the consumer on each of those occasions.
- (6) Subject to *subsection (7)*, if the trader fails to supply the service to the consumer in accordance with this section, the consumer shall have the right to the remedies specified in *sections 84* and *91*.
- (7) If there is a short-term interruption of the supply of the service that is more than negligible or that recurs—
- (a) *section 84* shall not apply,

(b) the service shall be deemed not to be in conformity with the service contract, and

(c) the consumer shall have the right to the remedies specified in sections 85, 86 and 91.

(8) For the purposes of *subsection (3)*, whether a service has been supplied within a reasonable time following the conclusion of a service contract is a question of fact.

Service to be in conformity with service contract

79. (1) Where a service contract is concluded, the trader shall supply a service to the consumer that is in conformity with the service contract.

(2) A service is in conformity with the service contract if it complies with the requirements specified in sections 80 and 81.

(3) Where the service supplied by the trader is not in conformity with the service contract, the consumer shall have the right to the remedies specified in *Chapter 3* of this Part.

Subjective requirements for conformity with service contract

80. (1) The service supplied under a service contract and any goods or digital content produced by or resulting from the service, shall—

(a) comply with the terms of the service contract agreed between the trader and the consumer,

(b) subject to *subsection (2)*, comply with any oral or written statement to the consumer by or on behalf of the trader in relation to the service or the trader on which the consumer relied when —

(i) deciding to enter into the service contract, or

(ii) making any decision in relation to the service after entering into the service contract,

(c) be reasonably fit for any purpose—

(i) that the consumer made known to the trader at the time of, or before, the conclusion of the service contract, and

(ii) that the trader has accepted,

(d) be of a nature and quality that can reasonably be expected to achieve any result—

(i) that the consumer made known to the trader at the time of, or before, the conclusion of the service contract, and

(ii) that the trader has accepted,

and

(e) where the service contract is a distance contract or an off-premises contract, comply with any additional terms imposed by virtue of section 103, 104 or 106.

(2) The meaning and effect of any oral or written statement of the kind referred to in *subsection (1)(b)* is subject to—

(a) any oral or written statement made to the consumer by the trader on the same occasion which qualified that statement, and

(b) any change to that statement subsequently agreed between the consumer and the trader.

(3) Where a service contract provides for the continuous supply of a service for a period specified in the contract, the trader shall ensure that the service complies with the requirements of *subsection (1)* during that period.

(4) Where a service contract provides for the supply of a service on more than one occasion during the period for which the contract subsists, the trader shall ensure that the service complies with the requirements of *subsection (1)* on each of those occasions.

(5) In case of dispute, it shall be for the trader to show that—

(a) the trader did not accept a purpose relating to the service of the kind referred to in *subsection (1)(c)*, and

(b) the trader did not accept a result relating to the service of the kind referred to in *subsection (1)(d)*.

Objective requirements for conformity with service contract

81. (1) The following requirements shall apply in relation to a service contract—

(a) the trader shall have the necessary skill to supply the service,

(b) the trader shall supply the service with reasonable care and skill,

(c) the trader shall supply the service in accordance with any applicable laws,

(d) any materials used in the supply of the service shall be sound, reasonably fit for the purpose for which they are supplied, and correspond to any description provided by the trader, and

- (e) the service shall comply with any public statement in relation to the service made by, or on behalf of, the trader or any other person constituting a previous link in the chain of transactions relating to the service contract, particularly in advertising, unless the trader shows that—
- (i) the trader was not, and could not reasonably have been, aware of the public statement in question,
 - (ii) at the time of conclusion of the service contract, the public statement had been corrected in the same way as it had been made (or in a comparable way), or
 - (iii) the decision of the consumer to purchase the service could not have been influenced by the public statement.
- (2) A trader who purports to supply a service to a higher standard of care and skill than that specified in *subsection (1)(b)* shall exercise that higher standard of care and skill in supplying the service.
- (3) Where—
- (a) standards of care and skill have been set by a body or a public authority in relation to the supply of a particular service by a trader, and
 - (b) a trader is, or purports to be, a member of the professional body,
- the trader shall exercise those standards of care and skill in supplying the service under a service contract.
- (4) A trader who is, or purports to be, bound by a code of practice relating to the supply of a service shall abide by that code in supplying the service under a service contract.
- (5) Where a service contract provides for the continuous supply of a service for a period specified in the contract, the trader shall ensure that the service is in conformity with the contract during that period.
- (6) Where a service contract provides for the supply of a service on more than one occasion during the period for which the contract subsists, the trader shall ensure that the service is in conformity with the contract on each of those occasions.

(7) In this section, “code of practice” means any rules or standards that are not imposed by or under an enactment which purport to govern or define the behaviour, practices or ethical standards of traders in relation to their transactions with consumers arising from the supply of a service (whether generally or in respect of a particular trade, business or profession).

Implied terms of service contract

82. *Sections 78 (2)(b) to (6), 80 and 81* are implied into every service contract and shall have effect as if they were terms of such a contract.

Reasonable price to be paid for service

83. (1) Where, in respect of a service contract—

(a) the consumer has not paid the price or other consideration for the service,

(b) the contract does not fix the price or other consideration for the service or provide for how it is to be fixed, and

(c) the price or other consideration for the service is not fixed by—

(i) an oral or written statement by or on behalf of the trader of the kind referred to in *section 80 (1)(b)*,

(ii) where the contract is an off-premises contract, the information provided to the consumer under *section 103* or *104*, or

(iii) where the contract is a distance contract, the information provided to the consumer under *section 106*,

the price payable for the service shall be a reasonable price and no more.

(2) What is a reasonable price for a service is a question of fact.

Chapter 3

Consumer remedies in service contracts

Remedy for failure to supply service

84. (1) Where the trader—

(a) fails to supply the service under a service contract in accordance with *section 78*, and

(b) fails to comply with a subsequent request from the consumer to supply the service within an additional period appropriate to the circumstances,

the consumer shall have the right to terminate the service contract.

(2) *Subsection (1)* shall not apply, and the consumer shall have the right to terminate the service contract immediately (and without making a request referred to in *subsection (1)(b)*), where—

(a) the trader has declared that the trader will not supply the service or it is clear from the circumstances that the trader will not do so,

(b) the supply of the service in accordance with *section 78* is essential, taking into account all the relevant circumstances at the time of the conclusion of the service contract, or

(c) the consumer informed the trader at the time of, or before, the conclusion of the service contract that the supply of the service on or by a specified date was essential for the consumer and the trader fails to supply the service on or by that date.

(3) Where the consumer has the right to terminate the service contract under *subsection (1)* or *(2)* and wishes to exercise that right—

(a) the consumer shall exercise that right in accordance with *section 88*, and

(b) the trader shall comply with the obligations in *section 89*.

Right to have service brought into conformity with service contract

85. (1) Subject to *subsection (2)*, where a service is not in conformity with the service contract, the consumer shall have the right to have the service brought into conformity with the service contract in accordance with *subsection (3)*.

(2) *Subsection (1)* shall not apply where it would be impossible to bring the service into conformity with the service contract.

(3) The trader shall ensure that the service is brought into conformity with the service contract—

(a) free of charge,

(b) within a reasonable time after being informed by the consumer of the lack of conformity with the service contract, and

(c) without significant inconvenience to the consumer.

- (4) The reasonable time for bringing the service into conformity with the service contract under *subsection (3)(a)* shall be the shortest possible time necessary for remedying the lack of conformity of the service with the service contract, having regard to—
- (a) the nature and complexity of the service,
 - (b) the nature and severity of the lack of conformity with the service contract, and
 - (c) the effort needed to bring the service into conformity with the service contract.
- (5) In objectively determining what is a significant inconvenience to the consumer for the purposes of *subsection (3)(c)*, regard shall be had to—
- (a) the nature of the service,
 - (b) the purpose for which it is required by the consumer, and
 - (c) any other relevant circumstances.
- (6) *Subsection (7)* applies where—
- (a) bringing a service into conformity with a service contract requires the removal of goods that were installed in a manner consistent with their nature and purpose before the lack of conformity became apparent, or
 - (b) goods that were installed in a manner consistent with their nature and purpose before the lack of conformity with the service contract became apparent require to be replaced.
- (7) The trader's obligation to bring the service into conformity with the service contract shall include —
- (a) the removal of the goods and—
 - (i) their repair and reinstallation, or
 - (ii) the installation of goods in place of them,or
 - (b) bearing the costs incurred under *paragraph (a)*.

Right to proportionate reduction in price or termination of service contract

- 86.** (1) This section applies where—

- (a) the trader does not have the necessary skill to supply the service under a service contract,
 - (b) as specified in section 85 (2), it is impossible to bring the service into conformity with the service contract,
 - (c) the trader has declared, or it is clear from the circumstances, that the trader will not bring a service into conformity with the service contract within a reasonable time, or without significant inconvenience to the consumer,
 - (d) the trader fails to remedy a lack of conformity with a service contract within a reasonable time, without significant inconvenience to the consumer, or free of charge,
 - (e) the same or a different lack of conformity appears despite the trader's attempt to bring the service into conformity with the service contract,
 - (f) the lack of conformity of a service with the service contract is of such a serious nature as to justify—
 - (i) an immediate proportionate reduction in the price, or
 - (ii) the termination of the service contract,or
 - (g) the service under a service contract is unsafe or any goods produced by, or resulting from, the service or any materials used in the service are unsafe.
- (2) Subject to *subsections (3) and (5)*, where any of the circumstances specified in *subsection (1)* apply, the consumer shall have the right—
- (a) to a proportionate reduction in the price in accordance with section 87, or
 - (b) to terminate the contract in accordance with section 88.
- (3) Where *subsection (1)(e)* applies, the question of whether the consumer has the right to a remedy referred to in *subsection (2)* or shall be required to accept a further attempt (or attempts) by the trader to bring the service into conformity with the service contract shall be objectively determined by having regard to all the circumstances, including in particular—
- (a) the type and value of the service,
 - (b) the nature and significance of the lack of conformity with the service contract, and

- (c) whether the consumer can reasonably be expected to maintain confidence in the ability of the trader to bring the service into conformity, in particular where the same lack of conformity appears more than once.
- (4) In objectively determining for the purpose of *subsection (1)(f)* whether the lack of conformity of the service with the service contract is of such a serious nature as to justify an immediate proportionate reduction in the price or the termination of the service contract, regard shall be had to the nature and severity of the lack of conformity, including in particular whether the lack is such that—
- (a) the consumer cannot reasonably be expected to maintain confidence in the ability of the trader to bring the service into conformity with the service contract, and
- (b) the ability of the consumer to make normal use of the service, or of any goods or digital content produced by or resulting from the service, is severely affected and the consumer cannot reasonably be expected to trust that this would be remedied by the trader.
- (5) The consumer shall have the right to terminate the service contract under *subsection (2)* only if the lack of conformity with the service contract is not minor.
- (6) In case of dispute, it shall be for the trader to show that the lack of conformity of the service with the service contract is minor.

Price reduction: service contract

- 87.** (1) This section applies where a consumer has the right under *section 86 (1)* to a proportionate reduction in the price.
- (2) The right of the consumer under this section is the right—
- (a) to require the trader to reduce the price the consumer is required to pay under the service contract in accordance with *subsection (3)*, or
- (b) to receive from the trader a reimbursement of the price paid by the consumer in the amount of the reduction applicable under *subsection (3)*.
- (3) The reduction of the price shall be proportionate to the decrease in the value of the service supplied to the consumer compared with the value that the service would have if it were in conformity with the service contract.

- (4) Where the service contract provides that the service shall be supplied for a period specified in the service contract, the reduction in the price shall be proportionate to the period during which the service was not in conformity with the service contract.
- (5) Where the consumer has the right to reimbursement under *subsection (2)(b)*, the trader shall reimburse the consumer in accordance with *section 90*.

Obligations of consumer in event of termination of service contract

- 88.** (1) This section applies where a consumer has the right under *section 84 (1) or (2) or 86 (2)(b)* to terminate a service contract.
- (2) The consumer shall exercise his or her right to terminate the service contract by means of a statement to the trader expressing the decision to terminate the service contract.
 - (3) A consumer who exercises the right to terminate the service contract—
 - (a) subject to *subsections (4) and (5)*, shall make any goods and other materials supplied under the service contract available for collection by the trader,
 - (b) shall not use any digital content or digital service supplied under the service contract, and
 - (c) shall not make any digital content or digital service supplied under the service contract available to any third person.
 - (4) The consumer shall not be required to make the goods available for collection by the trader or to return the goods or other materials to the trader if their collection or return—
 - (a) would cause disproportionate inconvenience to the consumer, or
 - (b) would damage the property of the consumer.
 - (5) *Subsection (3)(a)* shall not apply where—
 - (a) the consumer and the trader agree that the consumer should return the goods and any other materials to the trader and the trader should bear the cost to the consumer of doing so, and
 - (b) the consumer and the trader comply with the agreement.
 - (6) If a consumer fails to comply with an obligation imposed by *subsection (3)* or fails to return the goods and any other materials under an agreement such as is mentioned in *subsection (5)*, he or she shall be liable in damages for any loss or damage suffered by the trader as a result of the failure.

Obligations of trader where service contract terminated

- 89.** (1) Where the consumer exercises the right under *section 84 (1) or (2) or 86 (2)(b)* to terminate a service contract, the trader shall reimburse the consumer in accordance with *section 90* for all payments made under the service contract.
- (2) Where a service contract provides for the supply of the service for a period specified in the contract, the trader shall reimburse the consumer only for—
- (a) the proportionate part of the price paid corresponding to the period during which the service was not in conformity with the service contract, and
 - (b) any part of the price paid by the consumer in advance for any period of the service contract that would have remained had the service contract not been terminated.

Time limits and means of reimbursement by trader: service contract

- 90.** (1) Where reimbursement is owed to the consumer by the trader pursuant to a price reduction under *section 87* or the termination of the service contract under *section 89*, the trader shall make the reimbursement—
- (a) without undue delay and in any event before the expiry of the period of 14 days beginning on the date on which the trader was informed of the consumer's decision to exercise the right to a proportionate reduction in the price or to terminate the contract,
 - (b) using the same means of payment as the consumer used to pay for the service, unless the consumer expressly agrees otherwise and provided that the consumer does not incur any fees as a result of such reimbursement, and
 - (c) without the imposition of any fee on the consumer in respect of the reimbursement.
- (2) If a trader fails to comply with the obligation to reimburse the consumer in accordance with this section, the trader shall be liable in damages for any loss or damage suffered by the consumer as a result of the failure.

General right to withhold payment: service contract

- 91.** (1) Subject to *subsections (2) and (3)*, where a trader fails to comply with an obligation imposed on the trader by this Part in relation to a service contract, the consumer shall have the right to withhold payment of any outstanding part of the price payable under the contract until the trader fulfils the obligation.

- (2) Where the failure of the trader to comply with an obligation imposed on the trader by this Part relates to a lack of conformity of the service with the service contract, the part of the price withheld by the consumer under *subsection (1)* shall be proportionate to the decrease in the value of the service received by the consumer compared with the value of the service if it had been in conformity with the service contract.
- (3) Where the failure of the trader to comply with an obligation imposed on the trader by this Part relates to a failure to supply the service (other than a short-term interruption of the supply referred to in *section 78 (7)*), the part of the price withheld by the consumer under *subsection (1)* shall be proportionate to the price payable for the period during which the service was not supplied by the trader.
- (4) The consumer shall exercise the right to withhold payment under *subsection (1)* by means of a statement to the trader expressing the consumer's decision to withhold payment until the trader has fulfilled the trader's obligations under this Part.

Effect of termination of service contract on ancillary contract

- 92.** (1) Where a consumer terminates a service contract in accordance with *section 88*, any ancillary contract shall be automatically terminated without any cost to the consumer.
- (2) When a trader is informed by a consumer in accordance with *section 88 (2)* of the consumer's decision to terminate a service contract, the trader shall inform any other trader with whom the consumer has an ancillary contract of the termination of that contract by *subsection (1)*.
- (3) Where an ancillary contract is terminated by *subsection (1)*—
 - (a) the consumer shall comply with the obligation in *section 88 (3)*, and
 - (b) the trader with whom the consumer had that contract shall comply with the obligations in *section 89*.
- (4) Where any security has been provided under an ancillary contract that is terminated under *subsection (1)*, it is to be treated as never having had effect and any property lodged with the trader or a person other than the trader (a "third party") solely for the purposes of that security shall be returned immediately by the trader or third party.
- (5) In this section, "ancillary contract", in relation to a service contract concluded between a consumer and a trader (in this subsection referred to as the "principal contract"), means another contract (other than a hire-purchase agreement or a consumer-hire agreement) concluded between that consumer and that trader, or that consumer and a third party, under which—

- (a) the trader, or
 - (b) 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.

Remedies where contract also provides for sale of goods etc.

- 93.** (1) This section applies where a service is supplied to a consumer under a contract that provides also for the sale of goods or the supply of digital content or a digital service.
- (2) Where the conditions in *subsection (3)* are met, the consumer shall have the right—
- (a) to terminate the contract, or
 - (b) to obtain a proportionate reduction in the price payable under the contract.
- (3) The conditions referred to in *subsection (2)* are the following—
- (a) if it were a contract for the supply of a service only, the consumer would have the right to obtain a proportionate reduction in the price under *section 87* or to terminate the contract under *section 88*, and
 - (b) the value of the goods, digital content or digital service to the consumer would be materially reduced in the absence of the service.
- (4) In objectively determining for the purposes of *subsection (3)(b)* whether a reduction in the value of the goods, digital content or digital service to the consumer would, in the absence of the service, be reduced to an extent that would justify the termination of the contract or a proportionate reduction in the price payable under the contract, all the circumstances shall be taken into account, including in particular—
- (a) the nature and purpose of the contract,
 - (b) the relative value of the different elements of the contract, and
 - (c) the nature and degree of the inter-dependence of the different elements of the contract.
- (5) Where the consumer exercises the right to terminate the contract under *subsection (2)*—
- (a) the consumer shall comply with the obligations in *section 88 (3)*, and

(b) the trader with whom the consumer has that contract shall comply with the obligations in *section 89*.

(6) This section shall not apply where a bundle of electronic communications services or a bundle of such services and terminal equipment within the scope of Article 107 of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018¹ establishing the European Electronic Communications Code (Recast) includes elements of an internet access service or a number-based interpersonal communications service.

(7) This section does not apply to a consumer-hire agreement or a hire-purchase agreement.

Exclusion or limitation of liability of trader (*Part 4*)

94. (1) A term of a service contract or of any other contract between a consumer and a trader shall not exclude or restrict the trader's liability under any of the following provisions:

(a) *section 78* (supply of service);

(b) *section 79* (service to be in conformity with service contract);

(c) *section 80* (subjective requirements for conformity with service contract);

(d) *section 81* (objective requirements for conformity with service contract);

(e) *section 82* (implied terms of service contract);

(f) *section 83* (reasonable price to be paid for service).

(2) A term of a service contract or of any other contract between a consumer and a trader which purports to, or has the effect of, excluding or restricting the liability of the trader under any of the provisions specified in *subsection (1)* shall not be binding on the consumer.

(3) The references in *subsections (1)* and *(2)* to excluding or restricting the trader's liability include a reference to—

(a) excluding or limiting a right or remedy in respect of a liability under a provision specified in *subsection (1)*,

(b) making such a right or remedy, or its enforcement, subject to a restrictive or onerous condition,

(c) allowing a trader to put a consumer at a disadvantage as a result of pursuing such a right or remedy,

- (d) excluding or restricting rules of evidence or procedure, or
 - (e) preventing an obligation arising or limiting its extent.
- (4) An agreement in writing to submit present or future disputes to an ADR procedure within the meaning of the European Union (Alternative Dispute Resolution for Consumer Disputes) Regulations 2015 (S.I. No. 343 of 2015) is not to be regarded as excluding or restricting any liability for the purposes of this section.
- (5) A trader who contravenes *subsection (1)* commits an offence.

Continuing entitlement to pursue other remedies

- 95.** (1) The remedies provided for in this Chapter do not affect the right of a consumer to pursue other remedies (without recovering twice for the same loss) where a service is not in conformity with the service contract or the trader otherwise fails to comply with the requirements of this Part.
- (2) The other remedies referred to in *subsection (1)* include in particular any of the following remedies that may be available to the consumer:
- (a) claiming damages;
 - (b) relying on the failure of the trader to comply with the requirements of this Part against a claim under the service contract by the trader for payment of the price;
 - (c) seeking to recover money paid to the trader for a service that does not comply with the requirements of this Part;
 - (d) having a lack of conformity of the service with the service contract remedied elsewhere and recovering from the trader all reasonable costs incurred in having the lack of conformity so remedied.
- (3) An exclusion or limitation of a remedy provided for in this section shall be subject to assessment for unfairness under *Part 6*.

PART 5

Consumer information, cancellation and other rights

Chapter 1

Interpretation and application

Interpretation (*Part 5*)

96. (1) In this Part—

“business premises”, in relation to a trader, means—

- (a) any immovable retail premises where the trader carries out activities in the course of the trader’s trade, business, craft or profession on a permanent basis, or
- (b) any movable retail premises where the trader usually carries out activities in the course of the trader’s trade, business, craft or profession;

“Consumer Rights Directive” means Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011¹¹ 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, as amended by Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015¹² and Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019¹³ ;

“goods” includes digital content that is supplied on a tangible medium;

“linked travel arrangement”, “organiser”, “package”, “package travel contract” and “traveller” have the same meanings as they have in the Package Holidays and Travel Trade Act 1995 ;

“on-premises contract” means any contract between a trader and a consumer other than a distance contract or an off-premises contract;

“public auction” means a method of sale under which—

- (a) goods or services are offered by a trader through a transparent, competitive bidding procedure run by an auctioneer to consumers who attend, or are given the possibility to attend, the auction, in person, and
- (b) the successful bidder is bound to purchase the goods or services;

“sales contract” has the meaning assigned to it by section 11 (1) and includes a contract that has as its object both the sale of goods and the supply of a service;

“service contract” has the meaning assigned to it by section 2 except that it does not include—

- (a) a contract for the supply of gas, water or electricity that is not supplied in a limited volume or set quantity, or

(b) a contract for the supply of district heating.

(2) A word or expression used in this Part that is also used in the Consumer Rights Directive has, unless the context otherwise requires, the same meaning in this Part as it has in that Directive.

(3) A court shall construe this Part in a manner that gives effect to the Consumer Rights Directive, and for this purpose, the court shall have regard to the provisions of that Directive, including its preamble.

Application (Part 5)

97. (1) Subject to *subsections (3) to (8)* and *sections 98, 104, 111* and *119 to 121*, this Part applies to any contract specified in *subsection (2)* that is concluded between a trader and a consumer on or after the day on which this section comes into operation.

(2) The contracts referred to in *subsection (1)* are:

(a) a sales contract;

(b) a service contract;

(c) a contract for the supply of digital content that is not supplied on a tangible medium;

(d) a digital service contract;

(e) a contract for the supply of water, gas or electricity that is not supplied in a limited volume or set quantity;

(f) a contract for the supply of district heating.

(3) This Part does not apply to any of the following contracts concluded between a trader and a consumer:

(a) subject to *section 121 (6)*, a contract for financial services (other than a payment for such services in any contract to which this Part applies);

(b) a contract for rental of accommodation for residential purposes.

(4) This Part (other than *Chapter 6*) does not apply to any of the following contracts concluded between a trader and a consumer:

(a) a contract for gambling;

- (b) a contract for the creation, acquisition or transfer of immovable property or of rights in immovable property;
 - (c) a contract for the construction of new buildings or the substantial conversion of existing buildings;
 - (d) a contract within the scope of Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009¹⁴ on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts;
 - (e) a contract established, in accordance with the law of a Member State, by a public office-holder who has a statutory duty to be independent and impartial and who must ensure, by providing comprehensive legal information, that the consumer only concludes the contract on the basis of careful legal consideration and with knowledge of its legal scope;
 - (f) a contract for the supply of foodstuffs, beverages or other goods, intended for current consumption in the household, and which are physically supplied by the trader on frequent and regular rounds to the consumer's home, residence or workplace;
 - (g) a contract concluded by means of automatic vending machines or automated commercial premises;
 - (h) a contract concluded with a telecommunications operator through a public pay telephone for the use of the telephone;
 - (i) a contract concluded for the use of one single connection by telephone, internet or fax established by a consumer;
 - (j) a contract for any goods sold by way of execution or otherwise by authority of law.
- (5) Subject to *subsections (6) and (7)*, this Part does not apply to—
- (a) a package travel contract or a linked travel arrangement, or
 - (b) a contract for passenger transport services.
- (6) *Sections 108 and 122 to 124* shall apply in relation to a package travel contract or a linked travel arrangement concluded on or after the day on which this section comes into operation subject to the following modifications and any other necessary modifications:

- (a) a reference to a trader shall be construed as a reference to an organiser or a trader (within the meaning of the Package Holidays and Travel Trade Act 1995) facilitating linked travel arrangements;
- (b) a reference to a consumer shall be construed as a reference to a traveller;
- (c) a reference to a contract shall be construed as a reference to a package travel contract or a linked travel arrangement.
- (7) Sections 108 and 122 to 124 shall apply in relation to a contract for passenger transport services concluded on or after the day on which this section comes into operation.
- (8) *Chapters 2* and *6* of this Part shall apply to a contract for the supply of healthcare concluded between a trader and a consumer on or after the day on which this section comes into operation but otherwise this Part does not apply to such a contract.
- (9) *Chapter 5* shall also apply to a contract, concluded on or after the day on which this section comes into operation, for—
- (a) a service in addition to the urgent repairs or maintenance requested by the consumer, and
- (b) goods other than replacement parts necessarily used in carrying out the maintenance or making the repairs,
- provided by the trader on the occasion of a visit made for the purpose of carrying out urgent repairs or maintenance.
- (10) For the purposes of *subsection (4)(e)*, “Member State” means a Member State of the European Union or, not being such a Member State, a state that is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as adjusted by the Protocol signed at Brussels on 17 March 1993).
- (11) In this section—
- “gambling” means wagering a stake with pecuniary value in games of chance, including lotteries, casino games and betting transactions;
- “healthcare” means health services provided by health professionals to patients in order to assess, maintain or restore their state of health, whether or not these services are provided via healthcare facilities, and includes the prescription, dispensing and provision of medicinal products and medical devices;

“health professional”, “medical device”, “medicinal product”, “patient” and “prescription” have the meanings assigned to them by Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011¹⁶ on the application of patients’ rights in cross-border healthcare;

“passenger transport services” means services for the conveyance of passengers by air, rail, road, sea or waterway, but excludes car rental services.

Off-premises contracts to which *Part 5* does not apply

98. (1) This Part does not apply to an off-premises contract under which the payment to be made by the consumer does not exceed €50.

(2) Where two or more off-premises contracts with related subjects are concluded between a trader and a consumer at the same time, the total of the payments to be made by the consumer under those contracts shall be taken into account in applying the monetary threshold specified in *subsection (1)*.

Rights of consumer cannot be waived

99. (1) Any purported waiver by a consumer of a right conferred by this Part is of no effect.

(2) Any term of a contract which directly or indirectly waives or restricts the rights conferred by this Part is not binding on the consumer.

Burden of proof

100. In relation to compliance with *Chapters 2* and *3* of this Part, it is for the trader to show that the trader has complied with any requirement imposed on the trader under this Part in relation to the provision of information to the consumer.

Chapter 2

Consumer information for on-premises contract

Information requirements for on-premises contract

101. (1) Before a consumer is bound by an on-premises contract or any corresponding offer, the trader shall provide the consumer with the information specified in *Schedule 2* in a clear and comprehensible manner, if that information is not already apparent from the context.

(2) *Subsection (1)* does not apply to a contract that involves a day-to-day transaction and is performed immediately on conclusion of the contract.

(3) A trader who contravenes *subsection (1)* commits an offence.

Power of Minister to specify further information requirements

- 102.** (1) Subject to *subsection (2)*, the Minister may, after consultation with such persons as he or she considers appropriate, by regulations prescribe further information that is to be provided by the trader to the consumer before a consumer is bound by—
- (a) an on-premises contract or any corresponding offer, or
 - (b) a particular on-premises contract or corresponding offer of such description or class as may be prescribed in relation to the further information concerned.
- (2) In making regulations under *subsection (1)*, the Minister shall have regard to the objective of ensuring that the information provided to consumers before they enter into on-premises contracts or corresponding offers is adequate to enable them to make informed decisions.
- (3) In complying with *subsection (2)*, the Minister shall take account in particular of the following matters:
- (a) the adequacy of the information provided to consumers under *section 101 (1)*;
 - (b) the nature of the further information to be provided to consumers and the manner of its provision;
 - (c) the cost to traders of providing the further information;
 - (d) any recommendation made by the Competition and Consumer Protection Commission to the Minister under *section 10 (3) of the Competition and Consumer Protection Act 2014* .

Chapter 3

Consumer information for off-premises contract

Information requirements for off-premises contract

- 103.** (1) Before the consumer is bound by an off-premises contract or any corresponding offer, the trader shall provide to the consumer—
- (a) in a clear and comprehensible manner, the information specified in *Schedule 3* , and
 - (b) where a right to cancel the contract exists, the model cancellation form set out in *Part 2 of Schedule 4* .

- (2) The trader may provide the information specified in *clauses (m) to (o) of Schedule 3* by means of the model instructions on the right to cancel set out in *Part 1 of Schedule 4*, and a trader who correctly supplies those instructions shall be deemed to have complied with the duties imposed by *subsection (1)* in respect of those clauses.
- (3) In the case of a public auction, the information specified in *clauses (b), (d) and (e)(i) of Schedule 3* may be provided in relation to the auctioneer rather than the trader on whose behalf the auctioneer has acted and, if so, the information specified in *clauses (c) and (e)(ii) of Schedule 3* shall be provided in relation to that trader.
- (4) The information referred to in *subsection (1)(a)*—
 - (a) shall be given on paper or, if the consumer agrees, on another durable medium,
 - (b) shall be legible, and
 - (c) shall be in plain and intelligible language.
- (5) The cancellation form referred to in *subsection (1)(b)* shall be given on paper, or if the consumer agrees, on another durable medium, and shall be legible.
- (6) All means of communication provided by the trader under *clause (d) of Schedule 3* shall enable the consumer to contact the trader quickly and communicate with the trader efficiently.
- (7) The information referred to in *subsection (1)(a)* forms part of the contract and shall not be altered without the express agreement of the trader and the consumer.
- (8) If the trader has not complied with *subsection (1)* in respect of *clauses (g) and (n) of Schedule 3*, the consumer is not liable for the charges or costs specified in those clauses.
- (9) A trader who contravenes *subsection (1)* commits an offence.
- (10) This section does not apply to an off-premises contract to which *section 104* applies.

Information requirements for off-premises contract for repairs or maintenance

- 104.** (1) This section applies to an off-premises contract where—
- (a) the consumer explicitly requests the services of the trader for the purpose of carrying out repairs or maintenance,
 - (b) the trader and the consumer immediately perform their obligations under the contract, and

- (c) the payment to be made by the consumer under the contract does not exceed €200.
- (2) Before the consumer is bound by an off-premises contract, the trader shall provide the consumer with the following information:
- (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) if the trader is acting on behalf of another trader, the identity and geographical address of that other trader;
 - (d) subject to *subsection (7)*, the geographical address at which the trader is established, the trader's telephone number and email address, and, where applicable, the details of any other means of online communications provided by the trader which guarantee that the consumer can keep any written correspondence with the trader, including its date and time, on a durable medium;
 - (e) the total price of the service inclusive of taxes or, where the nature of the service is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated;
 - (f) where a right to cancel the contract exists, the conditions, time limit and procedures for exercising that right in accordance with *section 115*;
 - (g) where a right to cancel the contract under *section 112* does not apply, a statement that the consumer will not benefit from the right to cancel the contract or, where applicable, the circumstances in which the consumer loses that right.
- (3) The trader shall provide the consumer with—
- (a) the information referred to in *section 103 (1)(a)* in the copy or confirmation of the contract to be provided by the trader in accordance with *section 105*, and
 - (b) where the right to cancel the contract exists, the model cancellation form set out in *Part 2 of Schedule 4*.
- (4) Where a trader is required to provide the information specified in *subsection (2)(f)* and *clauses (m) to (o) of Schedule 3*—

- (a) the trader may provide that information by means of the model instructions on the right to cancel set out in *Part 1* of *Schedule 4*, and
 - (b) a trader who correctly supplies those instructions shall be deemed to have complied with the duties imposed by *subsection (2)(f)* and by *subsection (3)(a)* in respect of *clauses (m) to (o)* of *Schedule 3*.
- (5) The information specified in *subsection (2)(b) to (e)*—
- (a) shall be given on paper or, if the consumer agrees, on another durable medium,
 - (b) shall be legible, and
 - (c) shall be in plain and intelligible language.
- (6) If the consumer expressly agrees, the information referred to in *subsection (2)(a), (f) and (g)* need not be provided by the trader on paper or another durable medium.
- (7) All means of communication provided by the trader under *subsection (2)(d)* shall enable the consumer to contact the trader quickly and communicate with the trader efficiently.
- (8) The information referred to in *subsections (2) and (3)(a)* forms part of the contract and shall not be altered without the express agreement of the trader and the consumer.
- (9) A trader who contravenes *subsection (2) or (3)* commits an offence.

Provision of copy or confirmation of off-premises contract

- 105.** (1) A trader who concludes an off-premises contract with a consumer shall provide the consumer with a copy of the signed contract or confirmation of the contract at the time of, or before, the conclusion of the contract.
- (2) The copy or confirmation of the contract shall be provided on paper or, if the consumer agrees, on another durable medium.
- (3) Where—
- (a) an off-premises contract is a contract for the supply of digital content that is not supplied on a tangible medium, and
 - (b) performance of the contract has begun with the consumer's prior express consent,

the copy or confirmation of the contract provided by the trader shall include confirmation of the consumer's acknowledgement, in accordance with section 111 (e)(ii) of the loss of the right to cancel the contract.

(4) A trader who contravenes any of the provisions of this section commits an offence.

Chapter 4

Consumer information for distance contract

Information requirements for distance contract

106. (1) Before the consumer is bound by a distance contract or any corresponding offer, the trader shall give or make available to the consumer—

(a) in plain and intelligible language and in a way appropriate to the means of distance communication used, the information specified in *Schedule 3*, and

(b) where a right to cancel the contract exists, the model cancellation form set out in Part 2 of Schedule 4.

(2) The trader may provide the information specified in *clauses (m) to (o)* of Schedule 3 by means of the instructions on cancellation set out in Part 1 of Schedule 4, and a trader who correctly supplies those instructions shall be deemed to have complied with the duties imposed by *subsection (1)* in respect of those clauses.

(3) In the case of a public auction, the information specified in *clauses (b), (d) and (e)(i)* of *Schedule 3* may be provided in relation to the auctioneer rather than the trader on whose behalf the auctioneer has acted and, if so, the information specified in *clauses (c) and (e)(ii)* of *Schedule 3* shall be provided in relation to that trader.

(4) Where the information referred to in *subsection (1)(a)* or the cancellation form referred to in *subsection (1)(b)* is provided on a durable medium, it shall be legible.

(5) All means of communication provided by the trader under *clause (d)* of Schedule 3 shall enable the consumer to contact the trader quickly and communicate with the trader efficiently.

(6) Where a distance contract is concluded through a means of distance communication that allows limited space or time to display the information, the trader shall provide—

(a) the information specified in *clauses (a), (b), (f) to (h), (m) and (t)* of Schedule 3 on or through that means of communication in accordance with *subsections (1) and (2)*, and

- (b) the other information specified in *Schedule 3* and the model cancellation form set out in *Part 2* of *Schedule 4* in an appropriate way in accordance with *subsections (1) to (4)*.
- (7) Without prejudice to *subsection (6)*, a trader who makes a telephone call to the consumer with a view to concluding a distance contract shall, at the beginning of that call, disclose—
- (a) the trader's identity,
 - (b) where the call is made on behalf of another trader, the identity of that other trader, and
 - (c) the commercial purpose of the call.
- (8) Where a distance contract is concluded through a trading website, the trader shall ensure that—
- (a) the website indicates clearly and legibly—
 - (i) whether any delivery restrictions apply, and
 - (ii) which means of payment are accepted,and
 - (b) the information referred to in *paragraph (a)* is indicated at or before the beginning of the ordering process.
- (9) The information referred to in *subsection (1)(a)* forms part of the distance contract and shall not be altered without the express agreement of the trader and the consumer.
- (10) If the trader has not complied with *subsection (1)* in respect of *clauses (g) and (n)* of *Schedule 3*, the consumer is not liable for the charges or costs specified in those clauses.
- (11) A trader who contravenes *subsection (1), (6), (7) or (8)* commits an offence.

Additional information requirements for distance contract concluded on online marketplace

- 107.** (1) Before the consumer is bound by a distance contract or any corresponding offer on an online marketplace, the provider of the online marketplace shall, without prejudice to the provisions of Parts 3 and 4 of the Act of 2007, provide the following information to the consumer in plain and intelligible language and in a way appropriate to the means of distance communication used:

- (a) general information on the main parameters determining the ranking of offers presented to a consumer as a result of a search query and the relative importance of those parameters as opposed to other parameters;
 - (b) whether the third party offering the goods, service, digital content or digital service is a trader or not, on the basis of the declaration of that third party to the provider of the online marketplace;
 - (c) where the third party offering the goods, service, digital content or digital service is not a trader, that the consumer rights arising from European Union consumer protection law do not apply to the contract;
 - (d) information on how any obligations relating to the contract are shared between the third party offering the goods, service, digital content or digital service and the provider of the online marketplace.
- (2) (a) The information to be provided by the provider of the online marketplace under *subsection (1)(a)* shall be made available in a specific section of the online interface that is directly and easily accessible from the page where the offers are presented.
- (b) The information to be provided by the provider of the online marketplace under *subsection (1)(d)* shall be without prejudice to any responsibility that the provider of the online marketplace or the third party trader has in relation to the contract under European Union and national law other than consumer protection law.
- (3) In *subsection (1)(a)*, “ranking” means the relative prominence given to goods, services, digital content or digital services as presented, organised or communicated by the provider of the online marketplace, irrespective of the technological means used for such presentation, organisation or communication.
- (4) A provider of an online marketplace who contravenes *subsection (1)* commits an offence.
- (5) In this section—

“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 a consumer to conclude distance contracts with other traders or consumers;

“provider of an online marketplace” means any trader who provides an online marketplace to consumers.

Additional information requirements for distance contract concluded by electronic means

- 108.** (1) This section applies to a distance contract concluded by electronic means, including the following types of contract:
- (a) a package travel contract;
 - (b) a contract for passenger transport services.
- (2) This section shall apply to packages and linked travel arrangements subject to the following modifications and any other necessary modifications:
- (a) a reference to a trader shall be construed as a reference to an organiser or a trader facilitating linked travel arrangements;
 - (b) a reference to a consumer shall be construed as a reference to a traveller;
 - (c) a reference to a package travel contract shall be construed as a reference to a package travel contract or a linked travel arrangement.
- (3) If a contract places a consumer under an obligation to pay, the trader shall make the consumer aware in a clear and prominent manner, and directly before the consumer places his or her order, of the information specified in *clauses (a), (f) to (h), (t) and (u) of Schedule 3*.
- (4) The trader shall ensure that the consumer, when placing an order, explicitly acknowledges that the order implies an obligation to pay.
- (5) If placing an order in accordance with *subsection (4)* entails activating a button or a similar function, the trader shall ensure that the button or similar function is labelled in an easily legible manner, with only the words "order with obligation to pay", or with a corresponding unambiguous formulation indicating that the order entails an obligation to pay the trader.
- (6) If the trader has not complied with *subsection (4)* and, where applicable, *subsection (5)*, the consumer is not bound by the contract or order.
- (7) A trader who contravenes *subsection (3), (4) or (5)* commits an offence.

Provision of confirmation of distance contract

- 109.** (1) A trader who concludes a distance contract with a consumer shall provide the consumer with confirmation of the concluded contract on a durable medium.
- (2) The confirmation shall include all of the information specified in *Schedule 3* unless the trader has already provided that information to the consumer on a durable medium before the conclusion of the contract.

(3) Where—

(a) a distance contract is a contract for the supply of digital content that is not supplied on a tangible medium, and

(b) the performance of the contract has begun with the consumer's prior express consent,

the confirmation shall include confirmation of the consumer's acknowledgement, in accordance with section 111 (e)(ii) of the loss of the right to cancel the contract.

(4) The confirmation required by *subsection (1)* shall be provided within a reasonable time after the conclusion of the contract and at the latest—

(a) by the time of the delivery of the goods, or

(b) before performance begins of—

(i) a supply of a service,

(ii) a supply of digital content that is not supplied on a tangible medium,

(iii) a supply of a digital service,

(iv) a supply of water, gas or electricity that is not supplied in a limited volume or set quantity,
or

(v) a supply of district heating.

(5) A trader who contravenes any of the provisions of this section commits an offence.

Chapter 5

Right to cancel distance contract or off-premises contract

Interpretation (Chapter 5)

110. In this Chapter, "cancellation period", in relation to a distance contract or an off-premises contract, shall be construed in accordance with section 113.

Application (Chapter 5)

111. This Chapter does not apply to a distance contract or an off-premises contract concluded between a trader and a consumer that is—

- (a) a service contract, where the service has been fully supplied and the supply of the service began with the consumer's prior express consent and acknowledgement that he or she will lose the right to cancel once the service has been fully supplied by the trader,
- (b) a contract under which the trader supplies or undertakes to supply a digital service to the consumer and under which the consumer does not pay or undertake to pay the price of the digital service, where the digital service has been fully supplied,
- (c) a contract under which the trader supplies or undertakes to supply a digital service to the consumer and under which the consumer pays or undertakes to pay the price of the digital service, where—
 - (i) the digital service has been fully supplied, and
 - (ii) the supply of the digital service began with the consumer's prior express consent and acknowledgement that he or she will lose the right to cancel once the digital service has been fully supplied by the trader,
- (d) a contract under which the trader supplies or undertakes to supply digital content that is not supplied on a tangible medium to the consumer and under which the consumer does not pay or undertake to pay the price of the digital content, where supply of the digital content has begun,
- (e) a contract under which the trader supplies or undertakes to supply digital content that is not supplied on a tangible medium to the consumer and under which the consumer pays or undertakes to pay the price of the digital content, where—
 - (i) supply of the digital content has begun,
 - (ii) the consumer provided prior express consent to the supply beginning during the cancellation period and an acknowledgement that he or she will thereby lose the right to cancel, and
 - (iii) the trader provided confirmation of the contract in accordance with section 105 or, as the case may be, section 109,
- (f) a contract under which the trader supplies or undertakes to supply goods, a service or a digital service, whose price is dependent on fluctuations in the financial market that may occur during the cancellation period and that cannot be controlled by the trader,
- (g) a contract for the supply of non-prefabricated goods made on the basis of an individual choice of, or decision by, the consumer,

- (h) a contract for the supply of goods that are clearly personalised,
- (i) a contract for the supply of goods that are liable to deteriorate or expire rapidly,
- (j) a contract for the supply of sealed goods that—
 - (i) are not suitable for return for health protection and hygiene reasons, and
 - (ii) were unsealed after delivery,
- (k) a contract for the supply of goods that are, according to their nature, inseparably mixed with other items after their delivery,
- (l) a contract for the supply of an alcoholic beverage where—
 - (i) the price has been agreed at the time of the conclusion of the contract,
 - (ii) the delivery of the beverage is to take place more than 30 days after the conclusion of the contract, and
 - (iii) the value of the beverage is dependent on fluctuations in the market that cannot be controlled by the trader,
- (m) subject to *subsection*, a contract under which the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance,
- (n) a contract for the supply of sealed audio or sealed video recordings or sealed computer software that were unsealed after delivery,
- (o) a contract for the supply of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such publications,
- (p) a contract concluded at a public auction, or
- (q) a contract for—
 - (i) the provision of accommodation other than for residential purposes,
 - (ii) the transport of goods,
 - (iii) car rental services,
 - (iv) catering, or

(v) services related to leisure activities,

where the contract provides for a specific date or period of performance.

Right to cancel

112. (1) A consumer may cancel a distance contract or an off-premises contract before the expiry of the cancellation period in accordance with section 115 without giving any reason for the cancellation.

(2) A consumer who cancels a distance contract or an off-premises contract in accordance with subsection (1) shall not incur any costs or liability other than those for which he or she is liable under the following provisions:

(a) section 117 (2) (non-standard delivery);

(b) section 118 (5) (direct cost of returning goods);

(c) section 118 (6)(b) (diminished value of goods);

(d) section 119 (3) (services, digital services, gas, water, electricity, or district heating supplied during cancellation period).

Duration of cancellation period

113. (1) Subject to section 114, the cancellation period for a distance contract or an off-premises contract expires in accordance with subsections (2) to (8).

(2) Subject to subsection (3), the cancellation period for—

(a) a service contract,

(b) a digital service contract,

(c) a contract for the supply of digital content that is not supplied on a tangible medium,

(d) a contract for the supply of water, gas or electricity that is not supplied in a limited volume or set quantity, or

(e) a contract for the supply of district heating,

expires on the expiry of the period of 14 days beginning on the day on which the contract is concluded.

(3) Where a contract referred to in *subsection (2)* was concluded in the context of an unsolicited visit by a trader to a consumer's home or an excursion organised by a trader with the aim or effect of promoting or selling to a consumer—

(a) a service,

(b) digital content that is not supplied on a tangible medium,

(c) a digital service, or

(d) water, gas or electricity that is not supplied in a limited volume or set quantity,

the cancellation period expires on the expiry of the period of 30 days beginning on the day on which the contract is concluded.

(4) Subject to *subsections (5) to (8)*, the cancellation period for a sales contract expires on the expiry of the period of 14 days beginning on the day on which the consumer acquires physical possession of the goods.

(5) The cancellation period for a sales contract for multiple goods that are ordered by the consumer in one order and delivered separately expires on the expiry of the period of 14 days beginning on the day on which the consumer acquires physical possession of the last of the goods.

(6) The cancellation period for a sales contract for goods consisting of multiple lots or pieces expires on the expiry of the period of 14 days beginning on the day on which the consumer acquires physical possession of the last lot or piece.

(7) The cancellation period for a sales contract for regular delivery of goods during a defined period of time expires on the expiry of the period of 14 days beginning on the day on which the consumer acquires physical possession of the first of the goods.

(8) The cancellation period for a sales contract concluded in the context of an unsolicited visit by a trader to a consumer's home or an excursion organised by a trader with the aim or effect of promoting or selling goods to a consumer expires on the expiry of the period of 30 days beginning on the day on which—

(a) where the contract falls within *subsection (5)*, the consumer acquires physical possession of the last of the goods,

(b) where the contract falls within *subsection (6)*, the consumer acquires physical possession of the last lot or piece of the goods,

(c) where the contract falls within *subsection (7)*, the consumer acquires physical possession of the first of the goods.

(9) In *subsections (4) to (8)*, "consumer" includes a person, other than the carrier, nominated by the consumer for the purpose of acquiring physical possession of the goods.

Omission of information on right to cancel

114. (1) If a trader does not provide a consumer with the information on the right to cancel the contract required by *clause (m) of Schedule 3*, the cancellation period expires on the expiry of the period of 12 months beginning on the day on which it would otherwise have expired in accordance with *section 113*.

(2) Subject to *subsection (3)*, if the trader provides the consumer with the information on the right to cancel required by *clause (m) of Schedule 3* within 12 months of the day on which the cancellation period would, but for this subsection have expired in accordance with *section 113*, that cancellation period shall instead expire on the expiry of the period of 14 days beginning on the day on which the consumer receives that information.

(3) In the case of an off-premises contract concluded in the context of an unsolicited visit by a trader to a consumer's home or an excursion organised by a trader with the aim or effect of promoting or selling to a consumer—

(a) goods,

(b) a service,

(c) digital content that is not supplied on a tangible medium,

(d) a digital service, or

(e) water, gas or electricity that is not supplied in a limited volume or set quantity,

where the trader provides the consumer with the information on the right to cancel required by *clause (m) of Schedule 3* within 12 months of the day on which the cancellation period would, but for this subsection, have expired in accordance with *section 113*, that cancellation period shall instead expire on the expiry of the period of 30 days beginning on the day on which the consumer receives that information.

(4) The information on the right to cancel referred to in *subsections (1) to (3)* shall be provided in accordance with:

- (a) section 103, in the case of off-premises contracts;
- (b) section 104, in the case of off-premises contracts for repairs or maintenance to which that section applies;
- (c) section 106, in the case of distance contracts.

Exercise of right to cancel

- 115.** (1) Where the consumer wishes to exercise the right to cancel a distance contract or an off-premises contract under section 112, the consumer shall, before the expiry of the cancellation period, inform the trader of his or her decision to cancel the contract.
- (2) For the purposes of informing the trader under *subsection (1)*, the consumer may—
- (a) use the model cancellation form set out in *Part 2 of Schedule 4*, or
 - (b) make any other unequivocal statement setting out his or her decision to cancel the contract.
- (3) Where the trader gives the consumer the option to do so, the consumer may fill in and submit the cancellation form or the statement referred to in *subsection (2)* on the trader's website.
- (4) Where the consumer exercises the option in *subsection (3)*, the trader shall communicate to the consumer without delay an acknowledgement on a durable medium of receipt of the consumer's cancellation of the contract.
- (5) The consumer exercises the right to cancel within the cancellation period if he or she sends the communication concerning the exercise of the right to the trader before that period has expired.
- (6) In case of dispute, it is for the consumer to show that the right to cancel was exercised in accordance with this section.

Effect of cancellation or withdrawal

- 116.** (1) Subject to sections 117 to 121, the exercise by the consumer of the right to cancel a distance contract or an off-premises contract under section 112 terminates the obligations of the consumer and the trader to perform the contract.
- (2) The withdrawal by the consumer of an offer to enter into a distance contract or an off-premises contract terminates any obligation on the consumer or the trader to conclude the contract.

Obligations of trader in event of cancellation

- 117.** (1) Subject to *subsection (2)*, the trader shall reimburse all payments, including any payment for delivery, received from a consumer who exercises the right to cancel a contract.
- (2) If the consumer has expressly opted for a type of delivery costing more than the least expensive type of standard delivery offered by the trader, the trader is required to reimburse the consumer in respect of the payment for delivery only by an amount equivalent to the cost of the least expensive type of standard delivery offered by the trader.
- (3) Subject to *subsection (4)*, the trader shall reimburse the consumer's payment without undue delay and in any event not later than 14 days after the day on which the trader is informed in accordance with *section 115* of the consumer's decision to cancel the contract.
- (4) Where the cancellation relates to a sales contract, the trader may, unless the trader has offered to collect the goods, withhold the reimbursement until—
- (a) the trader has received the goods back, or
 - (b) the consumer supplies evidence to the trader that he or she has sent the goods back,
- whichever first occurs.
- (5) Unless the consumer has expressly agreed otherwise, the trader shall reimburse the consumer using the same means of payment as the consumer used for the initial transaction.
- (6) Where the consumer agrees that the reimbursement may be made by a different means of payment to that used for the initial transaction, the trader shall ensure that the consumer does not incur any fees as a result of the use of that different means of payment.
- (7) The trader shall not use any content, other than personal data, which was provided or created by the consumer when using the digital content or digital service supplied by the trader, except where such content—
- (a) has no utility outside the context of the digital content or digital service supplied by the trader,
 - (b) only relates to the consumer's activity when using the digital content or digital service supplied by the trader,
 - (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 other consumers are able to continue to make use of the content.

- (8) The trader shall, at the request of the consumer, make available to the consumer any content (other than personal data or content to which *subsection (7)(a), (b) or (c)* applies) which was provided or created by the consumer when using the digital content or digital service supplied by the trader.
- (9) The consumer shall be entitled to retrieve the digital content referred to in *subsection (8)* free of charge, without hindrance from the trader, within a reasonable time and in a commonly used and machine-readable format.
- (10) Where the consumer cancels the contract, the trader may prevent any further use of the digital content or digital service by the consumer, in particular by making the digital content or digital service inaccessible to the consumer or disabling the user account of the consumer, without prejudice to *subsection (8)*.
- (11) A trader who contravenes any of *subsections (1) to (8)* commits an offence.
- (12) If the trader fails to comply with an obligation to reimburse the consumer in accordance with this section, the trader shall be liable in damages for any loss or damage suffered by the consumer as a result of that failure.

Return of goods and obligations of consumer in event of cancellation

- 118.** (1) Where a consumer cancels a sales contract under *section 112*, the trader shall collect the goods if—
- (a) the trader has offered to collect them, or
 - (b) in the case of an off-premises contract, the goods were delivered to the consumer's home at the time of the conclusion of the contract and the nature of the goods is such that they cannot normally be returned by post.
- (2) Where the trader is required to collect the goods under *subsection (1)*, the trader shall do so at the trader's own expense.
- (3) Where the trader is not required to collect the goods under *subsection (1)*, the consumer shall—
- (a) send them back, or
 - (b) hand them over to the trader or to a person authorised by the trader to receive them.

- (4) The consumer shall return or hand over the goods without undue delay and in any event not later than 14 days after the day on which he or she informed the trader in accordance with section 115 of his or her decision to cancel the contract.
- (5) The consumer shall bear the direct costs of returning the goods under *subsection (3)* unless—
- (a) the trader has agreed to bear those costs, or
 - (b) the trader has failed to inform the consumer, in accordance with *clause (n)* of *Schedule 3*, that the consumer shall bear those costs.
- (6) A consumer who is required to return goods to a trader following the exercise of the right to cancel—
- (a) shall take reasonable care of the goods prior to returning them, and
 - (b) 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.
- (7) There is no liability on the consumer under *subsection (6)* if the trader has failed to provide the consumer with the information on the right to cancel required by *clause (m)* of *Schedule 3* in accordance with—
- (a) section 103, in the case of off-premises contracts,
 - (b) section 104, in the case of off-premises contacts for repairs or maintenance to which that section applies, or
 - (c) section 106, in the case of distance contracts.
- (8) If the consumer fails to comply with the obligation to return the goods in accordance with this section, he or she shall be liable in damages for any loss or damage suffered by the trader as a result of that failure.
- (9) Where a consumer cancels a contract for the supply of—
- (a) digital content that is not supplied on a tangible medium, or
 - (b) a digital service,
- he or she shall not use the digital content or digital service or make it available to any third person.

Performance of certain contracts during cancellation period

- 119.** (1) This section applies to any of the following contracts concluded between a trader and a consumer that place the consumer under an obligation to pay:
- (a) a service contract;
 - (b) a digital service contract;
 - (c) a contract for the supply of water, gas or electricity that is not supplied in a limited volume or set quantity;
 - (d) a contract for the supply of district heating.
- (2) Where the consumer wishes the performance of the contract to begin during the cancellation period, the trader shall—
- (a) require the consumer to make an express request to this effect on a durable medium, and
 - (b) request the consumer to acknowledge that, once the contract has been fully performed by the trader, the consumer will no longer have the right to cancel the contract under section 112.
- (3) Subject to *subsection (5)*, where the consumer cancels a contract during the cancellation period before the service, digital service, water, gas, electricity or district heating has been fully supplied, the consumer shall pay to the trader an amount for the supply of such service, digital service, water, gas, electricity or district heating—
- (a) for the period for which it is supplied, ending on the date the consumer informed the trader of the consumer's decision to cancel the contract, and
 - (b) that is in proportion to what has been supplied.
- (4) The amount referred to in *subsection (3)* is to be calculated—
- (a) on the basis of the total price agreed in the contract, or
 - (b) if that total price is excessive, on the basis of the market value of the service that has been supplied.
- (5) The consumer bears no cost for the supply of the service, digital service, water, gas, electricity or district heating during the cancellation period if—

- (a) the trader has failed to provide the consumer with the information on—
 - (i) the right to cancel required by *clause (m)* of *Schedule 3*, or
 - (ii) the consumer's liability to pay the trader reasonable costs for the performance of the contract during the cancellation period required by *clause (o)* of *Schedule 3*,or
 - (b) the consumer has not expressly requested performance to begin during the cancellation period in accordance with *subsection (2)*.
- (6) The information on the right to cancel and on the consumer's liability to pay the trader reasonable costs referred to in *subsection (5)(a)* shall be provided in accordance with—
- (a) *section 103*, in the case of off-premises contracts,
 - (b) *section 104*, in the case of off-premises contracts for repairs or maintenance to which that section applies, or
 - (c) *section 106*, in the case of distance contracts.

Supply of digital content during cancellation period

- 120.** (1) This section applies where a consumer cancels a contract for the supply of digital content that is not supplied on a tangible medium under *section 112*.
- (2) The consumer is not liable for the cost of that supply, whether in full or in part, during the cancellation period if—
- (a) the consumer has not given his or her prior express consent to the beginning of the performance of the digital content before the expiry of the cancellation period,
 - (b) the consumer has not acknowledged, in giving his or her consent to the beginning of the performance of the digital content before the expiry of the cancellation period, that the right to cancel would be lost, or
 - (c) the trader has failed to provide confirmation in accordance with *subsection (3)* of—
 - (i) the consumer's prior express consent to the beginning of the performance of the digital content before the expiry of the cancellation period, and

(ii) the consumer's acknowledgement of the loss of the right to cancel the contract where the performance of the digital content has begun with the consumer's prior express consent before the expiry of the cancellation period.

(3) Confirmation is provided in accordance with this subsection—

(a) where it relates to an off-premises contract, if it is provided in accordance with section 105, and

(b) where it relates to a distance contract, if it is provided in accordance with section 109.

Effect of cancellation on ancillary contract

121. (1) Where a consumer cancels a distance contract or an off-premises contract in accordance with this Chapter, any ancillary contract is automatically terminated without any cost for the consumers other than costs under the following provisions:

(a) section 117 (2) (non-standard delivery);

(b) section 118 (5) (direct cost of returning goods);

(c) section 118 (6)(b) (diminished value of goods);

(d) section 119 (3) (services, gas, water, electricity, or district heating supplied during cancellation period).

(2) When a trader is informed by a consumer in accordance with section 115 of the consumer's decision to cancel a contract, the trader shall inform any other trader with whom the consumer has an ancillary contract of its termination by *subsection (1)*.

(3) Where an ancillary contract is terminated by *subsection (1)*—

(a) the trader with whom the consumer has that contract shall reimburse all payments received from the consumer, and

(b) the consumer—

(i) shall return any goods delivered under the ancillary contract to the trader at the trader's expense, and

(ii) shall not use any digital content or digital service supplied under the ancillary contract or make it available to any third person.

- (4) Where any security has been provided under an ancillary contract that is terminated in accordance with *subsection (1)*, it is to be treated as never having had effect and any property lodged with the trader or a person other than the trader solely for the purposes of that security shall be returned immediately by the trader or other person.
- (5) *Subsection (1)* is without prejudice to Regulation 18 of the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010).
- (6) Notwithstanding *section 97 (3)(a)*, contracts for financial services may be ancillary contracts for the purposes of this section.
- (7) In this section, “ancillary contract” means a contract under which—
- (a) the consumer acquires—
 - (i) goods,
 - (ii) a service,
 - (iii) digital content,
 - (iv) a digital service, or
 - (v) water, gas or electricity that is not supplied in a limited volume or set quantity, related to a distance contract or an off-premises contract, and
 - (b) the goods are, or the service, digital content, digital service, water, gas or electricity is, supplied by—
 - (i) the trader, or
 - (ii) a person other than the trader on the basis of an arrangement between the trader and that other person.

Chapter 6

Other consumer rights

Fee for use of means of payment

- 122.** (1) A trader shall not charge a consumer, in respect of the use of a given means of payment, a fee that exceeds the cost borne by the trader for the use of that means of payment.

(2) Where—

(a) a trader charges a consumer a fee that exceeds the cost borne by the trader as mentioned in *subsection (1)*, and

(b) the consumer pays that fee,

the trader shall reimburse the consumer to the extent of the excess paid.

(3) Any provision of a contract which requires the consumer to pay a fee that exceeds the cost borne by the trader as mentioned in *subsection (1)* is unenforceable to the extent of the excess charged.

(4) A trader who contravenes *subsection (1)* commits an offence.

(5) If a trader fails to comply with the obligation to reimburse the consumer in accordance with *subsection (2)*, the trader shall be liable in damages for any loss or damage suffered by the consumer as a result of that failure.

(6) In case of dispute, it is for the trader to show that a fee charged in respect of the use of a given means of payment does not exceed the cost borne by the trader for the use of that means of payment.

(7) Nothing in this section shall affect the operation of Regulation 86 of the European Union (Payment Services) Regulations 2018 (S.I. No. 6 of 2018).

Additional payments

123. (1) Before a consumer is bound by a contract or an offer, the trader shall seek the consumer's express consent to any payment additional to the payment or other consideration agreed for the trader's main obligation under the contract.

(2) There is no express consent by the consumer under *subsection (1)* if that consent is inferred from the use of a default option which the consumer is required to reject in order to avoid the additional payment.

(3) Where a trader receives a payment from a consumer that contravenes *subsection (1)*, the trader shall reimburse the consumer for the payment.

(4) Any provision of a contract which requires the consumer to make a payment that contravenes *subsection (1)* is unenforceable.

(5) A trader who contravenes *subsection (1)* or (3) commits an offence.

- (6) If a trader fails to comply with the obligation to reimburse the consumer in accordance with *subsection (3)*, the trader shall be liable in damages for any loss or damage suffered by the consumer as a result of that failure.
- (7) In case of dispute, it is for the trader to show that—
- (a) the trader sought the consumer's express consent to any payment additional to that agreed for the trader's main obligation under the contract, and
 - (b) consent was not inferred from the use of a default option which the consumer was required to reject in order to avoid the additional payment.

Charges for communication by telephone

- 124.** (1) Where a trader operates a telephone line for the purpose of enabling a consumer to contact the trader in relation to a contract concluded by the consumer with the trader, the trader shall ensure that the telephone line is available to the consumer at a charge that does not exceed the basic rate.
- (2) Where a trader operates a telephone line that contravenes *subsection (1)*, and the consumer uses the line and pays more than the basic rate, the trader shall reimburse the consumer to the extent of the excess charged.
- (3) Any provision of a contract which requires the consumer to make a payment that contravenes *subsection (1)* is unenforceable.
- (4) A trader who contravenes *subsection (1)* commits an offence.
- (5) If a trader fails to comply with the obligation to reimburse a consumer in accordance with *subsection (2)*, the trader shall be liable in damages for any loss or damage suffered by the consumer as a result of that failure.
- (6) In case of dispute, it is for the trader to show that calls to a telephone line operated by the trader for the purpose of permitting consumers to contact the trader in relation to a contract concluded with the trader were not charged at more than the basic rate.
- (7) In this section—
- “basic rate”, in relation to a telephone line operated by a trader for the purpose referred to in *subsection (1)*, means:
- (a) where the telephone line uses a freephone number, nil;

(b) where the telephone line uses a landline telephone number, the rate charged for a call to a landline telephone number;

(c) where the telephone line uses a mobile telephone number, the rate charged for a call to a mobile telephone number;

(d) where the telephone line uses a standard rate number, the rate charged for a call to a standard rate number;

(e) where the telephone line does not fall within any of *paragraphs (a) to (d)*, the rate charged for a call to a landline telephone number;

“freephone number” means a non-geographic number (other than a mobile telephone number, a standard rate number or a premium rate number), in respect of which the charge for a call is paid for by the called party and not the caller;

“landline telephone number” means a number from the national numbering scheme where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point;

“mobile telephone number” means a mobile telephone number that is a non-geographic number (other than a freephone number, a standard rate number or a premium rate number);

“national numbering scheme” has the same meaning as it has in section 12 of the Communications Regulation Act 2002 ;

“network termination point” has the meaning assigned to it by Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018¹⁶ establishing the European Electronic Communications Code (Recast);

“non-geographic number” means a number—

(a) that is not a landline telephone number, and

(b) that is from the national numbering scheme;

“premium rate number” means a non-geographic number that is used to provide a premium rate service within the meaning of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 ;

“standard rate number” means a non-geographic number (other than a freephone number, a mobile telephone number or a premium rate number), in respect of which the rate charged to the caller does not exceed the rate charged for a call to a landline telephone number.

Inertia selling

125. (1) Where—

(a) goods are supplied by a trader to a consumer without any request by or on behalf of the consumer, or

(b) a service, digital service, digital content, or (where not supplied in a limited volume or set quantity) water, gas or electricity, is supplied by a trader to a consumer without any request by or on behalf of the consumer,

the consumer is exempted from any requirement to pay or provide any consideration to the trader and may treat the goods, service, digital service, digital content, water, gas or electricity as an unconditional gift.

(2) The absence of a response from the consumer following the supply as mentioned in *subsection (1)* of goods, a service, digital service, digital content, water, gas or electricity does not constitute consent to—

(a) the provision of consideration for the goods, service, digital service, digital content, water, gas or electricity, or

(b) the return or safekeeping of any goods so supplied.

PART 6

Unfair terms in consumer contracts

Chapter 1

Interpretation and application (Part 6)

Interpretation (Part 6)

126. (1) In this Part—

“authorised body” means—

(a) the Competition and Consumer Protection Commission,

(b) the Central Bank of Ireland,

- (c) the Commission for Communications Regulation,
- (d) the Consumers' Association of Ireland, being the association of that name whose purpose is to promote and protect the interests of consumers, or
- (e) such other person as may be prescribed;

"consumer contract" means any contract between a consumer and a trader.

- (2) Any reference in this Part to a term of a consumer contract includes a reference to a term, condition or specification (howsoever described) which governs, or purports to govern, the contractual relationship between the trader and consumer.

Application (*Part 6*)

- 127.** (1) Subject to *subsections (2) to (6)* and *section 140 (2)(b)*, this Part applies to a consumer contract that is concluded on or after the day on which this section comes into operation.
- (2) A consumer contract is not excluded from the application of this Part by reason only that—
 - (a) the consumer contract or a term of the consumer contract has been individually negotiated between the trader and the consumer, or
 - (b) the consumer does not pay a price under the contract.
 - (3) This Part does not apply to a term of a consumer contract that reflects—
 - (a) mandatory statutory or regulatory provisions, including rules that, according to law, apply between the contracting parties on the basis that no other rules or arrangements have been established, or
 - (b) the provisions or principles of international conventions to which the State or the European Union is party.
 - (4) This Part does not apply to—
 - (a) a contract of employment,
 - (b) a contract relating to succession rights,
 - (c) a contract relating to rights under family law, or
 - (d) a contract relating to—

(i) the incorporation and organisation of a company, or

(ii) the creation and organisation of a partnership.

(5) If—

(a) the law of a country or territory other than an EEA State is chosen by the parties to be applicable to a consumer contract, and

(b) that contract has a close connection with the State,

this Part shall apply to the contract despite that choice.

(6) Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008¹⁷ on the law applicable to contractual obligations (Rome I) applies where—

(a) the applicable law has not been chosen by the parties to the contract, or

(b) the law of an EEA State is chosen (other than an EEA State that has chosen not to be bound by that Regulation).

(7) In this section—

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement;

“EEA State” means a state which is a contracting party to the EEA Agreement.

Application of Part in relation to implied term of consumer contract

128. No term may be implied into a consumer contract that would be unfair in accordance with this Part if it were an express term of such a contract.

Chapter 2

Unfair terms in consumer contracts

Unfair term not binding

129. (1) An unfair term of a consumer contract is not binding on the consumer.

(2) *Subsection (1)* does not prevent the consumer from relying on the unfair term if the consumer chooses to do so.

- (3) If a consumer contract is capable of continuing in existence without the unfair term, it shall continue to bind the parties.

Meaning of “unfair”

- 130.** (1) A term of a consumer contract is unfair if, 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.
- (2) In assessing whether a term of a consumer contract is unfair, the following matters shall in particular be taken into account—
- (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.
- (3) In assessing whether a term of a consumer contract complies with the requirement of good faith, regard shall be had in particular to—
- (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.
- (4) Nothing in this section affects the operation of the following provisions:
- (a) section 39 (exclusion or limitation of liability of trader (Part 2));
 - (b) section 71 (exclusion or limitation of liability of trader (Part 3));

(c) section 94 (restriction on exclusion or limitation of liability of trader (Part 4));

(d) section 132 (consumer contract terms that are always unfair).

Exclusion from assessment for unfairness

- 131.** (1) Subject to *subsections (2) to (4)*, a term of a consumer contract shall not be assessed for unfairness under section 130 to the extent that—
- (a) it specifies the main subject matter of the contract and lays down the essential obligations under it, or
 - (b) it relates to the adequacy of the price or remuneration payable under the contract as against the goods, digital content, digital service, service or other subject matter of the contract supplied in exchange for such price or remuneration.
- (2) A term of a consumer contract is excluded from assessment for unfairness under section 130 only if it is transparent in accordance with section 134.
- (3) The reference in *subsection (1)(b)* to the price or remuneration payable under the contract does not include—
- (a) a payment that is incidental or ancillary to the price or remuneration payable under the contract for the goods, digital content, digital service, service or other subject matter of the contract supplied in exchange for such price or remuneration, or
 - (b) a payment that is contingent on whether a particular event occurs or not.
- (4) *Subsection (1)* does not apply to a term of a consumer contract that is presumed to be unfair under section 133 (1).

Consumer contract terms that are always unfair

- 132.** (1) Subject to *subsections (2) and (3)*, a term of a consumer contract shall always be unfair if its object or effect is—
- (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.
- (2) *Subsection (1)(a)* does not apply—
- (a) to a consumer contract in so far as it is a contract of insurance, including a contract to pay an annuity on human life, or
 - (b) to a consumer contract so far as it relates to the creation or transfer of an interest in land.
- (3) *Subsection (1)(a)* does not apply to the liability of an occupier of premises to a person who obtains access to the premises for recreational purposes if—
- (a) the person suffers loss or damage because of the dangerous state of the premises, and
 - (b) allowing the person access for recreational purposes does not relate to the occupier's trade, business, craft or profession.
- (4) *Subsection (1)(a)* does 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.
- (5) For the purposes of *subsection (1)(a)*, a consumer shall not be deemed to have voluntarily accepted any risk merely because he or she agreed to or knew about a term of a consumer contract that purported to exclude the trader's liability for death or personal injury.

(6) In this section, “personal injury” has the same meaning as it has in the Civil Liability Act 1961 .

Consumer contract terms presumed to be unfair

133. (1) *Part 1* of *Schedule 5* contains an indicative and non-exhaustive list of terms of consumer contracts that shall be presumed to be unfair for the purposes of this Part.

(2) *Part 1* of *Schedule 5* is subject to the provisions of *Part 2* of that Schedule.

(3) Subject to *section 131* , a term of a consumer contract referred to in *Part 1* of *Schedule 5* may be assessed for unfairness under *section 130* .

(4) The Minister may by regulations specify further terms of consumer contracts that shall be presumed to be unfair for the purposes of this Part.

(5) The Minister may make regulations under *subsection (4)* only where the Minister is satisfied, after consultation with such persons as the Minister considers appropriate, that it is necessary in the interests of consumer protection and fair competition to do so.

Consumer contract terms to be transparent

134. (1) A trader shall ensure that the terms of a consumer contract are transparent.

(2) A term of a consumer contract is transparent if—

(a) the term is expressed in concise, plain and intelligible language,

(b) in the case of a term that is in writing, the term is legible and presented clearly,

(c) the term is made available to the consumer in a manner that gives the consumer a reasonable opportunity to become acquainted with it before the conclusion of the contract, irrespective of whether or not such an opportunity is availed of,

(d) in the case of a term that is novel or onerous, the term has specifically been brought to the consumer’s attention in such a way that the average consumer would be aware of the term,

(e) any costs or other financial consequences deriving from the term would be comprehensible to the average consumer, and

(f) the term complies with such other requirements as may be prescribed.

(3) In assessing the transparency of a term of a consumer contract, the following matters shall in particular be taken into account—

- (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.
- (4) In case of dispute, it shall be for the trader to show that a term of a consumer contract is transparent.
- (5) If a consumer contract is directed at a particular group of consumers, any reference to the average consumer shall be read as a reference to the average member of that group.
- (6) Before making regulations under *subsection (2)(f)* the Minister shall consult such persons as he or she considers appropriate.
- (7) In this section—
- “novel”, in relation to a term of a consumer contract, means a term which may be considered new or original by reference to existing or established market practice in the relevant sector or industry;
- “the average consumer”, subject to *subsection (5)*, means a consumer who is reasonably well-informed, reasonably observant and circumspect.

Interpretation of term of consumer contract

- 135.** (1) Where there is doubt about the meaning of a term of a consumer contract, the interpretation that is most favourable to the consumer shall prevail.
- (2) *Subsection (1)* shall apply to the interpretation of a term in proceedings on an application to a court for a declaration or injunction under *section 137*.

Duty of court to consider whether term of consumer contract unfair

- 136.** (1) In proceedings before a court relating to a term of a consumer contract, the court shall determine whether the term is unfair irrespective of whether a party to the proceedings has raised that question or indicated an intention to raise it.

(2) *Subsection (1)* shall not apply unless the court considers that it has before it sufficient legal and factual material to enable it to determine whether the term is unfair.

Application to court for declaration or injunction

137. (1) On an application by an authorised body for a declaration that a term of a consumer contract is unfair, the court may make an order—

(a) declaring that the term of the consumer contract is unfair,

(b) prohibiting the use or continued use in any consumer contract of such a term or similar terms of like object or effect, and

(c) imposing such other conditions as it considers appropriate, including in particular—

(i) a requirement that the trader publish a corrective statement, at the trader's own expense and in any manner the court considers appropriate, in respect of the matter which is the subject of the order, or

(ii) a requirement that the trader provide to each consumer who is party to the contract to which the order relates an amended contract which does not contain the term which has been declared to be unfair.

(2) On an application by an authorised body for a declaration as to the proper interpretation of a term drawn up for general use as a term of a consumer contract, the court may make such a declaration.

(3) Before making an application under *subsection (1)* or *(2)*, an authorised body shall cause to be published—

(a) in *Iris Oifigiúil* and at least two national newspapers, and

(b) in such other manner as the court may direct,

notice of intention to apply to the court for a declaration under the subsection concerned.

(4) An authorised body may apply for an injunction (including an interim injunction) against any trader using, or recommending the use of, a term which the authorised body considers to be an unfair term.

(5) Where an application is made under *subsection (4)*, the court may grant an injunction on such terms, including conditions referred to in *subsection (1)(c)*, as it considers appropriate.

- (6) An injunction granted pursuant to *subsection (4)* may relate not only to the use of a particular contract term but to any similar term, or a term having like effect, used or recommended for use by any trader.
- (7) In the exercise of its jurisdiction under *subsection (1), (2) or (5)* the court shall take account of all the interests involved and in particular the public interest in the protection of consumers.
- (8) Every person claiming to have an interest in an application under *subsection (1) or (2)* shall be entitled to appear before and to be heard by the court on the hearing of the application.
- (9) An application under *subsection (1), (2) or (4)* by an authorised body, other than the Competition and Consumer Protection Commission, shall be on notice to the Commission.
- (10) On any application under *subsection (1), (2) or (4)* it shall not be necessary for an authorised body to prove—
- (a) probable loss or damage,
 - (b) actual loss or damage, or
 - (c) recklessness or negligence on the part of the trader.
- (11) *Subsections (1), (2) and (4)* are without prejudice to the right of a consumer to rely upon the provisions of this Part in any case before a court of competent jurisdiction.
- (12) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the trader is ordinarily resident or carries on any profession, trade or business.
- (13) In this section, “court” means—
- (a) the High Court, or
 - (b) the Circuit Court.

Transfer from Circuit Court to High Court

- 138.** (1) If, in relation to an application under *section 137* to the Circuit Court, that court becomes of the opinion, during the hearing of the application, that it is not appropriate for the Circuit Court to deal with the application, it may, if it so thinks fit, transfer the application to the High Court.

- (2) *Subsection (1)* is without prejudice to the jurisdiction of the Circuit Court to determine an application under *section 137* which, at the time of the making of the application, it was satisfied it had jurisdiction to deal with.
- (3) Where an application is transferred to the High Court under *subsection (1)*, the High Court shall be deemed to have made any order of a procedural nature that was made by the court from which it was transferred in the proceedings relating to the application.

Publication of order made by court under *section 137(1)*

139. (1) Subject to *subsection (3)*, where a court makes an order under *section 137 (1)* declaring that a term of a consumer contract is unfair—

- (a) the authorised body that made the application for the order, and
- (b) where it did not make the application for the order, the Competition and Consumer Protection Commission,

shall publish, before the expiration of the period specified in *subsection (2)*, a copy of the order on its website.

(2) The period referred to in *subsection (1)* is the period of 90 days beginning on—

- (a) where no appeal is brought against the order made under *section 137 (1)*, the day on which the period for bringing an appeal expires, or
- (b) where such an appeal is brought, the day on which the appeal is finally determined or is withdrawn or abandoned.

(3) Subject to *subsection (5)*, where the authorised body and, where it did not make the application for the order, the Competition and Consumer Protection Commission, consider that it would be —

- (a) in the interests of consumer protection, or
- (b) necessary in order to comply with a legal or regulatory requirement,

they may, instead of publishing a copy of the order as required by *subsection (1)*, publish in such form and manner as they consider appropriate a notice that sets out the term of a consumer contract that the court has declared to be unfair, without disclosing information specified in *subsection (4)*.

(4) The information referred to in *subsection (3)* is—

- (a) information that would identify the parties, and
 - (b) where *subsection (3)(b)* applies, information that is not permitted to be disclosed under that legal or regulatory requirement.
- (5) Where *subsection (3)* applies, both the authorised body and, where it did not make the application for the order, the Competition and Consumer Protection Commission shall publish the same notice.

Offence

140. (1) This section applies where an authorised body—

- (a) publishes under *section 139 (1)* a copy of an order under *section 137 (1)* declaring that the term of a consumer contract to which the order relates is unfair, or
 - (b) publishes a notice under *section 139 (3)* setting out that term.
- (2) Where, after the date on which the authorised body publishes an order or notice in respect of which this section applies, a trader—
- (a) enters into a consumer contract containing the term to which the order or notice, as the case may be, relates, or
 - (b) seeks to rely on that term in a consumer contract (whenever concluded),
- the trader commits an offence.

PART 7

Proceedings and penalties

Interpretation (*Part 7*)

141. In this Part, “relevant authority” means—

- (a) the Competition and Consumer Protection Commission,
- (b) the Commission for Communications Regulation,
- (c) the Central Bank of Ireland, or
- (d) such other body as may be prescribed.

Offences: penalties

142. (1) A person who commits an offence under this Act shall be liable—

(a) on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment to a fine not exceeding €60,000 or to imprisonment for a term not exceeding 18 months or to both.

(2) Where a court is determining the sentence to impose on a person convicted of an offence under *Part 5 or 6*, it shall take account, so far as applicable, of the following indicative and non-exhaustive criteria:

(a) the nature, gravity, scale and duration of the infringement;

(b) any action taken by the person to mitigate or remedy the damage suffered by consumers;

(c) any previous infringements of the provisions of any of those Parts by the person;

(d) the financial benefits gained or losses avoided by the person due to the infringement, if the relevant data are available;

(e) any penalties imposed on the person for the same infringement in other Member States in cross-border cases where information about such penalties is available through the mechanism established by Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017¹⁸ on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No. 2006/2004;

(f) any other aggravating or mitigating factors applicable in the circumstances of the case.

Liability for offences by body corporate

143. (1) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to be attributable to any wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, commits an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Defence of due diligence

144. In proceedings for an offence under this Act, it shall be a defence for the defendant to prove that he or she exercised due diligence and took all reasonable precautions to avoid the commission of the offence.

Convicted persons liable for costs and expenses of proceedings and investigation

145. (1) On convicting a person of an offence under this Act, the court shall, unless satisfied that there are special and substantial reasons for not so doing, order the person to pay to the relevant authority the costs and expenses, measured by the court, incurred by the relevant authority in relation to the investigation, detection and prosecution of the offence.

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

Convicted traders liable to compensate consumers for loss or damage

146. (1) If a trader is convicted of an offence under this Act, the relevant authority that brought the proceedings in which the trader was convicted may, on behalf of an aggrieved consumer who consents to the application, apply to the court for an order (a "compensation order") requiring the trader (the "trader concerned") to pay an amount of money the court considers appropriate compensation in respect of any loss or damage to that consumer resulting from that offence.

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

(3) The compensation payable under a compensation order—

(a) shall be of such amount as the court considers appropriate (though not exceeding the amount set by law as the limit of the court's jurisdiction in tort), having regard to any evidence and to any submissions made by or on behalf of the trader concerned, the aggrieved consumer, the relevant authority or, where the relevant authority is not the prosecutor, the prosecutor, and

(b) shall not exceed the amount of the damages that, in the opinion of the court, the aggrieved consumer would be entitled to recover in an action under *section 34* or, as the case may be, *section 73* or *95* in respect of the same failure to comply with a requirement of this Act.

(4) An application shall not be made under *subsection (1)* if the aggrieved consumer has brought an action under *section 34* or, as the case may be, *section 73* or *95* against the trader concerned and the action is in respect of the same failure to comply with a requirement of this Act for which the trader concerned is convicted.

- (5) If the amount of compensation payable under a compensation order is paid to the aggrieved consumer under this section and the consumer subsequently commences an action under *section 34* or, as the case may be, *section 73* or *95* and is awarded damages by the court in respect of the same failure to comply with a requirement of this Act, the compensation order is deemed to be in satisfaction of so much of the awarded damages as is equal to the first-mentioned amount.
- (6) If the trader concerned does not comply with a compensation order—
- (a) within the time ordered by the court, or
 - (b) within 30 days after the order is made, if no time is specified in the order,
- the aggrieved consumer may enter judgment in the District Court or, as appropriate, the Circuit Court by filing the order with that court in the District Court district or, as appropriate, the circuit where the conviction was entered.
- (7) A judgment entered in the District Court or the Circuit Court under *subsection (6)* is enforceable against the trader concerned in the same manner as if it were a judgment rendered in that court in civil proceedings.

Prosecution of summary offences

- 147.** (1) Summary proceedings for an offence under *Part 2* or *3* may be brought and prosecuted by the Competition and Consumer Protection Commission.
- (2) Summary proceedings for an offence under *Part 4* or *6* may be brought and prosecuted by—
- (a) the Competition and Consumer Protection Commission,
 - (b) the Commission for Communications Regulation in relation to an offence relating to a function that is exercisable by that Commission, or
 - (c) the Central Bank of Ireland in relation to an offence relating to a function that is exercisable by the Bank.
- (3) Summary proceedings for an offence under *Part 5* may be brought and prosecuted by—
- (a) the Competition and Consumer Protection Commission, or
 - (b) the Commission for Communications Regulation in relation to an offence relating to a function that is exercisable by that Commission.

PART 8

Amendment of Consumer Credit Act 1995

Amendment of section 2 of Act of 1995

148. Section 2 of the Act of 1995 is amended—

(a) in subsection (1), by the insertion of the following definitions:

“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;

‘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;”,

and

(b) by the insertion of the following subsection after subsection (9):

“(10) In Part VI, a reference to a reasonable expectation shall be interpreted having regard objectively 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.”.

Sections 73A to 73X: Interpretation

149. The Act of 1995 is amended by the insertion of the following section after section 56:

“56A. A reference in sections 73A to 73X to goods being in conformity with a hire-purchase agreement shall be construed in accordance with section 73A(2).”.

Insertion of sections 73A to 73X into Act of 1995

150. (1) The Act of 1995 is amended by the insertion of the following sections after section 73:

“Goods to be in conformity with hire-purchase agreement at time of delivery

- 73A.** (1) Where a hire-purchase agreement is concluded between an owner and a hirer, the owner shall deliver goods to the hirer that are in conformity with the hire-purchase agreement at the relevant time.
- (2) Goods are in conformity with the hire-purchase agreement if the goods—
- (a) comply with the requirements of sections 73B to 73D, and
 - (b) do not fall to be treated as not being in conformity with the hire-purchase agreement under section 73E.
- (3) Subject to sections 73B(3) and 73G(1) to (3), where the goods delivered by the owner are not in conformity with the hire-purchase agreement at the relevant time, the hirer shall have the right to the remedies specified in section 73I and 73L.
- (4) In this section, ‘relevant time’—
- (a) in relation to goods other than goods with digital elements, means the time at which—
 - (i) the hirer or a person indicated by the hirer for the purpose acquires the physical possession of the goods, or
 - (ii) the goods are delivered to a carrier who was commissioned by the hirer to deliver the goods (and who was not proposed by the owner for that purpose),and
 - (b) in relation to goods with digital elements, means the time at which, following delivery of the physical component of the goods to the hirer or a person indicated by the hirer for the purpose—
 - (i) the single act of supply of the digital content or digital service is performed, or
 - (ii) the continuous supply of the digital content or digital service over a period of time begins,in such a way that the digital content or digital service, or any means suitable for downloading or accessing it, has reached the sphere of the hirer and no further action by the owner is required in order to enable the hirer to use the digital content or digital service in accordance with the hire-purchase agreement.

Owner to have right to sell goods etc.

- 73B.** (1) Subject to subsection (2), the requirements referred to in section 73A(2) are that the owner shall ensure that—
- (a) at the time when the ownership of the goods is to be transferred under the hire-purchase agreement, the owner has the right to sell the goods,
 - (b) at the time when the ownership of goods is to be transferred under the hire-purchase agreement, the goods are free from any charge or other encumbrance (other than a charge or other encumbrance which was disclosed to the hirer before the hirer entered into the hire-purchase agreement), and
 - (c) the hirer shall enjoy quiet possession of the goods except so far as it may be disturbed by the owner or any other person entitled to the benefit of any charge or encumbrance so disclosed.
- (2) Where the hire-purchase agreement shows, or the circumstances at the time the agreement was concluded imply, that the owner and the hirer intend that the owner transfer only the limited title to the goods that the owner or a third person may have—
- (a) all charges and encumbrances known to the owner shall be disclosed to the hirer before the hirer enters into the agreement, and
 - (b) the hirer's quiet possession of the goods shall not be disturbed by—
 - (i) the owner,
 - (ii) the third person, or
 - (iii) a person claiming through or under the owner or the third person unless that person is claiming under a charge or encumbrance that was disclosed to the hirer before the agreement was concluded.
- (3) Where the owner does not have the right to sell goods as required by subsection (1)(a), the hirer shall have the right to terminate the hire-purchase agreement.
- (4) Where the hirer has the right to terminate the hire-purchase agreement under subsection (3) and wishes to exercise that right—
- (a) the hirer shall exercise that right in accordance with section 73N, and
 - (b) the owner shall comply with the obligations in section 73O.
- (5) The hirer shall have the right to the remedies specified in sections 73I and 73L where—

- (a) the goods are not in compliance with subsection (1)(b) and (c),
 - (b) the owner does not disclose all known charges or encumbrances in accordance with subsection (2)(a),
 - (c) the hirer's possession of the goods does not comply with subsection (2)(b), or
 - (d) a restriction resulting from a violation of any right of a third party, in particular an intellectual property right, prevents or limits the use of the goods in accordance with sections 73C and 73D.
- (6) In case of dispute, it shall be for the owner to show that—
- (a) the owner had the right to sell the goods in accordance with subsection (1)(a),
 - (b) the goods complied with the requirements of subsection (1)(b) and (c),
 - (c) the owner disclosed all known charges and encumbrances in accordance with subsection (2)(a), and
 - (d) the hirer's possession of the goods complied with subsection (2)(b).

Subjective requirements for conformity with hire-purchase agreement

73C. (1) The goods delivered under a hire-purchase agreement shall—

- (a) be of the description, type, quantity and quality, and possess the functionality, compatibility, interoperability and other features, specified in the hire-purchase agreement,
 - (b) be fit for any particular purpose for which the hirer requires them—
 - (i) that the hirer made known to the owner at the time of, or before, the conclusion of the hire-purchase agreement, and
 - (ii) that the owner has accepted,
 - (c) be delivered with all accessories and instructions, including on installation of the goods, specified in the hire-purchase agreement, and
 - (d) be updated as specified in the hire-purchase agreement.
- (2) Spare parts and an adequate after-sales service shall be made available by the owner—

- (a) in such circumstances as are stated in an offer, description or advertisement by the owner on behalf of the producer or on his or her own behalf, and
 - (b) for such period as is so stated or, if no period is so stated, for a reasonable period.
- (3) In this section, 'interoperability' means the ability of goods to function with hardware or software different from those with which goods of the same type are normally used.

Objective requirements for conformity with hire-purchase agreement

73D. (1) The goods delivered under a hire-purchase agreement shall—

- (a) be fit for all of the purposes for which goods of the same type would normally be used, taking into account so far as relevant any enactment or rule of law, European Union law, technical standards or, in the absence of technical standards, applicable sector-specific industry codes of conduct,
 - (b) be of the quality and correspond to the description of any sample or model that the owner made available to the hirer before the conclusion of the hire-purchase agreement,
 - (c) be delivered along with any accessories, including packaging, installation instructions or other instructions, that the hirer may reasonably expect to receive, and
 - (d) be of the quantity and possess the qualities and other features (including in relation to durability, functionality, compatibility, safety and security) normal for goods of the same type that the hirer may reasonably expect given the nature of the goods and taking into account any public statement in relation to the goods made by, or on behalf of, the owner or any other person constituting a previous link in the chain of transactions relating to the hire-purchase agreement, including the producer, particularly in advertising or on labelling.
- (2) In subsection (1)(d), the reference to the durability of the goods is a reference to the ability of the goods to maintain their functions and performance through normal use and to possess the ability to do so which is normal for goods of the same type and which the hirer can reasonably expect having regard to—
- (a) the specific nature of the goods,
 - (b) the possible need for reasonable maintenance of the goods,

- (c) any public statement on the durability of the goods made by or on behalf of any person constituting a link in the chain of transactions, and
 - (d) all other relevant circumstances, including the price of the goods and the intensity or frequency of the use made of the goods by the hirer.
- (3) The owner shall not be bound by any public statement referred to in subsection (1)(d) or (2)(c) if the owner shows that—
- (a) the owner was not, and could not reasonably have been, aware of the public statement in question,
 - (b) at the time of the conclusion of the hire-purchase agreement, the public statement had been corrected in the same way as it had been made (or in a comparable way), or
 - (c) the decision of the hirer to take the goods could not have been influenced by the public statement.
- (4) Where a hire-purchase agreement for the letting of goods with digital elements provides for a single act of supply of the digital content or digital service, the owner shall ensure that the hirer is informed of and supplied with updates, including security updates, that are necessary to maintain the goods in conformity with the agreement for the period of time that the hirer may reasonably expect given the type and purpose of the goods and the digital elements, and taking into account the circumstances and nature of the hire-purchase agreement.
- (5) Where a hire-purchase agreement for the letting of goods with digital elements provides for a continuous supply of the digital content or digital service for a period exceeding two years, the owner shall ensure that the hirer is informed of the availability, and supplied with, any update (including a security update) that is necessary to maintain the goods in conformity with the agreement during that period.
- (6) Where a hire-purchase agreement for the letting of goods with digital elements provides for a continuous supply of the digital content or digital service for a period not exceeding two years, the owner shall ensure that the hirer is informed of the availability, and supplied with, any update (including a security update) that is necessary to maintain the goods in conformity with the contract for the period of two years beginning with the delivery of the goods with digital elements.

- (7) Where the hirer fails to install within a reasonable time an update supplied in accordance with subsection (4), (5) or (6), the owner shall not be liable for any lack of conformity with the hire-purchase agreement resulting solely from the failure to install the update—
- (a) if the owner informed the hirer of the need for the hirer to install the update (including the consequences of failing to do so), and
 - (b) the failure of the hirer to install the update, or the incorrect installation by the hirer of the update, was not due to shortcomings in the installation instructions provided to the hirer.
- (8) There shall be no lack of conformity with a hire-purchase agreement under subsection (1), (4), (5) or (6) if, at the time of the conclusion of the agreement—
- (a) the hirer was specifically informed by the owner that a particular characteristic of the goods deviated from the requirements of the subsection concerned, including a lack of conformity with the hire-purchase agreement caused by a restriction resulting from a violation of an intellectual property right or any other right of a third person, and
 - (b) the hirer expressly and separately accepted that deviation.
- (9) In case of dispute, it shall be for the owner to show that the hirer—
- (a) was specifically informed by the owner that a particular characteristic of the goods deviated from the requirements of subsection (1), (4), (5) or (6), and
 - (b) expressly and separately accepted that deviation when concluding the hire-purchase agreement.

Incorrect installation of goods

73E. Any lack of conformity with the hire-purchase agreement resulting from the incorrect installation of the goods shall be treated as a lack of conformity of the goods with the hire-purchase agreement if—

- (a) the installation forms part of the agreement and was carried out by the owner or under the owner's responsibility, or

(b) the installation, intended to be carried out by the hirer, was done by the hirer and the incorrect installation was due to shortcomings in the installation instructions provided to the hirer by the owner or, in the case of goods with digital elements, provided to the hirer by the owner or by the supplier of the digital content or digital service.

Implied terms of hire-purchase agreement

73F. Sections 73B to 73E shall be implied into every hire-purchase agreement and shall have effect as if they were terms of such an agreement.

Liability of owner

- 73G.** (1) Where a hire-purchase agreement for the letting of goods with digital elements provides for a continuous supply of digital content or a digital service for a period specified in the agreement, the owner shall be liable for a lack of conformity of the digital content or digital service with the agreement that occurs or becomes apparent within that period.
- (2) Where a hire-purchase agreement provides for the delivery of goods on more than one occasion during the period for which the agreement subsists, the owner shall be liable to the hirer during that period for a lack of conformity of the goods with the hire-purchase agreement which exists at the relevant time.
- (3) Where an update is supplied by the owner or a third party supplying the digital content or digital service under a hire-purchase agreement for the letting of goods with digital elements, the owner shall be liable for any lack of conformity of the digital content or digital service with the agreement—
- (a) caused by the update which exists at the time of supply or installation of the update,
or
- (b) caused by the failure of the owner to supply an update in accordance with section 73D at the time when the update should have been supplied.
- (4) Subject to subsections (2) and (3), where a hire-purchase agreement for the letting of goods other than goods with digital elements provides for a continuous supply of digital content or a digital service for a period specified in the hire-purchase agreement, the hirer's right to a remedy in respect of a lack of conformity with the hire-purchase agreement for which the owner is liable under this section shall apply for the period of 6 years beginning with the relevant time.

(5) Where a hire-purchase agreement for the letting of goods with digital elements provides for a continuous supply of digital content or a digital service for a period specified in the hire-purchase agreement, the hirer's right to a remedy in respect of a lack of conformity with the hire-purchase agreement for which the owner is liable under this section shall apply for the period of 6 years beginning with the time at which the lack of conformity with the hire-purchase agreement occurs or becomes apparent during the period so specified.

(6) In this section, 'relevant time' has the same meaning as it has in section 73A.

Burden of proof

73H. (1) Subject to subsection (2), where it becomes apparent during the period of 12 months beginning with the relevant time that goods supplied under a hire-purchase agreement are not in conformity with the hire-purchase agreement, the lack of conformity with the agreement shall be presumed to have existed at the relevant time unless—

(a) the contrary is proven, or

(b) such a presumption is incompatible with the nature of the goods or with the nature of the lack of conformity with the agreement.

(2) Where a hire-purchase agreement for the letting of goods with digital elements provides for the continuous supply of the digital content or digital service for a period specified in the agreement, the burden of proof as to whether the digital content or digital service was in conformity with the hire-purchase agreement during that period shall be on the owner for a lack of conformity with the agreement which becomes apparent during that period.

(3) For the purposes of relying on the presumption under subsection (1), the hirer shall be required to prove only that—

(a) the goods are not in conformity with the hire-purchase agreement, and

(b) the lack of conformity became apparent during the period of 12 months beginning with the relevant time.

(4) Nothing in this section shall prevent or restrict a hirer from exercising a remedy after 12 months from the delivery of the goods.

(5) In this section, 'relevant time' has the same meaning as it has in section 73A.

Right to remedies under sections 73J and 73K

73I. (1) Where goods are not in conformity with the hire-purchase agreement at the relevant time, the hirer shall have the following rights—

(a) the right to exercise the short-term right to terminate the agreement in accordance with section 73J, and

(b) subject to subsections (2) and (3), the right to have the goods brought into conformity with the agreement through repair or replacement in accordance with section 73K.

(2) The hirer may choose between the remedies of repair and replacement of the goods unless the remedy chosen by the hirer—

(a) would be impossible for the owner to carry out, or

(b) compared to the alternative remedy, would impose disproportionate costs on the owner, taking all the circumstances into account, including—

(i) the value that the goods would have if there were no lack of conformity,

(ii) the significance of the lack of conformity, and

(iii) whether the alternative remedy could be provided without significant inconvenience to the hirer.

(3) The owner may refuse to bring the goods into conformity with the hire-purchase agreement if both repair and replacement—

(a) are impossible for the owner to carry out, or

(b) compared to the alternative remedy, would impose disproportionate costs on the owner, taking all the circumstances into account, including those specified in subsection (2)(b)(i) and (ii).

(4) In this section, 'relevant time' has the same meaning as it has in section 73A.

Short-term right to terminate hire-purchase agreement

73J. (1) This section applies where the hirer has the short-term right to terminate the hire-purchase agreement under section 73I(1)(a).

- (2) The period during which the hirer has the short-term right to terminate the hire-purchase agreement—
- (a) begins—
- (i) where the hire-purchase agreement requires the owner to install the goods after their delivery or to take any other action to enable the hirer to use the goods, on the day on which the installation or other action is completed, or
- (ii) in any other case, at the relevant time,
- and
- (b) subject to subsection (3), expires 30 days after that day or, as the case may be, the relevant time.
- (3) Where goods are of a kind that can reasonably be expected to expire or deteriorate on the expiry of a smaller number of days than the 30 days referred to in paragraph (b) of subsection (2), that paragraph shall apply as if for the reference to 30 days there were substituted a reference to that smaller number of days.
- (4) Nothing in subsection (2) prevents a hirer who has the right to terminate a hire-purchase agreement from terminating it before the beginning of the period referred to in that subsection (or that subsection as applied by subsection (3)).
- (5) In case of dispute, it shall be for the owner to show that by virtue of subsection (3) the period referred to in subsection (2) is shorter than 30 days.
- (6) Where the hirer has the right to terminate a hire-purchase agreement under this section and wishes to exercise that right—
- (a) the hirer shall exercise that right in accordance with section 73N, and
- (b) the owner shall comply with the obligations in section 73O.
- (7) In this section, 'relevant time' has the same meaning as it has in section 73A.

Repair or replacement of goods

73K. (1) This section applies where goods are to be brought into conformity with the hire-purchase agreement by repair or replacement.

- (2) The owner shall ensure that the repair or replacement of the goods is carried out—

- (a) free of charge,
 - (b) within a reasonable time after being informed by the hirer of the lack of conformity with the agreement, and
 - (c) without significant inconvenience to the hirer, taking into account the nature of the goods and the purpose for which the hirer requires the goods.
- (3) The reasonable time for completing the repair or replacement of the goods under subsection (2)(b) shall correspond to the shortest possible time necessary for completing the repair or replacement and shall be objectively determined having regard to the nature and complexity of the goods, the nature and severity of the lack of conformity and the effort needed to complete the repair or replacement.
- (4) The hirer shall make the goods that are to be remedied by repair or replacement available to the owner.
- (5) The owner shall take back any goods that have been replaced and any goods that are to be repaired at the owner's expense.
- (6) Subsection (7) applies where—
- (a) it is necessary to remove goods in order to repair or replace them, and
 - (b) the goods were installed in a manner consistent with their nature and purpose before the lack of conformity of the goods with the hire-purchase agreement became apparent.
- (7) The owner's obligation to repair or replace the goods under subsection (2) includes—
- (a) the removal of the goods that are not in conformity with the hire-purchase agreement (referred to in this subsection as the 'non-conforming goods'),
 - (b) where the non-conforming goods are repaired, the installation of those goods,
 - (c) where the non-conforming goods are replaced, the installation of the goods that replace the non-conforming goods, and
 - (d) bearing the costs of any such removal and installation.
- (8) The hirer shall not be liable to pay for the normal use of any goods that are replaced during the period prior to their replacement.

- (9) In this section, 'free of charge' means free of the necessary costs incurred in order to bring goods into conformity with the hire-purchase agreement, particularly the cost of postage, carriage, labour or materials.

Right to proportionate reduction in price or final termination of hire-purchase agreement

73L. (1) This section applies where—

- (a) the hirer has exercised his or her right under section 73I(1)(b) and—
 - (i) the owner has not completed the repair or the replacement of the goods or, where applicable, has not completed the repair or replacement in accordance with section 73K, or
 - (ii) the owner has refused to bring the goods into conformity with the hire-purchase agreement in accordance with section 73I(3),
- (b) the goods are not in conformity with the hire-purchase agreement at the relevant time and the same or a different lack of conformity of the goods with the agreement becomes apparent despite the owner having attempted to bring the goods into conformity with the agreement,
- (c) the goods are not in conformity with the hire-purchase agreement at the relevant time and the lack of conformity of the goods is of such a serious nature as to justify an immediate price reduction or the termination of the hire-purchase agreement, or
- (d) the goods are not in conformity with the hire-purchase agreement at the relevant time and the owner has declared, or it is clear from the circumstances, that the owner will not bring the goods into conformity with the hire-purchase agreement within a reasonable time or without significant inconvenience to the hirer.

(2) Subject to subsections (5) and (7), the hirer shall have—

- (a) the right to a proportionate reduction in the price in accordance with section 73M, or
- (b) subject to subsection (3), the right to exercise the final right to terminate the hire-purchase agreement in accordance with section 73N.

- (3) The hirer shall not have the right to exercise the final right to terminate the hire-purchase agreement under subsection (2)(b) if the lack of conformity of the goods with the agreement is only minor.
- (4) In case of dispute, it shall be for the owner to show that the lack of conformity of the goods with the agreement is minor.
- (5) Where subsection (1)(b) applies, it shall be objectively determined, taking all the circumstances into account (including the matters mentioned in subsection (6)), whether the hirer—
 - (a) shall have the right specified in paragraph (a) or (b) of subsection (2), or
 - (b) shall be required to accept a further attempt or attempts by the owner to bring the goods into conformity with the hire-purchase agreement.
- (6) The matters referred to in subsection (5) are—
 - (a) the type and value of the goods,
 - (b) the nature and significance of the lack of conformity with the hire-purchase agreement, and
 - (c) whether the hirer can reasonably be expected to maintain confidence in the ability of the owner to bring the goods into conformity with the hire-purchase agreement, in particular where the same lack of conformity with the agreement appears on more than one occasion.
- (7) For the purposes of subsection (1)(c), it shall be objectively determined, having regard to the nature and severity of the lack of conformity with the hire-purchase agreement (including the matters mentioned in subsection (8)), whether the lack of conformity of the goods with the agreement is of such a serious nature as to justify the application of subsection (2).
- (8) The matters referred to in subsection (7) are whether the lack of conformity with the hire-purchase agreement is such that—
 - (a) the hirer cannot maintain confidence in the ability of the owner to bring the goods into conformity,

(b) the ability of the hirer to make normal use of the goods is severely affected and the hirer cannot reasonably be expected to trust that this would be remedied by repair or replacement by the owner.

(9) Where the hirer is entitled to exercise the right conferred by subsection (2)(b) by virtue of some (but not all) of the goods to which the hire-purchase agreement relates not being in conformity with the agreement, the hirer may exercise that right only in relation to—

(a) those goods, and

(b) any other goods that the hirer acquired with the goods that are not in conformity with the agreement, if the hirer cannot reasonably be expected to keep only the goods that are in conformity with the hire-purchase agreement.

(10) In this section, 'relevant time' has the same meaning as it has in section 73A.

Price reduction

73M. (1) This section applies where the hirer has the right to a price reduction under section 73L(2)(a).

(2) The right of the hirer under this section is the right—

(a) to require the owner to reduce in accordance with subsection (3) the price the hirer is required to pay under the hire-purchase agreement, or

(b) to receive from the owner a reimbursement of the price paid by the hirer in excess of the amount of the reduction applicable under subsection (3).

(3) The reduction of the price shall be proportionate to the decrease in the value of the goods received by the hirer compared with the value that the goods would have if they were in conformity with the hire-purchase agreement.

(4) Where the hirer has the right to reimbursement under subsection (2)(b), the owner shall reimburse the hirer in accordance with section 73P.

(5) In a hire-purchase agreement where the hirer transfers the ownership of goods to the owner in full or part payment of the price, the right of the hirer to a price reduction shall not apply if—

- (a) no agreed monetary value was ascribed by the parties to the goods to be transferred by the hirer at the time the hire-purchase agreement was concluded, or
- (b) the goods which the hirer has transferred, or is required to transfer, under the hire-purchase agreement cannot be divided up so as to enable the owner to receive or retain only the reduced price.

Obligations of hirer in event of termination of hire-purchase agreement

- 73N.** (1) Where the hirer exercises the right to terminate a hire-purchase agreement under section 73B(3), the short-term right to terminate a hire-purchase agreement under section 73I(1)(a) or the final right to terminate a hire-purchase agreement under section 73L(2)(b), the hirer shall—
- (a) do so by means of a statement to the owner expressing the decision to terminate the hire-purchase agreement, and
 - (b) return any goods or materials delivered under the hire-purchase agreement to the owner at the owner's expense.
- (2) A hirer who fails to comply with the obligation to return any goods or materials in accordance with subsection (1) shall be liable in damages for any loss or damage suffered by the owner as a result of that failure.

Obligations of owner where hire-purchase agreement terminated

- 73O.** (1) This section applies where the hirer exercises—
- (a) the right to terminate a hire-purchase agreement under section 73B(3),
 - (b) the short-term right to terminate a hire-purchase agreement under section 73I(1)(a),
or
 - (c) the final right to terminate a hire-purchase agreement under section 73L(2)(b).
- (2) The owner shall upon receipt of the goods or, if the owner so chooses, of evidence provided by the hirer of having sent back the goods, reimburse the hirer in accordance with section 73P for—
- (a) the price paid for the goods, and
 - (b) any costs incurred by the hirer in returning the goods to the owner.

- (3) If the hirer terminates a hire-purchase agreement before the price payable for the goods under the agreement has been paid in full, the reimbursement to which the hirer is entitled under subsection (2) applies only to the part of the price which has been paid by the hirer.
- (4) Where the hirer exercises the final right to terminate the hire-purchase agreement under section 73L(2)(b), the reimbursement of the price to which the hirer is entitled under subsection (2) may be reduced in proportion to any depreciation in the value of the goods in excess of the depreciation that could reasonably be expected to result from their normal use.
- (5) In case of dispute as to the application of subsection (4), it shall be for the owner to show that the depreciation in the value of the goods exceeded that which could reasonably be expected to result from their normal use.
- (6) Subject to subsection (7), in a hire-purchase agreement where the hirer transfers the ownership of goods to the owner in full or part payment of the price, the owner shall—
 - (a) return those goods to the hirer, and
 - (b) reimburse the hirer in accordance with section 73P for any part of the price paid by the hirer.
- (7) If the owner cannot return goods to the hirer in accordance with subsection (6), the owner shall reimburse the hirer—
 - (a) to the agreed monetary value ascribed to the goods by the parties at the time the hire-purchase agreement was concluded, or
 - (b) where no such monetary value was agreed, to a reasonable market value for the goods at the time the hire-purchase agreement was concluded.

Time limits and means of reimbursement by owner

- 73P.** (1) This section applies where reimbursement is owed to the hirer by the owner by virtue of—
- (a) a price reduction under section 73M,
 - (b) the exercise of the right to terminate the hire-purchase agreement under section 73B(3),

- (c) the exercise of the short-term right to terminate the hire-purchase agreement under section 73I(1)(a), or
 - (d) the exercise of the final right to terminate the hire-purchase agreement under section 73L(2)(b).
- (2) The owner shall reimburse the hirer without undue delay and in any event not later than 14 days after the day on which the owner receives—
- (a) the goods back, or
 - (b) if the owner so chooses, evidence provided by the hirer of having returned the goods.
- (3) The owner shall reimburse the hirer using the same means of payment as the hirer used to pay for the goods unless—
- (a) the hirer expressly agrees otherwise, and
 - (b) the hirer does not incur any fees as a result of reimbursement by the means otherwise agreed.
- (4) The owner shall reimburse the hirer without the imposition of any fee on the hirer in respect of the reimbursement.
- (5) An owner who fails to comply with the obligation to reimburse the hirer in accordance with this section shall be liable in damages for any loss or damage suffered by the hirer as a result of that failure.

Effect of termination of hire-purchase agreement on ancillary contract

- 73Q.** (1) Where a hirer terminates a hire-purchase agreement in accordance with section 73N, any ancillary contract is terminated without any cost to the hirer.
- (2) Where an owner is informed by a hirer in accordance with section 73N(1)(a) of the hirer's decision to terminate a hire-purchase agreement, the owner shall inform any trader with whom the hirer has an ancillary contract that the contract with that trader has been terminated by subsection (1).
- (3) Where an ancillary contract is terminated by subsection (1)—
- (a) the owner or trader with whom the hirer has that contract shall comply with the obligations in section 73O, and

(b) the hirer shall comply with the obligation in section 73N(1)(b).

(4) Where any security has been provided under an ancillary contract that is terminated by subsection (1), it is to be treated as never having had effect and any property lodged with the owner or trader solely for the purposes of that security shall be returned immediately by the owner or trader.

(5) In this section—

‘ancillary contract’, in relation to a hire-purchase agreement concluded between a hirer and an owner, means another contract concluded between that hirer and that owner, or between that hirer and a trader other than the owner, under which—

(a) the owner, or

(b) in pursuance of arrangements made between the owner and that trader, the trader, supplies to the hirer goods, digital content, a digital service or a service relating to the hire-purchase agreement;

‘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 related to the person’s trade, business, craft or profession, and includes any person acting in the name, or on behalf, of the trader.

Representations purporting to restrict rights of hirer: offences

73R. (1) It shall be an offence for an owner to do any of the following things in relation to a representation to which subsection (1) applies:

(a) to display on any part of any premises a notice that includes any such representation;

- (b) to publish or cause to be published an advertisement which contains any such representation;
 - (c) to supply goods bearing, or digital content or a digital service displaying in any form such representation; or
 - (d) otherwise to furnish or to cause to be furnished a document including any such representation.
- (2) A representation is 'relevant' for the purposes of subsection (1) if—
- (a) it is a representation that refunds will not be made for goods that are not in conformity with the hire-purchase agreement,
 - (b) it is a representation that any refunds will be made only in the form of a credit note or gift voucher,
 - (c) it is a representation that goods that are not in conformity with the hire-purchase agreement will not be replaced, repaired or otherwise brought into conformity with the agreement, or
 - (d) it is otherwise likely to be taken as indicating that—
 - (i) a right or the exercise of a right conferred by any of sections 73A to 73P,
 - (ii) a remedy or the exercise of a remedy conferred by any of those sections, or
 - (iii) an obligation or a liability arising under any of those sections,is restricted or excluded otherwise than in accordance with this Act.
- (3) In this section, 'representation' includes—
- (a) any oral, written, visual, descriptive or other representation by an owner, including any commercial communication, marketing or advertising, and
 - (b) any term or form of a contract, notice or other document used or relied on by an owner in connection with a hire-purchase transaction.

Exclusion or limitation of liability of owner

- 73S.** (1) A term of a hire-purchase agreement or of any other contract between a hirer and an owner shall not exclude or restrict the owner's liability under any of sections 73A to 73H.
- (2) A term of a hire-purchase agreement or of any other contract between a hirer and an owner which purports to, or has the effect of, excluding or restricting the liability of the owner under any of the provisions specified in subsection (1) shall not be binding on the hirer.
- (3) The references in subsections (1) and (2) to excluding or restricting the owner's liability include a reference to—
- (a) excluding or limiting a right or remedy in respect of a liability under a provision specified in subsection (1),
 - (b) making such a right or remedy, or its enforcement, subject to a restrictive or onerous condition,
 - (c) allowing an owner to put a person at a disadvantage as a result of pursuing such a right or remedy,
 - (d) excluding or restricting rules of evidence or procedure, or
 - (e) preventing an obligation arising or limiting its extent.
- (4) An agreement in writing to submit present or future differences to an ADR procedure within the meaning of the European Union (Alternative Dispute Resolution for Consumer Disputes) Regulations 2015 (S.I. No. 343 of 2015) is not to be regarded as excluding or restricting any liability for the purposes of this section.
- (5) An owner who contravenes subsection (1) commits an offence.

Liability for commercial guarantee

- 73T.** (1) A commercial guarantee shall be binding on the guarantor under the conditions specified in the commercial guarantee statement and in any associated advertising available at the time of, or before, the conclusion of the hire-purchase agreement.
- (2) Without prejudice to the generality of subsection (1), where a producer offers the hirer a commercial guarantee of durability for specified goods for a specified period of time —

- (a) the producer shall be liable directly to the hirer during the entire period of the commercial guarantee of durability for the repair or the replacement of the goods in accordance with section 73I, and
 - (b) the producer may offer more favourable conditions to the hirer in the commercial guarantee statement on the durability of the goods.
- (3) If some or all of the conditions specified in the commercial guarantee statement are less advantageous to the hirer than those specified in the associated advertising, the commercial guarantee shall be binding under the more advantageous conditions specified in the advertising relating to the commercial guarantee unless, before the conclusion of the hire-purchase agreement, the associated advertising was corrected to reflect the same, or comparable, conditions to those specified in the commercial guarantee statement.

Liability of owner for another's commercial guarantee

- 73U.** (1) Where an owner gives a hirer a commercial guarantee provided by another guarantor, the owner shall, unless the owner expressly indicates the contrary when the guarantee is given to the hirer, be liable to the hirer for the observance of that guarantee as if the owner were the guarantor.
- (2) Notwithstanding subsection (1), where the owner gives his or her own commercial guarantee to a hirer, it shall be presumed, unless the contrary is proved, that the owner has not made himself or herself liable to the hirer under any commercial guarantee from another guarantor which the owner has given to the hirer.
- (3) The liability of an owner to a hirer under subsections (1) and (2) is without prejudice to the rights conferred on the hirer under section 73T.

Liability under commercial guarantee to subsequent hirers

- 73V.** Where goods covered by a commercial guarantee provided to a hirer are subsequently acquired by another hirer within the duration of the guarantee period, that other hirer shall be entitled to rely on the commercial guarantee against—
- (a) the guarantor under section 73T, or
 - (b) the owner under section 73U(1) and (2),
- as if he or she were the hirer to whom the guarantee was provided.

Provision and content of commercial guarantee statement

- 73W.** (1) Where goods are let under a hire-purchase agreement and there is a commercial guarantee, the commercial guarantee statement shall be provided to the hirer on a durable medium by the time of the delivery of the goods.
- (2) The commercial guarantee statement shall be expressed in concise, plain, intelligible language and shall include the following—
- (a) a clear statement that the hirer is entitled by law to remedies from the owner free of charge in the event of a lack of conformity of the goods with the hire-purchase agreement and that those remedies are not affected by the commercial guarantee,
 - (b) the name and address of the guarantor,
 - (c) the procedure to be followed by the hirer to obtain the implementation of the commercial guarantee,
 - (d) the designation of the goods to which the commercial guarantee applies, and
 - (e) the conditions of the commercial guarantee.
- (3) Any failure to comply with subsection (1) or (2) shall not affect the binding nature of the commercial guarantee for the guarantor.
- (4) In this section—

‘durable medium’ means any instrument which enables a hirer or an owner 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;

‘free of charge’ means free of the necessary costs incurred in order to bring goods into conformity with the hire-purchase agreement, particularly the cost of postage, carriage, labour or materials.

Exclusion or limitation of rights of hirer under commercial guarantee

- 73X.** (1) A commercial guarantee shall not—
- (a) in any way exclude or limit the rights of the hirer under any enactment or rule of law,

(b) impose obligations on the hirer that are additional to his or her obligations under the hire-purchase agreement, or

(c) purport to make the guarantor or any person acting on his or her behalf the sole authority to decide whether goods conform to the hire-purchase agreement or whether the hirer is otherwise entitled to make a claim under the commercial guarantee.

(2) Any provision of a commercial guarantee that is contrary to subsection (1) shall not be binding on the hirer.

(3) A guarantor who gives a commercial guarantee which contravenes subsection (1) commits an offence.”.

(2) The amendment made by *subsection (1)* shall apply in relation to a hire-purchase agreement that is concluded on or after the day on which this section comes into operation.

Application of sections 73A to 83 of Act of 1995 to consumer-hire agreements

151. (1) The Act of 1995 is amended by the substitution for section 88 of the following section:

“Application of sections 73A to 83 to consumer-hire agreements

88. (1) Subject to subsection (2), where goods are let under a consumer-hire agreement, the provisions of sections 73A to 83 shall apply to the consumer-hire agreement as if it were a hire-purchase agreement.

(2) In the application of section 73P to a consumer-hire agreement, the entitlement to reimbursement of the price referred to in subsection (1)(a) applies only so far as relating 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.

(3) In a consumer-hire agreement, the owner shall ensure that—

(a) the goods are free from any charge or encumbrance that is not disclosed to the hirer before the agreement is entered into, and

(b) the hirer shall enjoy quiet possession of the goods except so far as it may be disturbed by the owner or any other person who is entitled to the benefit of any charge or encumbrance so disclosed.”.

- (2) The amendment made by *subsection (1)* shall apply in relation to a consumer-hire agreement that is concluded on or after the day on which this section comes into operation.

PART 9

Amendment of Consumer Protection Act 2007

Amendment of section 2 of Act of 2007

152. Section 2 of the Act of 2007 is amended, in subsection (1)—

- (a) by the substitution of the definition “authorised officer” for the following definition:

“authorised officer’—

(a) in relation to the functions performed by the Competition and Consumer Protection Commission under this Act, has the same meaning as it has in the Competition and Consumer Protection Act 2014 , and

(b) in relation to the functions performed by the Commission for Communications Regulation under this Act, has the same meaning as it has in section 39 of the Communications Regulation Act 2002 ;”

- (b) by the substitution for the definition of “product” of the following definition:

“product’ means any goods or services including immovable property, a digital service and digital content, as well as rights and obligations;”

- (c) in the definition of “relevant statutory provisions”—

(i) by the deletion of paragraphs (k) and (l),

(ii) by the deletion of “and”, where it occurs immediately after paragraph (m), and

(iii) by the insertion after paragraph (n) of the following:

“, and

(o) the *Act of 2022*.”

and

- (d) by the insertion of the following definitions:

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

'digital content' has the same meaning as it has in the *Act of 2022*;

'digital service' has the same meaning as it has in the *Act of 2022*;

'distance contract' has the same meaning as it has 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;".

Amendment of section 41 of Act of 2007

153. Section 41 of the Act of 2007 is amended by the insertion of the following subsection after subsection (3):

"(4) A trader who continues to engage in a commercial practice that has been found to be unfair by a court under this section commits an offence and is liable on conviction on indictment or on summary conviction, as the case may be, to the fines and penalties provided in Chapter 4 of Part 5."

Misleading: marketing of goods as identical where significantly different

154. The Act of 2007 is amended by the insertion of the following section after section 44:

"44A. (1) A commercial practice is misleading if—

(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.

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

Amendment of section 46 of Act of 2007

155. Section 46 of the Act of 2007 is amended—

(a) in subsection (3), by—

(i) the substitution of the following paragraph for paragraph (e):

“(e) the arrangements for payment, delivery and performance if such arrangements do not meet or accord with—

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

(ii) the general principle of good faith in the trader’s field of activity;”,

and

(ii) the insertion of the following paragraph after paragraph (f):

“(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.”,

(b) by the insertion of the following subsections after subsection (3):

“(3A) (a) Where consumers are provided with the option of searching for products offered by different traders or consumers on the basis of a query in the form of a keyword, phrase or other input (and irrespective of where transactions are ultimately concluded) general information relating to—

(i) the main parameters determining the ranking of products presented to a consumer as a result of the search query, and

(ii) the importance of those parameters relative to other parameters,

that is made available in a specific section of the online interface directly and easily accessible from the page where the query results are presented shall be treated as material information for the purposes of this section.

(b) Paragraph (a) does not apply to any person who provides or offers to provide an online search engine to consumers.

(3B) Where a trader provides access to reviews by consumers of products, information in relation to whether and how the trader ensures that the published reviews originate from consumers who have actually used or purchased the products shall be treated as material information for the purposes of this section.”,

and

(c) in subsection (4), by the substitution of “subsections (3) to (3B)” for “subsection (3)”.

Amendment of section 47 of Act of 2007

156. Section 47 of the Act of 2007 is amended by the insertion of “, 44(1), 44A, 45(1) or 46(1) or (2)” after “43(1) or (2)”.

Amendment of section 55 of Act of 2007

157. Section 55(1) of the Act of 2007 is amended by—

(a) the insertion of the following paragraph after paragraph (q):

“(qa) providing search results in response to a consumer’s online search query without clearly disclosing any paid advertisement or payment specifically for achieving higher ranking of products within the search results;”,

and

(b) the insertion of the following paragraphs after paragraph (y):

“(z) reselling event tickets to consumers if the trader acquired them by using automated means to circumvent any limit on the number of tickets that a person may buy or any other rules applicable to the purchase of tickets;

(za) stating that reviews of a product are submitted by consumers who have actually used or purchased the product without taking reasonable and proportionate steps to check that the reviews originate from such consumers;

(zb) submitting or commissioning a person to submit false reviews or endorsements by consumers, or misrepresenting reviews or social endorsements by consumers, in order to promote products.”.

Amendment of section 67 of Act of 2007

158. Section 67 of the Act of 2007 is amended—

(a) by the deletion of paragraph (g), and

(b) by the insertion of the following paragraphs after paragraph (n):

“(o) any contravention of section 7 of the *Act of 2022*;

(p) 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*;

(q) 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;

(r) any contravention of section 39 (1), 44 (1) or (2), 71 (1) or 94 (1) of the *Act of 2022*;

(s) any contravention of Part 5 of the *Act of 2022*;

(t) 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;

(u) 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;

(v) 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;

(w) any contravention of section 140 of the *Act of 2022*”.

Amendment of section 71 of Act of 2007

159. Section 71 of the Act of 2007 is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) In this section, ‘prohibited act or practice’ does not include:

(a) a contravention of section 59(2) (respecting weighing facilities in grocery retail);

(b) a contravention of section 60(1) (respecting preventing the reading of prices);

(c) in relation to a financial service (within the meaning of the Central Bank Act 1942) provided by a trader who is a regulated financial service provider (within the meaning of that Act), a failure or refusal by the trader to provide—

(i) a remedy to which a consumer is entitled under section 85 (1) or 86 (2)(a) of the *Act of 2022*, or

(ii) a reimbursement to which a consumer is entitled under section 90 of the *Act of 2022*;

(d) 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;

(e) 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;

(f) 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.”,

(b) by the insertion of the following subsection after subsection (2):

“(2A) An application may be made under subsection (2) for—

(a) an interim order,

(b) an interlocutory order, or

(c) an order for an indefinite period or for a period specified in the application.”,

and

(c) by the insertion of the following subsection after subsection (6):

“(6A) Where an application under this section relates to a particular prohibited act or practice which relates to any of Parts 2 to 5 of the *Act of 2022*, an order may be made in relation to any similar prohibited act or practice (or prohibited act or practice having like effect) committed or engaged in by a trader.”.

Amendment of section 73 of Act of 2007

160. Section 73 of the Act of 2007 is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) In this section, ‘prohibited act or practice’ does not include:

(a) a contravention of section 59(2) (respecting weighing facilities in grocery retail);

- (b) a contravention of section 60(1) (respecting preventing the reading of prices);
- (c) in relation to a financial service (within the meaning of the Central Bank Act 1942) provided by a trader who is a regulated financial service provider (within the meaning of that Act), a failure or refusal by the trader to provide—
 - (i) a remedy to which a consumer is entitled under *section 85 (1)* or *86 (2)(a)* of the *Act of 2022*, or
 - (ii) a reimbursement to which a consumer is entitled under *section 90* of the *Act of 2022*.”

and

(b) by the substitution of the following subsection for subsection (7):

“(7) Despite subsection (6), the Commission may—

- (a) apply for an order against a trader under section 71, or
- (b) serve a compliance notice on a trader under section 75,

if the trader fails to comply with the terms and conditions of an undertaking under this section.”.

Consumer’s right to price reduction and termination of contract

161. The Act of 2007 is amended by the insertion of the following section after section 74:

“74A. (1) A consumer who is aggrieved by a prohibited act or practice shall have the following remedies—

- (a) a right to a reduction in the price payable under the contract, and
- (b) a right to terminate the contract.

(2) The conditions under which the consumer shall have the right to those remedies, and the obligations of the trader and the consumer in respect of the remedies, shall be prescribed for the purposes of this section.”.

Amendment of section 75 of Act of 2007

162. Section 75 of the Act of 2007 is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) In this section, ‘prohibited act or practice’ does not include—

(a) a contravention of a regulation under section 57 (respecting price display regulations),

(b) in relation to a financial service (within the meaning of the Central Bank Act 1942) provided by a trader who is a regulated financial service provider (within the meaning of that Act), a failure or refusal by the trader to provide—

(i) a remedy to which a consumer is entitled under *section 85 (1)* or *86 (2)(a)* of the *Act of 2022*, or

(ii) a reimbursement to which a consumer is entitled under *section 90* of the *Act of 2022*.”,

(b) in subsection (3)(d), by the substitution of “relevant court specified in the notice” for “District Court”,

(c) by the insertion of the following subsection after subsection (3):

“(3A) Where the person on whom the compliance notice is served is a trader, an authorised officer may include a requirement under subsection (3)(b) that the trader refund any payments made by the consumer in any transaction relating to the contravention to which the notice relates;”,

(d) in subsection (5), by the substitution of “relevant court specified in the notice” for “District Court in the district court district in which the notice was served”, and

(e) by the insertion of the following subsection after subsection (14):

“(15) In this section, ‘relevant court’ means—

(a) the District Court,

(b) the Circuit Court, or

(c) the High Court.”.

Time limit for instituting summary proceedings

163. The Act of 2007 is amended by the insertion of the following section after section 77:

"77A. Notwithstanding section 10 (4) of the Petty Sessions (Ireland) Act 1851 , summary proceedings for an offence under this Act may be instituted at any time within three years from the date on which the offence is alleged to have been committed."

Amendment of section 79 of Act of 2007

164. Section 79 of the Act of 2007 is amended—

(a) in subsection (1)(a), by the substitution of "a class B fine" for "a fine not exceeding €3,000", and

(b) by the insertion of the following subsection after subsection (7):

"(7A) Where a court is determining the sentence to impose on a person convicted of an offence under any of Chapters 1 to 4 of Part 3 or this section, it shall take account, so far as applicable, of the following indicative and non-exhaustive criteria:

- (a) the nature, gravity, scale and duration of the infringement;
- (b) any action taken by the person to mitigate or remedy the damage suffered by consumers;
- (c) any previous infringements of the provisions of any of those Chapters or of this section by the person;
- (d) the financial benefits gained or losses avoided by the person due to the infringement, if the relevant data are available;
- (e) any penalties imposed on the person for the same infringement in other Member States in cross-border cases where information about such penalties is available through the mechanism established by Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017¹⁹ on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No. 2006/2004;
- (f) any other aggravating or mitigating factors applicable in the circumstances of the case."

Commission for Communications Regulation may institute summary proceedings for certain offences

165. The Act of 2007 is amended by the insertion of the following section after section 84:

“84A. Summary proceedings for an offence under this Act, except an offence under section 65(2), that relates to a function of the Commission for Communications Regulation may be brought and prosecuted by that Commission.”.

Amendment of section 85 of Act of 2007

166. Section 85 of the Act of 2007 is amended—

(a) in subsection (1)—

(i) in paragraph (a), by the insertion of “47 (respecting misleading commercial practices) or” after “section”,

(ii) by the insertion of the following paragraph after paragraph (b):

“(ba) Parts 4 to 6 of the Act of 2022”;

(iii) by the insertion of the following paragraph after paragraph (c):

“(ca) Regulation 7, 8, 13 or 14 of the European Communities (Directive 2000/31/EC) Regulations 2003 (S.I. No. 68 of 2003);”;

and

(iv) by the deletion of paragraph (d),

(b) in subsection (3)(c), by the substitution of “the prescribed amount specified in the notice” for “the amount of €300”, and

(c) by the insertion of the following subsection after subsection (6):

“(6A) 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).”.

Amendment of section 90 of Act of 2007

167. Section 90(1) of the Act of 2007 is amended by the substitution of the following paragraph for paragraph (e):

“(e) the *Act of 2022*”.

Amendment of section 91 of Act of 2007

168. Section 91 of the Act of 2007 is amended—

(a) by the substitution of “sections 66(1) and 74A” for “section 66(1)”, and

(b) by the substitution of “any product” for “any goods or the provision of any services.”.

Amendment of Schedule 4 to Act of 2007

169. Schedule 4 to the Act of 2007 is amended—

(a) by the deletion of the following:

“

No. 16 of 1980

Sale of Goods and Supply of Services Act 1980

”

(b) by the deletion of the following:

“

<u>S.I. No. 224 of 1989</u>	European Communities (Cancellation of Contracts Negotiated away from Business Premises) Regulations 1989
<u>S.I. No. 27 of 1995</u>	European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000
<u>S.I. No. 307 of 2000</u>	
<u>S.I. No. 204 of 1997</u>	European Communities (Contracts for Time Sharing of Immovable Property - Protection of Purchasers) Regulations 1997
<u>S.I. No. 144 of 2000</u>	European Communities (Contracts for Time Sharing of Immovable Property - Protection of Purchasers) (Amendment) Regulations 2000
<u>S.I. No. 207 of 2001</u>	European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations 2001

”

(c) by the deletion of the following:

“

<u>S.I. No. 11 of 2003</u>	European Communities (Sale of Consumer Goods and Associated Guarantees) Regulations 2003
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”

(d) by the deletion of the following:

“

S.I. No. 484 of 2013 European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013

”

and

(e) by the insertion of the following:

“

the *Consumer Rights Act 2022*

”

Amendment of Schedule 5 to Act of 2007

170. Schedule 5 to the Act of 2007 is amended—

(a) by the deletion of the following:

“

No. 16 of 1980 Sale of Goods and Supply of Services Act 1980

”

(b) by the deletion of the following:

“

S.I. No. 224 of 1989 European Communities (Cancellation of Contracts Negotiated away from Business Premises) Regulations 1989

”

(c) by the deletion of the following:

“

- S.I. No. 204 of 1997 European Communities (Contracts for Time Sharing of Immovable Property - Protection of Purchasers) Regulations 1997
- S.I. No. 144 of 2000 European Communities (Contracts for Time Sharing of Immovable Property - Protection of Purchasers) (Amendment) Regulations 2000
- S.I. No. 207 of 2001 European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations 2001

”

(d) by the deletion of the following:

”

- S.I. No. 484 of 2013 European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013

”

and

(e) by the insertion of the following:

”

the *Consumer Rights Act 2022*

”.

PART 10

Amendment of Central Bank Act 1942

Amendment of Central Bank Act 1942

171. The Central Bank Act 1942 is amended—

(a) in section 5A, in subsection (5)(a), by the substitution of the following subparagraph for subparagraph (ii):

“(ii) Parts 4 and 6 of the *Consumer Rights Act 2022*,”

(b) in Part 1 of Schedule 2, by the insertion of the following item after item 49:

“

50. Consumer Rights Act 2022 Parts 4 and 6

”

and

(c) in Part 2 of Schedule 2, by the deletion of items 21 and 29.

PART 11

Amendment of Communications Regulation Act 2002

Amendment of section 10 of Communications Regulation Act 2002

172. Section 10 of the Communications Regulation Act 2002 is amended—

(a) in subsection (1), by—

(i) the deletion of paragraphs (ab) and (ac), and

(ii) the insertion of the following paragraphs after paragraph (ae):

“(af) to monitor and ensure compliance by undertakings and premium rate service providers with Part 3 of the Consumer Protection Act 2007 ,

(ag) to monitor and ensure compliance by undertakings and premium rate service providers with Parts 4 to 6 of the *Consumer Rights Act 2022*,”

(b) by the substitution of the following subsection for subsection (1A):

“(1A) The functions of the Competition and Consumer Protection Commission specified in subsection (1B) are (in so far as they relate to the provision of electronic communications networks, electronic communications services, associated facilities and premium rate services) also functions of the Commission for Communications Regulation, and subsections (1B) to (1E) have effect for the purposes of this subsection.”

(c) by the substitution of the following subsection for subsection (1B):

“(1B) The functions of the Competition and Consumer Protection Commission referred to in subsection (1A) are the functions of that Commission under—

- (a) sections 71 to 73 , 75 , 77 , 80 to 82 , 85 to 88 and 90 of the Consumer Protection Act 2007 in relation to Part 3 of that Act,
- (b) sections 71 to 73 , 75 , 77 , 80 , 85 to 88 and 90 of the Consumer Protection Act 2007 in relation to *Parts 4 and 5* of the *Consumer Rights Act 2022*, and
- (c) sections 73 , 75 , 77 , 80 , 85 to 87 and 90 of the Consumer Protection Act 2007 in relation to *Part 6* of the *Consumer Rights Act 2022*."

and

- (d) in subsection (1D)(b), by the substitution of "Consumer Protection Act 2007" for "Act".

Amendment of section 39 of Communications Regulation Act 2002

173. Section 39 of the Communications Regulation Act 2002 is amended—

- (a) in subsection (1), by the substitution of ", the Competition Act 2002 , the Consumer Protection Act 2007 , the Competition and Consumer Protection Act 2014 , the *Consumer Rights Act 2022*, a transferred function or any regulations made under the Act of 1972" for "or the Competition Act 2002 ", and
- (b) in subsection (3) (as amended by the Competition (Amendment) Act 2022), by the insertion of "the Consumer Protection Act 2007 , the Competition and Consumer Protection Act 2014 and the *Consumer Rights Act 2022*," after "law),".

PART 12

Amendment of Competition and Consumer Protection Act 2014

Amendment of section 12 of Competition and Consumer Protection Act 2014

174. Section 12 (13) of the Competition and Consumer Protection Act 2014 is amended by the insertion of ", (3)(b) or (5)(a)" after "subsection (1)".

PART 13

Amendment of Companies Act 2014

Amendment of section 459 of Companies Act 2014

175. Section 459 of the Companies Act 2014 is amended—

- (a) in subsection (7), by the substitution of the following paragraph for paragraph (c):

“(c) after the expiry of the period of 7 years referred to in paragraph (b), realise as soon as practicable any shares, other securities or other property vested in it as consideration and lodge the proceeds so realised and any money standing to the credit of the bank account referred to in paragraph (b), together with the names of the persons believed by the offeree company to be entitled thereto, to an account as the Minister for Public Expenditure and Reform may nominate and operated under the control of the Accountant of the Courts of Justice (in this section referred to as the ‘nominated account’),”

(b) by the insertion of the following subsections after subsection (8):

“(9) (a) Where the offeree company is unable to realise under subsection (7)(c) the shares, other securities or other property vested in it as consideration, such shares, other securities, or other property and any money standing to the credit of the bank account referred to in subsection (7)(b) shall continue to be held on trust by the offeree company concerned for the persons whom the offeree company believes are entitled thereto until such time as—

(i) the shares, other securities, or other property and any money standing to the credit of the bank account referred to in subsection (7)(b) are claimed by a person claiming to be entitled thereto, or

(ii) the shares, other securities or other property are realised by the offeree company concerned.

(b) Where the offeree company realises the shares, other securities or other property referred to in paragraph (a)(ii), it shall lodge the proceeds so realised and any money standing to the credit of the bank account referred to in subsection (7)(b), together with the names of the persons believed by the offeree company to be entitled thereto, to the nominated account.

(10) Any person claiming to be entitled to any moneys which were lodged to the nominated account under subsection (7)(c) or (9)(b) may make an application to the court in that regard and the court may, where it is satisfied that the person so claiming is so entitled, order that payment be made to that person.

(11) After the expiry of the period of 7 years after the date of any lodgment to the nominated account made under subsection (7)(c), (9)(b) or (13), the amount of the lodgment remaining unclaimed shall be paid into the Exchequer.

(12) Any person claiming to be entitled to any moneys which were paid into the Exchequer under subsection (11) may make an application to the court in that regard and the court may, where it is satisfied that the person so claiming is so entitled, order that the Minister for Public Expenditure and Reform make payment to that person and that Minister shall issue such sum as may be necessary to provide for that payment.

(13) Where, before the commencement of *section 175* of the *Consumer Rights Act 2022*—

(a) money standing to the credit of the bank account referred to in subsection (7)(b) was, after the expiry of the period of 7 years referred to in that subsection, transferred pursuant to the previous subsection (7)(c) to the Minister for Public Expenditure and Reform together with the names of the persons believed by the offeree company to be entitled thereto, that money shall, on the commencement of *section 175* of the *Consumer Rights Act 2022*, be lodged by that Minister, together with those names, to the nominated account, and

(b) any shares, other securities or other property vested in the offeree company as consideration were, after the expiry of the period of 7 years referred to in subsection (7)(b), transferred pursuant to the previous subsection (7)(c) to the Minister for Public Expenditure and Reform—

(i) those shares, other securities or other property shall, on the commencement of *section 175* of the *Consumer Rights Act 2022*, be returned to the offeree company concerned to be held by that company on trust for the persons whom the company believes are entitled thereto,

(ii) the offeree company concerned shall as soon as practicable realise such shares, other securities or other property and shall lodge the proceeds so realised, together with the names of the persons believed by the company to be entitled thereto to the nominated account,

(iii) where the offeree company is unable to realise the shares, other securities or other property vested in it as consideration, such shares, other securities, or other property shall continue to be held on trust by the offeree company concerned for the persons whom the offeree company believes are entitled thereto until such time as the shares, other securities or other property are claimed by a person claiming to be entitled thereto or are realised by the offeree company concerned, and

(iv) where the offeree company has realised the shares, other securities or other property concerned, it shall lodge the proceeds together with the names of the persons believed by the company to be entitled thereto to the nominated account.

(14) On and after the commencement of *section 175* of the *Consumer Rights Act 2022*, any person claiming to be entitled to any moneys which were lodged to the nominated account under subsection (13)(a) or any sum representing the value of the proceeds lodged to the nominated account under subsection (13)(b), whether that claim arises before or after the commencement of *section 175* of the *Consumer Rights Act 2022*, may make an application to the court in that regard, and the court may, where it is satisfied that the person claiming is so entitled, order that payment be made to that person.

(15) No liability shall attach to the Minister for Public Expenditure and Reform in respect of or arising from any action or omission of the offeree company or any other person in relation to—

(a) the shares, other securities or other property vested in the offeree company as consideration referred to in this section, or

(b) the proceeds or moneys referred to in this section prior to or subsequent to their lodgment to the nominated account.

(16) In this section, 'previous subsection (7)(c)' means subsection (7)(c) as it stood enacted immediately before the commencement of *section 175* of the *Consumer Rights Act 2022*."

PART 14

Minor and consequential amendments of enactments

Minor and consequential amendments of enactments

176. (1) The Acts specified in column (3) of *Part 1* of *Schedule 6* are amended to the extent specified in column (4) of that Part.

(2) The statutory instruments specified in column (3) of *Part 2* of *Schedule 6* is amended to the extent specified in column (4) of that Part.

SCHEDULE 1

Repeals and Revocations

Section 8

Part 1

Repeals

Reference Session and Chapter or Number (1)	and Year (2)	Short title (3)	Extent of repeal (4)
1.	1893 (56 & 57 Vict., c.71)	<u>Sale of Goods Act, 1893</u>	Section 4
2.	No. 16 of 1980	<u>Sale of Goods and Supply of Services Act 1980</u>	Sections 3, 14, 47(6) to (10) and 53 to 55
3.	No. 23 of 1980	<u>Trading Stamps Act 1980</u>	The whole Act
4.	No. 17 of 1995	<u>Package Holidays and Travel Trade Act 1995</u>	Section 25C
5.	No. 24 of 1995	<u>Consumer Credit Act 1995</u>	Sections 74 to 79 and 81
6.	No. 19 of 2007	<u>Consumer Protection Act 2007</u>	Sections 65(1)(b) and 74(1)
7.	No. 1 of 2010	<u>Arbitration Act 2010</u>	Section 21(6)

Part 2

Revocations

Reference	Number and Year	Title of instrument	Extent of revocation
(1)	(2)	(3)	(4)
1.	<u>S.I. No. 27 of 1995</u>	European Communities (Unfair Terms in Consumer Contracts) Regulations 1995	The whole instrument
2.	<u>S.I. No. 307 of 2000</u>	European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2000	The whole instrument
3.	<u>S.I. No. 11 of 2003</u>	European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003	The whole instrument
4.	<u>S.I. No. 160 of 2013</u>	European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2013	The whole instrument
5.	<u>S.I. No. 484 of 2013</u>	European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013	The whole instrument
6.	<u>S.I. No. 336 of 2014</u>	European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2014	The whole instrument

SCHEDULE 2

Information to be provided: on-premises contract

The information to be provided by the trader to the consumer in accordance with section 101 is as follows:

- (a) the main characteristics of the goods, digital content, digital service or service, to the extent appropriate to the medium and to the goods, digital content, digital service or service;
- (b) the identity of the trader, including the trader's trading name and legal identity;
- (c) the geographical address at which the trader is established, and the trader's telephone number;

- (d) the total price of the goods, digital content, digital service or service inclusive of taxes or, where the nature of the goods, digital content, digital service or service is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated;
- (e) where applicable, all freight, delivery or postal charges additional to the price referred to in *clause (d)* or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- (f) where applicable, the arrangements for payment, delivery, performance and the time by which the trader undertakes to deliver or supply the goods, digital content, digital service or service;
- (g) where applicable, the trader's complaint handling policy;
- (h) the existence of a legal obligation on the trader to supply goods, digital content or a digital service that is in conformity with the contract;
- (i) where applicable, the existence and the conditions of any after-sales service or commercial guarantee;
- (j) the duration of the contract where applicable or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating it;
- (k) where applicable, the functionality, including applicable technical protection measures, of goods with digital elements, digital content or digital services;
- (l) where applicable, any relevant compatibility and interoperability of goods with digital elements, digital content and digital services of which the trader is aware, or can reasonably be expected to have been aware;
- (m) such information as may be specified in regulations made under *section 102 (1)*.

SCHEDULE 3

Information to be provided: off-premises contract or distance contract

The information to be provided by the trader to the consumer in accordance with *section 103* or, as the case may be, *section 104 (3)(a)*, in the case of an off-premises contract and *section 106* in the case of a distance contract, is as follows:

- (a) the main characteristics of the goods, digital content, digital service or service, to the extent appropriate to the medium and to the goods, digital content, digital service or service;
- (b) the identity of the trader, including the trader's trading name and legal identity;
- (c) if the trader is acting on behalf of another trader, the identity and geographical address of that other trader;
- (d) the geographical address at which the trader is established, the trader's telephone number and email address, and, where applicable, the details of any other means of online communications provided by the trader which guarantee that the consumer can keep any written correspondence with the trader, including its date and time, on a durable medium;
- (e) the geographical address of—
 - (i) the place of business of the trader, if different from the address provided in accordance with *clause (d)*, and
 - (ii) where the trader acts on behalf of another trader, the place of business of that other trader, if different from the address provided in accordance with *clause (c)*,to which the consumer can address complaints;
- (f) the total price of the goods, digital content, digital service or service inclusive of taxes or, where the nature of the goods, digital content, digital service or service is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated;
- (g) where applicable, all freight, delivery or postal charges and any other costs additional to the price referred to in *clause (f)* or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- (h) in the case of a contract of indeterminate duration or a contract containing a subscription—
 - (i) the total costs per billing period,
 - (ii) where such contracts are charged at a fixed rate, the total monthly costs, or
 - (iii) where the total costs cannot reasonably be calculated in advance, the manner in which the price is to be calculated;

- (i) where applicable, that the price of the goods, digital content, digital service or service was personalised on the basis of automated decision-making;
- (j) the cost of using the means of distance communication used for the conclusion of the contract, where that cost is calculated other than at a rate referred to in any of *paragraphs (a) to (e)* of the definition of “basic rate” in [section 124](#);
- (k) the arrangements for payment, delivery, performance, and the time by which the trader undertakes to deliver, provide or supply the goods, digital content, digital service or service;
- (l) where applicable, the trader’s complaint handling policy;
- (m) where a right to cancel the contract exists, the conditions, time limit and procedures for exercising that right in accordance with [section 112](#);
- (n) where applicable, that the consumer will have to bear the cost of returning the goods in case of cancellation of the contract and, in the case of a distance contract, if the goods by their nature cannot normally be returned by post, the cost of returning the goods;
- (o) where the consumer exercises the right to cancel after having made a request in accordance with [section 119](#), that the consumer is liable to pay the trader reasonable costs in accordance with that section;
- (p) where a right to cancel the contract does not apply under [section 111](#), the information that the consumer will not benefit from the right to cancel the contract or, where applicable, the circumstances in which the consumer loses that right;
- (q) the existence of a legal obligation on the trader to supply goods, digital content, a digital service or a service that is in conformity with the contract;
- (r) where applicable, the existence and conditions of any after-sales customer assistance, after-sales service or commercial guarantee;
- (s) the existence of relevant codes of practice within the meaning of [section 81 \(7\)](#) and, where applicable, how a copy of such codes may be obtained;
- (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;
- (u) where applicable, the minimum duration of the consumer’s obligations under the contract;

- (v) where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;
- (w) where applicable, the functionality, including applicable technical protection measures, of goods with digital elements, digital content or digital services;
- (x) where applicable, any relevant compatibility and interoperability of goods with digital elements, digital content or digital services of which the trader is aware, or can reasonably be expected to have been aware;
- (y) where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism to which the trader is subject, and the methods of accessing that mechanism.

SCHEDULE 4

Information concerning the exercise of the right to cancel

Part 1

Model instructions on right to cancel

Right to cancel

You have the right to cancel this contract within [see Note 1] days without giving any reason. The cancellation period will expire after [see Note 1] days from the day [see Note 2].

To exercise the right to cancel, you must inform us [see Note 3] of your decision to cancel this contract by an unequivocal statement such as an e-mail or a letter sent by post. You may use the attached cancellation form but it is not obligatory. [See Note 4]

To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired.

Effects of cancellation

If you cancel this contract, we will reimburse to you all payments received from you, including the costs of delivery (with the exception of the supplementary costs resulting from your choice of a type of delivery other than the least expensive type of standard delivery offered by us), without undue delay and in any event not later than 14 days from the day on which we are informed of your decision to cancel this contract. We will carry out such reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of such reimbursement. [See Note 5]

[See Note 6]

[See Note 7]

Notes on instructions for completion:

1. Insert one of the following texts between inverted commas:

- (a) in the case of a contract other than an off-premises contract concluded in the context of an unsolicited visit to the consumer's home or an excursion organised by the trader with the aim or effect of promoting or selling goods, digital content, a digital service or a service to the consumer: "14 days";
- (b) in the case of an off-premises contract concluded in the context of an unsolicited visit to the consumer's home or an excursion organised by the trader with the aim or effect of promoting or selling goods, digital content, a digital service or a service to the consumer: "30 days".

2. Insert one of the following texts between inverted commas:

- (a) in the case of a service contract or a contract for the supply of water, gas or electricity not supplied in a limited volume or set quantity, of district heating or of digital content not supplied on a tangible medium: "of the conclusion of the contract.";
- (b) in the case of a sales contract: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the goods.";
- (c) in the case of a contract relating to multiple goods ordered by the consumer in one order and delivered separately: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last of the goods.";

(d) in the case of a contract relating to delivery of a good consisting of multiple lots or pieces: “on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last lot or piece.”;

(e) in the case of a contract for regular delivery of goods during a defined period of time: “on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the first of the goods.”.

3. Insert your name, geographical address, telephone number and email address.

4. If you give the option to the consumer to electronically fill in and submit information in relation to his or her cancellation of the contract on your website, insert the following: “You can also electronically fill in and submit the model cancellation form or any other unequivocal statement on our website [insert website address]. If you use this option, we will communicate to you an acknowledgement of receipt of such a cancellation on a durable medium (e.g. by e-mail) without delay.”.

5. In the case of a sales contract in which you have not offered to collect the goods in the event of cancellation, insert the following: “We may withhold reimbursement until we have received the goods back or you have supplied evidence of having returned the goods, whichever is the earliest.”.

6. If the consumer has received goods in connection with the contract—

(a) insert one of the following texts between inverted commas:

(i) “We will collect the goods”;

(ii) “You shall send back the goods or hand them over to us or ___ [insert the name and geographical address, where applicable, of the person authorised by you to receive the goods], without undue delay and in any event not later than 14 days from the day on which you communicate your cancellation of the contract to us. The deadline is met if you send back the goods before the period of 14 days has expired.”,

(b) insert one of the following texts between inverted commas:

(i) “We will bear the cost of returning the goods.”;

(ii) “You will bear the direct cost of returning the goods.”;

(iii) in the case of a distance contract where you do not offer to bear the cost of returning the goods and the goods, by their nature, cannot normally be returned by post: “You will have to bear the direct cost of returning the goods ___ EUR [insert the amount].”, or if the cost of returning the goods cannot reasonably be calculated in advance: “You will have to bear the direct cost of returning the goods. The cost is estimated at a maximum of approximately EUR [insert the amount].”;

(iv) in the case of an off-premises contract, the goods, by their nature, cannot normally be returned by post and have been delivered to the consumer’s home at the time of the conclusion of the contract: “We will collect the goods at our own expense.”,

and

(c) insert: “You are only 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”.

7. In the case of a contract for the provision of services or the supply of water, gas or electricity, where they are not supplied in a limited volume or set quantity, or of district heating, insert the following: “If you requested to begin the performance of services or the supply of water/gas/electricity/district heating [delete where inapplicable] during the cancellation period, you shall pay us an amount which is in proportion to what has been provided until you have communicated to us your cancellation of this contract, in comparison with the full coverage of the contract.”.

Part 2

Model cancellation form

[Complete and return this form only if you wish to cancel the contract.]

To [here the trader’s name, geographical address and e-mail address are to be inserted by the trader]:

I/We [*] hereby give notice that I/we [*] cancel my/our [*] contract of sale of the following goods[*]/for the provision of the following service [*],

Ordered on [*/received on [*],

Name of consumer(s),

Address of consumer(s),

Signature of consumer(s) [only if this form is notified on paper],

Date

SCHEDULE 5

Part 1

Contract terms presumed unfair

1. A term which has the object or effect of inappropriately excluding or limiting the legal rights of the consumer in relation to the trader or another party in the event of total or partial non-performance or inadequate performance by the trader of any contractual obligations, including the option of offsetting a debt owed to the trader against any claim which the consumer may have against the trader.
2. A term which has the object or effect of making an agreement binding on the consumer whereas the supply of a service by the trader is subject to a condition whose realisation depends on the trader's will alone.
3. A term which has the object or effect of permitting the trader to retain sums paid by the consumer where the consumer decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the trader where the trader is the party cancelling the contract.
4. A term which has the object or effect of requiring that, where the consumer decides not to conclude or perform the contract, the consumer must pay the trader a disproportionately high sum in compensation for goods, digital content, a digital service which have not been supplied.
5. A term which has the object or effect of requiring any consumer who fails to fulfil his or her obligations under the contract to pay a disproportionately high sum in compensation.
6. A term which has the object or effect of authorising the trader to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the trader to retain the sums paid for goods, digital content, a digital service or a service not yet delivered or supplied by the trader, where it is the trader who dissolves the contract.
7. A term which has the object or effect of enabling the trader to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so.

8. A term which has the object or effect of permitting a trader, where the consumer has cancelled the contract, to retain a payment which, had the contract been performed, would have been paid to a third party in accordance with a contractual obligation or a mandatory statutory or regulatory provision.
9. A term which has the object or effect of automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express a desire not to extend the contract is unreasonably early.
10. A term which has the object or effect of irrevocably binding the consumer to terms with which the consumer had no real opportunity of becoming acquainted before the conclusion of the contract.
11. A term which has the object or effect of enabling the trader to alter the terms of the contract unilaterally without a valid reason which is specified in the contract.
12. A term which has the object or effect of enabling the trader to alter unilaterally without a valid reason any characteristics of the goods, digital content, digital service or service to be delivered or supplied.
13. A term which has the object or effect of giving the trader the discretion to decide the price payable under the contract after the consumer has become bound by the contract, where no price or method of determining the price has been agreed with the consumer before the consumer becomes bound.
14. A term which has the object or effect of providing for the price of goods, digital content, a digital service or a service to be determined at the time of delivery or supply, or permitting a trader to increase the price of goods, digital content, a digital service or a service without giving the consumer the right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded.
15. A term which has the object or effect of limiting the trader's obligation to respect commitments undertaken by the trader's agents or making the trader's commitments subject to compliance with a particular formality.
16. A term which has the object or effect of obliging the consumer to fulfil all of his or her obligations where the trader does not perform the trader's obligations.
17. A term which has the object or effect of giving the trader the possibility of transferring the trader's rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the consumer's agreement.

18. A term which has the object or effect of requiring a consumer to pay a fee in order to exercise a statutory right.
19. A term which has the object or effect of preventing, without a valid reason, the consumer from obtaining repairs or spare parts from another trader.
20. A term which has the object or effect of imposing disproportionate formal or other requirements where the consumer wishes to terminate the contract, whether for the purposes of switching to another trader or otherwise.
21. A term which has the object or effect of requiring from the consumer excessive advance payments or excessive guarantees of the performance of future obligations.
22. A term which has the object or effect of unduly restricting the evidence available to the consumer in respect of the performance of the contract.
23. A term which requires a consumer to restrict his or her rights as a data subject under the Data Protection Acts 1988 to 2018 or the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016²⁰ 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 (General Data Protection Regulation)).
24. A term specified in any regulations made under [section 133 \(4\)](#).

Part 2

Restrictions on application of *Part 1*

1. Term 7 (cancellation of contract without reasonable notice) does not include a term of a consumer contract by which a supplier of financial services reserves the right to terminate unilaterally a consumer contract of indeterminate duration without notice where there is a valid reason, provided that the supplier of financial services is required to inform the consumer and any other contracting party of the cancellation immediately.
2. Terms 11 (alteration of contract terms without valid reason) and 13 (determination of price after consumer bound by contract) do not include a term of a consumer contract whereby a supplier of financial services reserves the right to alter the rate of interest payable by or due to the consumer, or the amount of other charges for financial services payable by the consumer where there is a valid reason for doing so, provided that the supplier is required to inform the consumer and any other contracting party or parties of the alteration at the earliest opportunity and the consumer is free to dissolve the contract immediately.

3. Terms 11 (alteration of contract terms without valid reason) and 13 (determination of price after consumer bound by contract) do not include a term under which a trader reserves the right to alter unilaterally the conditions of a contract of indeterminate duration provided that the trader is required to inform the consumer of the alteration with reasonable notice and the consumer is free to dissolve the contract.
4. Terms 7 (cancellation of contract without reasonable notice), 11 (alteration of contract terms without valid reason), 13 (determination of price after consumer bound by contract) and 14 (determination of price upon delivery or increase in price) do not apply to—
- (a) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control, or
 - (b) contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency,
- provided that the consumer is made aware of the possibility of such cancellation, alteration or determination of price in the contract before the consumer is bound by the contract.
5. Term 14 (determination of price upon delivery or increase in price) does not apply to a price-indexation clause, where otherwise lawful, provided that the method by which prices may vary is explicitly described.

SCHEDULE 6

Section 176

Part 1

Amendments of Acts

Reference	Regnal Year and Number or Number and Year (2)	Short title (3)	Extent of Amendment (4)
1.	1893 (56 & 57 Vict., c.71)	<u>Sale of Goods Act, 1893</u>	<p>Section 1 is amended by the insertion of the following subsection after subsection (4):</p> <p style="padding-left: 40px;">“(5) This section shall not apply to a contract to which <i>Part 2</i> of the <i>Consumer Rights Act 2022</i> applies.”.</p> <p>Section 3 becomes subsection (1) of that section and is amended by the insertion of the following subsection after subsection (1):</p> <p style="padding-left: 40px;">“(2) This section shall not apply to a contract to which <i>Part 2</i> of the <i>Consumer Rights Act 2022</i> applies.”.</p> <p>Section 11 is amended by the insertion of the following subsection after subsection (4):</p> <p style="padding-left: 40px;">“(5) This section shall not apply to a contract to which <i>Part 2</i> of the <i>Consumer Rights Act 2022</i> applies.”.</p> <p>Section 12 is amended by the insertion of the following subsection after subsection (2):</p> <p style="padding-left: 40px;">“(3) This section shall not apply to a contract to which <i>Part 2</i> of the <i>Consumer Rights Act 2022</i> applies.”.</p>

Section 13 is amended by the insertion of the following subsection after subsection (3):

“(4) This section shall not apply to a contract to which *Part 2* of the *Consumer Rights Act 2022* applies.”.

Section 14 is amended by the insertion of the following subsection after subsection (6):

“(7) This section shall not apply to a contract to which *Part 2* of the *Consumer Rights Act 2022* applies.”.

Section 15 is amended by the insertion of the following subsection after subsection (2):

“(3) This section shall not apply to a contract to which *Part 2* of the *Consumer Rights Act 2022* applies.”.

Section 20 is amended by—

(a) the insertion of the following subsection after subsection (2):

“(2A) This section shall not apply to a contract to which *Part 2* of the *Consumer Rights Act 2022* applies.”,
and

(b) the deletion of subsections (3) to (7).

Section 29 is amended by—

(a) the deletion of subsections (2A) to (2F), and

(b) the insertion of the following subsection after subsection (5):

“(6) This section shall not apply to a contract to which *Part 2* of the *Consumer Rights Act 2022* applies.”.

Section 30 is amended by the insertion of the following subsection after subsection (4):

“(5) This section shall not apply to a contract to which *Part 2* of the *Consumer Rights Act 2022* applies.”.

Section 31 is amended by the insertion of the following subsection after subsection (2):

“(3) This section shall not apply to a contract to which *Part 2* of the *Consumer Rights Act 2022* applies.”.

Section 32 is amended by—

(a) the insertion of the following subsection after subsection (3):

“(3A) This section shall not apply to a contract to which *Part 2* of the *Consumer Rights Act 2022* applies.”,
and

(b) the deletion of subsection (4).

Section 35 becomes subsection (1) of that section and is amended by the insertion of the following subsection after subsection (1):

“(2) This section shall not apply to a contract to which *Part 2* of the *Consumer Rights Act 2022* applies.”.

Section 53 is amended—

- (a) in subsection (1), by the deletion of “Subject to subsection (2),”,
- (b) by the deletion of subsections (2) and (3), and
- (c) by the insertion of the following subsection after subsection (6):

“(7) This section shall not apply to a contract to which *Part 2* of the *Consumer Rights Act 2022* applies.”.

Section 55 is amended by the insertion of the following subsection after subsection (8):

“(9) This section shall not apply to a contract to which *Part 2* of the *Consumer Rights Act 2022* applies.”.

Section 61 is amended by the insertion of the following subsection after subsection (6):

“(7) Subsection (6) shall not apply to a contract to which *Part 2 of the Consumer Rights Act 2022* applies.”.

2. No. 16 of 1980

Sale of Goods and Supply of Services Act 1980

Section 11 is amended by the insertion of the following subsection after subsection (4):

“(5) This section shall not apply to a contract to which *Parts 2 to 4 of the Consumer Rights Act 2022* applies.”.

Section 12 is amended by the insertion of the following subsection after subsection (3):

“(4) This section shall not apply to a contract to which *Part 2 of the Consumer Rights Act 2022* applies.”.

Section 13 is amended by the insertion of the following subsection after subsection (9):

“(10) This section shall not apply to a contract to which *Part 2 of the Consumer Rights Act 2022* applies.”.

Section 15 becomes subsection (1) of that section and is amended by the insertion of the following subsection after subsection (1):

“(2) In subsection (1), “goods” does not include goods supplied under a contract to which *Part 2* of the *Consumer Rights Act 2022* applies.”.

The following section is inserted before section 39 (and after the Part number and title for Part 4):

“**38A.** This Part shall not apply to a contract to which *Part 4* of the *Consumer Rights Act 2022* applies.”.

Section 47 is amended by the insertion of the following subsection after subsection (5):

“(5A) This section shall not apply in any case where *section 125* of the *Consumer Rights Act 2022* applies.”.

Part 1

Amendment of Statutory Instruments

Reference	Number and Year	Short title	Extent of Amendment
(1)	(2)	(3)	(4)
1.	S.I. No. 14 of 2020	European Union (Cooperation Between National Authorities Responsible for the Enforcement of Consumer Protection Laws) Regulations 2020	<p>Regulation 7 is amended—</p> <p>(a) in paragraph (3), by the deletion of subparagraphs (a), (b), (d) and (i), and</p> <p>(b) by the insertion of the following paragraph after paragraph (3):</p> <p style="padding-left: 40px;">“(4) For the purposes of paragraph (2) and Regulation 8(3), a “national measure” means the following:</p> <p style="padding-left: 80px;">(a) Chapters 1 to 4 of Part 3 and section 79 of the Act of 2007;</p> <p style="padding-left: 80px;">(b) <i>Parts 5 and 6 of the Consumer Rights Act 2022.</i>”.</p> <p>Regulation 8 is amended—</p> <p>(a) in paragraph (2), by the insertion of “specified in Regulation 7(3)” after “under a national measure”, and</p> <p>(b) by the insertion of the following paragraphs after paragraph (2):</p>

“(3) Where a person commits an offence under a national measure specified in Regulation 7(4), and the offence concerned also constitutes an offence under Regulation 7(2), the penalty in respect of the second mentioned offence shall be a fine not exceeding 4 per cent of the person’s annual turnover in any Member State concerned.

(4) Where a fine is to be imposed in accordance with paragraph (3) but information on the person’s annual turnover is not available, the person shall be liable to a fine not exceeding €2 million.”.

The following Regulation is inserted after Regulation 8:

“8A. Where a court is determining the sentence to impose on a person convicted of an offence under Regulation 7(2), it shall take account, so far as applicable, of the following indicative and non-exhaustive criteria:

- (a) the nature, gravity, scale and duration of the infringement;
- (b) any action taken by the person to mitigate or remedy the damage suffered by consumers;
- (c) any previous infringements of Regulation 7(2) by the person;
- (d) the financial benefits gained or losses avoided by the person due to the infringement, if the relevant data are available;

(e) any penalties imposed on the person for the same infringement in other Member States in cross-border cases where information about such penalties is available through the mechanism established by Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017²¹ on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No. 2006/2004;

(f) any other aggravating or mitigating factors applicable in the circumstances of the case.”.

The Schedule is amended—

(a) in column 3 opposite Reference Number 1, by the substitution of “*Part 6 of the Consumer Rights Act 2022*” for “*European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27 of 1995)*”,

(b) in column 2 opposite Reference Number 3, by the substitution of “Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019²² 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.” for “Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1995²³ on certain aspects of the sale of consumer goods and associated guarantees.”,

(c) in column 3 opposite Reference Number 3, by the substitution of “*Part 2 of the Consumer Rights Act 2022*” for “European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003 (S.I. No. 11 of 2003)”,

(d) in column 3 opposite Reference Number 9, by the insertion of the following after Competition and Consumer Protection Act 2014 (No. 29 of 2014)“:

“ Communications Regulation Act 2002

(No. 20 of 2002)

Central Bank Act 1942

(No. 22 of 1942)

Central Bank (Supervision and Enforcement) Act 2013 (No. 26 of 2013)”,

(e) in column 4 opposite Reference Number 9, by the insertion of “Commission for Communications Regulation” after “Commission”, and

(f) in column 3 opposite Reference Number 20, by the substitution of “Part 5 of the *Consumer Rights Act 2022*” for “European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013)”.

2.	<u>S.I. No. 555 of 2010</u>	European Communities (Court Orders for the Protection of Consumer Interests) Regulations 2010	The Schedule is amended by the substitution of the following paragraph for paragraph 7: “7. Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 ²⁴ 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”.
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- ¹ OJ No. L 136, 22.5.2019, p.1
- ² OJ No. L 136, 22.5.2019, p.28
- ³ OJ No. L 328, 18.12.2019, p.7
- ⁴ OJ L 136, 22. 5.2019
- ⁵ OJ No. L 321, 17.12.2018, p.36
- ⁶ OJ L 136, 22.5.2019
- ⁷ OJ No. L 119, 4.5.2016, p.1
- ⁸ OJ No. L 321, 17.12.2018, p.36
- ⁹ OJ No. L 321, 17.12.2018, p.36
- ¹ OJ No. L 321, 17.12.2018, p.36
- ¹¹ OJ No. L 304, 22.11.2011, p. 64
- ¹² OJ No. L 326, 11.12.2015, p.1
- ¹³ OJ No. L 328, 18.12.2019, p.7
- ¹⁴ OJ No. L 33, 3.2.2009, p.10
- ¹⁶ OJ No. L 88, 4.4.2011, p.45
- ¹⁶ OJ No. L 321, 17.12.2018
- ¹⁷ OJ No. L 177, 4.7.2008, p.6
- ¹⁸ OJ No. L345, 27.12.2017, p.1-26
- ¹⁹ OJ No. L345, 27.12.2017, p 1-26
- ²⁰ OJ No. L 119, 4.5.2016, p.1
- ²¹ OJ No. L345, 27.12.2017, p 1-26
- ²² OJ No. L 136, 22.5.2019, p.28-50
- ²³ OJ No. L 171, 7.7.1999, p.12
- ²⁴ OJ No. L 136, 22.5.2019, p.28-50