



# Submission on the General Scheme of the Consumer Rights Bill

Department of Enterprise, Trade and  
Employment

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Coimisiún um  
Iomaíocht agus  
Cosaint Tomhaltóirí

Competition and  
Consumer Protection  
Commission



# Introduction

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The Competition and Consumer Protection Commission (CCPC) welcomes the opportunity to provide its views on the General Scheme of the Consumer Rights Bill (the Scheme). The Scheme is a very positive development for consumers in Ireland and represents welcome consolidation of sale of goods and sale of services legislation. The CCPC notes the origin of a number of the reforms contained in the Scheme as arising from the Sale of Law Review Group Report issued in 2011, in addition to the transposition of a number of EU Directives arising from the Digital Single Market Strategy.

The Scheme will introduce a 'right to repair' which will be of significant importance as Ireland develops a more Circular Economy. The CCPC notes that the Scheme will contain new definitions relating to digital content and digital services as well as recognition of situations in which a consumer provides their personal data as the consideration for the digital content or service. This has the effect of providing rights to a consumer and placing a value on personal data. The CCPC further notes the inclusion of provision for the cancellation of digital goods or services offered as part of a bundle. This will allow for a clear path to a remedy and provide consumers with appropriate protection, in particular as technology advances and goods and services become increasingly digitised. To that end the Scheme will allow for a future proofed legislative instrument that will provide the basis for the development of consumer protection in Ireland.

In particular the CCPC welcomes the provisions of the Scheme that will provide for a consistent level of rights for consumers in regard to contracts for goods, services and digital content. The Scheme will assist consumers to more easily identify the majority of pre-contractual information rights for on-premises, off-premises and distance contracts by locating them in one Act rather than across a number of pieces of legislation. This will in turn assist traders in assessing their obligations and should improve compliance.

The extension of information requirements and cancellation right to contracts for social services such as nursing homes and child care in the Scheme is welcome. Given the importance and high cost of such contracts, the CCPC supports the inclusion of such social

services within the application of the Scheme. This will ensure appropriate safeguards are provided for the most vulnerable of consumers.

The CCPC welcomes the proposal that the liability of the trader for a lack of conformity, and the subsequent entitlement of the consumer to remedies, will not be subject to a two-year liability period but instead will retain the longer limitation period of 6 years.

The Scheme bolsters consumers' rights in contracts for the supply of a service, which the CCPC believes is much needed. In particular, the CCPC welcomes the introduction of statutory remedies for consumers where services are not in conformity with the contract. The CCPC considers that there was a clear need to strengthen the rights of, and remedies available to, consumers in service contracts.

The CCPC welcomes the strengthening of the statutory provisions governing unfair terms in consumer contracts and to bring Irish legislation in this area in line with other EU Member States. The CCPC welcomes the inclusion of so-called "blacklist" terms in the Scheme. This creates greater legal certainty and greater clarity for traders in formulating standard form consumer contracts. In addition, the CCPC welcomes the provision that continued use in a consumer contract of a contract term presumed unfair in accordance with the so-called "grey list" shall be a prohibited commercial practice.

The proposed amendments of the Consumer Protection Act 2007 will provide the CCPC with more effective enforcement measures to tackle breaches by traders, including a more streamlined process to ensure that traders abide by the terms of undertakings entered into with the CCPC. In addition, the insertion of measures to address so-called 'disguised traders' will be of significant assistance in investigating vehicle crime offences.

The CCPC also provides observations on areas where the Scheme could be strengthened further, including in the provision of proof of purchase for on-premises sales.

This submission follows the order of the questions posed in the consultation paper.

## 1. Optional provisions on sale contracts included in Part 2 of the Scheme.

### Option 1: the short-term right of consumers to terminate the contract (Heads 23(1) and 24)

The CCPC supports the proposal to introduce a short-term right (30 day period) to terminate the contract in accordance with Article 3(7) of the Sales Directive and agrees that the right to reject is an important protection for consumers.

One of the primary difficulties when providing information to consumers who contact the CCPC in relation to their right to reject faulty goods is the uncertainty as to when the right expires. Currently the right to reject is very closely associated with acceptance and the right to reject is lost once the consumer accepts the goods. Acceptance is then associated with examining the goods and the difficulties that may arise when a consumer isn't afforded an opportunity to examine what was delivered. There is further uncertainty when one considers the practical difficulties in understanding what is meant by doing some act 'inconsistent with the ownership of the seller' or being deemed to have accepted the goods simply by retaining them for a 'reasonable amount of time'.

The introduction of a 30 day limitation period is a welcome provision as it provides a form of certainty. There is evidence to suggest that 30 days, as a time period, resonates with consumers. It is the view of the CCPC that a 30 day time period provides consumers with a reasonable opportunity to acquaint themselves with the goods and also to sufficiently judge their operation.

The CCPC agrees that the short-term right to terminate the contract should begin when the goods have been delivered, as set out in head 24(2), and notes that this is in line with the recommendation of the Sales Law Review Group.

The CCPC notes that the 30 day period to terminate a sales contract may be shortened for goods that can be reasonably expected to "expire or deteriorate" and that in case of a dispute, it is for the trader to show that a period shorter than 30 days applies (Head 24(4) and (5)). The term "expire or deteriorate" used in Head 25(4) comes, as the Consultation document notes, from Article 16(d) of the Consumer Rights Directive ("CRD"). The CCPC notes that the term used in Article 16(d) of the CRD is "deteriorate or expire *rapidly*". If it

is the intention to provide some guidance in relation to the operation of the Act, consideration may be given to specifying the meaning of “expire or deteriorate” for the purposes of Head 24 and in particular, how the period shorter than 30 days can be calculated. The CCPC would be happy to provide a further view if this is the intention.

*Option 2: the duration of the liability of the trader, and of the entitlement of the consumer to remedies, for a lack of conformity of the goods (Head 21)*

The CCPC supports the proposal that the liability of the trader for a lack of conformity, and the entitlement of the consumer to remedies for a lack of conformity, will not be subject to a two-year liability period but instead to a longer limitation period of 6 years. It is the view of the CCPC that the 2 years as provided for in Directive 1999/44 was too short and its introduction would have weakened the protection afforded by the existing limitation provision.

The CCPC welcomes the proposed clarification of the meaning of delivery as provided for in Head 21(5) which states that the time of delivery of goods means the time at which “(a) the consumer or third party indicated by the consumer for this purpose acquires physical possession of the goods, or (b) 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.”.

The CCPC notes that in the case of delivery of goods, the physical possession of goods may occur over different dates (for example, where multiple goods are ordered by a consumer in one order and they are delivered separately). The CCPC suggests that consideration may be given to providing clarification as to when the time of delivery occurs in this situation. For example, the CCPC notes in relation to cancellation rights for sales contracts under the CRD Regulations, Regulation 15(4) provides “*In the case of sales contracts for multiple goods that are ordered by the consumer in one order and delivered separately, the cancellation period expires after 14 days from the day on which the consumer acquires physical possession of the last of the goods.*” The CCPC believes that such clarification would be especially important in respect of the practical exercise of the short-term right to terminate a sales contract (Head 24(2) refers back to the time of delivery per Head 21(5) and (6)).

*Option 3: the remedies available to the consumer in addition to the Directive's primary remedies of repair, replacement, price reduction and termination of the contract (Head 12(7), (8), (10) and (11)):*

The CCPC welcomes the proposal that supplementary remedies will be made available to the consumer in addition to the Sales Directive's primary remedies of repair, replacement, price reduction and termination of the contract.

*Option 4: the conditions and modalities for the reimbursement of the price in the event of the termination of the contract (Head 29):*

The CCPC supports the provisions at Head 29 on the modalities for return and reimbursement and agrees with the Department's view that it is desirable to have statutory rules on the reimbursement of the price in the event of termination of the contract. The CCPC also agrees that these rules should be consistent with those already provided for under the Digital Content Directive and Consumer Rights Directive.

*Option 5: the deduction permitted in the reimbursement of the price to the consumer in respect of the use of the goods prior to termination of the contract (Head 28(2) and (3)).*

The public consultation describes the proposed provisions at Head 28(2) and (3) as "*as one of the more contentious issues in sales law*". The CCPC appreciates the need for an appropriate range of remedies and a balance to be struck between the protection of consumers and the level of obligations on, and requirement for legal certainty for, traders.

The CCPC is of the view that there are aspects in relation to the effect and operation of the proposed provisions at Head 28(2) and (3) to consider from a consumer's perspective. The CCPC considers the context in which the right to terminate arises is relevant. That is, a right to terminate arises where the lack of conformity of the goods is of such a serious nature as to justify the termination. In this situation, the CCPC believes that the consumer is in a vulnerable position where the goods they have purchased suffer from such a lack of conformity.

However, the CCPC notes the position adopted by the Department in the Scheme and recognises the need to balance the protection of consumers with a trader's obligations.

The CCPC acknowledges that this arises only in circumstances where there has been any depreciation in the value of the goods in excess of the depreciation that could reasonably be expected to result from their normal use and that the burden of proof is on the trader in any case of dispute.

## **2. The non-implementation of the optional provisions in Part 2 of the Scheme.**

### *Option 1: the exclusion of contracts for the sale of second-hand goods sold at public auction*

The CCPC agrees with the proposal not to exclude the sale of second-hand goods sold at public auction from the provisions of Part 2. The CCPC's agrees with the Department's view that the provisions of the Sales Directive, in particular those on the conformity of goods with the contract, are sufficiently flexible to take account of the particular characteristics of second-hand goods sold at auction and welcomes the approach taken by the Department.

For the reasons as outlined in the Consultation paper, the CCPC agrees that second hand goods sold at public auction should not be excluded from Part 2 of the Scheme.

### *Option 2: the exclusion of contracts for the sale of living animals*

The CCPC also agrees with the proposal not to exclude the sale of living animals from the provisions of Part 2. The CCPC's notes the Department's observation that there is a significant market for the sale of animals as pets and that in the Department's view there is no valid policy reason to exclude such sales from the scope of the Scheme. The CCPC welcomes the approach taken by the Department.

The CCPC doesn't see any reason why the sale of living animals would be excluded.

### *Option 3: the duration of the period for the reversal of the burden of proof for a lack of conformity of the goods (Head 22(1))*

The Sales Directive provides Member States with the option to extend the duration of the period for the reversal of the burden of proof for a lack of conformity of the goods to 2 years. The CCPC notes that it is currently not proposed to exercise this option and instead, provides that the reversal of the burden of proof will apply for one year.

The CCPC recognises the benefit that would accrue to consumers by providing the maximum possible reversal of burden of proof period (2 years) However, we also note that the Department, at Head 21 of the Scheme, has chosen to retain the longer limitation period of 6 years for consumers to bring a claim against a trader rather than a period of 2 years and that this may act as a counterbalance to the one year period for the reversal of the burden of proof.

The CCPC considers that extending the duration of the reversal of the burden of proof to two years would offer a real benefit to consumers in relation to a lack of conformity of white goods and cars. In such circumstances, the CCPC considers that a two year reversal of the burden of proof would appear to be reasonable, particularly since consumers, due to the nature of the goods, may not be in a position where they can reasonably identify the lack of conformity in a shorter time frame. In addition, the CCPC notes that the value of these goods (particularly cars) is likely to fall outside the threshold of the Small Claims Court and if a consumer needs to take legal action to enforce their lack of conformity rights, the extension of the reversal of the burden of proof to 2 years will avoid placing an additional burden on consumers to prove the lack of conformity in a court setting and/or to go to further expense by engaging a lawyer to bring their case.

*Option 4: the obligation on the consumer to notify a lack of conformity within two months of detecting it*

The CCPC agrees with the proposal not to include an obligation on a consumer to notify a lack of conformity within two months of the date on which the consumer detected the lack of conformity. The CCPC welcomes the approach taken by the Department.

CCPC agrees with the Department's view that if implemented this would be unfair and unreasonable for the consumers affected.



### **3. The optional provisions included in Part 3 of the Scheme.**

*Option 1: the duration of the liability of the trader, and of the entitlement of the consumer to remedies, for a lack of conformity of the digital content or digital service (Head 50(3))*

The CCPC welcomes the proposal that the liability of the trader for a lack of conformity, and the entitlement of the consumer to remedies for a lack of conformity, will not be subject to a two-year liability period but instead to a longer limitation period of 6 years.

*Option 2: the remedies available to the consumer in addition to the Directive's primary remedies of bringing the digital content or digital service into conformity with the contract, price reduction and the termination of the contract (Head 41(9))*

The CCPC supports the proposal that supplementary remedies will be made available to the consumer in addition to the Digital Content Directive's primary remedies.

*Option 3: rules on the termination of bundle and ancillary contracts (Head 53(9))*

The CCPC welcomes the inclusion of this provision, which will allow for a clear path to a remedy and provide consumers with appropriate protection, in particular as technology advances and goods and services become increasingly digitised. With respect to bundle and ancillary contracts, consumers often have an issue with one element of a bundle with no clarity as to what remedies are applicable, particularly in circumstances where goods and digital services are mixed. In this regard, the ability for the consumer to terminate the contract where the value of the goods or service to the consumer would be materially reduced in the absence of the digital content or digital service is supported.

### **4. The non-implementation of the optional provisions in Part 3 of the Scheme.**

*Option 1: the consequences for the contract of a withdrawal of consent by the consumer to the processing of personal data*

The CCPC notes the decision of the Department not to include a provision dealing with the contractual consequences of a withdrawal of consent by the consumer to the processing of personal data following consultation between the Department and the Data Protection Commission. The CCPC has no observations on this issue.

*Option 2: the application of Part 3 of the Scheme to metadata collected by the trader and to cases where access to digital content or digital services involves exposure to advertisements*

The CCPC has no observations.

## **5. The provisions of Part 4 of the Scheme.**

Current legislation in Ireland relating to contracts for the supply of a service does not provide consumers with the levels of protection that are provided to consumers in contracts for the sale of goods. Part 4 of the Scheme bolsters consumers' rights in contracts for the supply of a service, which the CCPC believes is much needed.

In particular, the CCPC welcomes the introduction of statutory remedies for consumers where services are not in conformity with the contract. The CCPC considers that there was a clear need to strengthen the rights of, and remedies available to, consumers in service contracts. This is especially the case given the increased consumption of service contracts by consumers in society today. The CCPC supports the protections available to consumers in contracts for the supply of a service being brought in line with contracts for the sale of goods (Part 2 of the Scheme) and digital contracts (Part 3 of the Scheme).

The CCPC supports the inclusion of the additional objective requirements of a trader in performing a service provided for by Head 66. This will help ensure that the standards a service provider must adhere to are clear and unambiguous.

The CCPC also welcomes the inclusion of the recommendation by the Sales Law Review Group that the statutory provisions governing exemption clauses in service contracts are put on the same statutory footing as sales contracts (and now digital content contracts under Part 3 of the Scheme). The CCPC supports the proposal that a trader who includes a contract term which excludes or limits the trader's liability, contrary to Head 73(1) or Head 73(2), commits an offence.

## **6. The optional provisions included in Part 5 of the Scheme.**

Part 5 of the Scheme gives effect to Chapters I to IV of the Consumer Rights Directive and implements the considerable number of amendments made to the Consumer Rights Directive by the Better Enforcement Directive. The CCPC believes the approach taken in the Scheme, in revoking the 2013 CRD Regulations and replacing the transposing provisions in Part 5, as amended by the Better Enforcement Directive, will be of real practical benefit to both consumers and traders. This would ensure that the majority of consumer pre-contractual information rights for on-premises, off-premises and distance contracts are in one piece of legislation. This will assist traders in assessing their obligations, which will, in turn, improve compliance.

Optional provisions included:

### *Extension of information requirements and cancellation right to contracts for social services*

Availing of this optional provision is a positive development for consumers of these important services. Not only are these services important but they can represent a considerable outlay for consumers and, therefore, engagement with these services must be on as fully informed a basis as possible. That can only be achieved with access to relevant material information. The Consultation refers to the CCPC's engagement with the Nursing Home sector. In addition the CCPC's predecessor, the National Consumer Agency, had also engaged with providers of particular related services encouraging them to display the costs of those services to consumers in an easily accessible, informative and transparent manner.

While the exclusion of contracts for social services from the Consumer Rights Directive arose from the fact that these services are wholly or mainly provided on a non-market basis by public authorities in certain Member States, the provision of some social services in Ireland occurs on a private market basis. Examples in Ireland include the provision of child care and nursing home care. Given the importance and high cost of such contracts, the CCPC supports the inclusion of such social services within the application of Part 5 of

the Scheme. In the CCPC's view, this will ensure appropriate safeguards are provided for the most vulnerable of consumers.

*Extension of information requirements for on-premises contracts to healthcare contracts*

The CCPC is of the view that, as healthcare contracts are provided for on a largely for payment basis and in some cases on a for-profit basis, there should be a requirement to provide on-premises information on the price of these services before the conclusion of a healthcare contract. This is particularly important as healthcare contracts can have a high cost and, as healthcare contracts are often not routine, consumers may be unfamiliar with their cost. As many of these services are provided on a for-profit basis, such as dental and medical general practitioner, transparency of fees will allow consumers exercise choice more readily.

The CCPC notes that this information requirement is similar to guidelines for practitioners contained within the Dental Council code of practice and Medical Council's guide. Therefore, the CCPC does not envisage the implementation of this provision to be overly onerous on practitioners and welcomes this requirement being placed on a statutory footing.

By way of information the National Consumer Agency ("NCA") had devoted considerable resources, in terms of time and personnel, to the issue of price display for providers of private healthcare services. The NCA had clearly identified pricing in the healthcare sector as a source of concern for consumers. Results from a nationally representative survey of consumers conducted by the NCA which the consultation refers to, found that just 28% of consumers felt GPs gave adequate information about their fees. The corresponding figure for dentists was 25%. Both sectors fared significantly lower than other sectors surveyed in terms of adequate price display.

*Additional pre-contractual information requirements for on-premises contracts*

The information requirements for on-premises contracts at Article 5 of the Consumer Rights Directive are minimum harmonisation measures. Head 76(5) provides that the Minister may make Regulations to prescribe additional information requirements.

Consideration may be given to including a requirement that a trader must be in a position to provide a receipt or some form of proof of purchase to consumers who request it.

*Extension of cancellation period for certain off-premises contracts*

The CCPC welcomes the extension of the withdrawal period for off-premises contracts. This will protect consumers who have not sought out particular goods but have purchased goods potentially as a result of aggressive or misleading marketing or selling practices. An extended cooling-off period is justifiable and proportionate for the protection of these types of consumers in these circumstances and the CCPC supports the inclusion of this extension. This is an issue the CCPC receives contact on via the CCPC helpline where consumers sign up to an off-premises contract and subsequently find that what they were sold is not what is supplied. This additional time is welcome as the CCPC notes that many consumers who contact the CCPC on this issue could be deemed vulnerable consumers and it can take time for a family member or friend to realise there is an issue.

**7. The non-implementation of the optional provisions in Part 5 of the Scheme.**

*Derogation from exception to right of withdrawal for certain off-premises contracts*

The CCPC has no observation.

*Conditions applying to exception to right of withdrawal for specified off-premises contracts*

The CCPC has no observation.

**8. The extension of the scope of Part 6 of the Scheme.**

The CCPC believes that the extension of the scope of Part 6 of the Scheme to contracts previously excluded from the scope of the Consumer Rights Directive (other than financial services) would provide welcome clarity to consumers. The CCPC agrees with the Department that the sectoral exclusions in Article 3(3) of the Consumer Rights Directive were designed in the context of the Directive's provisions regarding pre-contractual information and cancellation of distance and off-premises contracts and the CCPC considers the provisions of Articles 19, 21 and 22 should not be excluded in the same manner for contracts other than financial services contracts.

As a general observation, the CCPC is aware of the intention of the Department of Justice to provide a specific regulator and regulatory framework for the gambling sector. Therefore, any extension as envisaged should take this into consideration.

**9. The provisions of Part 7 of the Scheme that extend the provisions and strengthen the protections of the Unfair Contract Terms Directive.**

Given the fundamental nature of this particular protection, its inclusion in a substantial piece of consumer protection primary legislation is supported.

The CCPC agrees with the Department that it is time to strengthen the statutory provisions governing unfair terms in consumer contracts and to bring Irish legislation in this area in line with other EU Member States. Unfair terms in consumer contracts are often the basis of complaints to the CCPC and contacts to the CCPC's helpline from consumers. The provisions introduced in Part 7 will provide greater protection to consumers from unfair contract terms, recognising and addressing the unequal bargaining power between traders and consumers.

Further, developments in consumer contracts since the Unfair Terms in Consumer Contracts Regulations 1995, such as standard form online contracts, create an even greater need for this legislation for the protection of consumers, as there can be even greater disparity in bargaining power in those circumstances.

The CCPC supports the extension of the application of Part 7 to negotiated contract terms, which were previously excluded from the remit of unfair terms legislation in Ireland. The CCPC is of the view that this acknowledges and helps to address the asymmetry of bargaining power between consumers and traders in the context of contract negotiation.

The CCPC welcomes the extension of this Part 7 to contracts where the consumer does not pay a monetary price under the contract. The inclusion of this provision would ensure that there is a consistency of protection for consumer from unfair terms.

Head 110 of the Scheme inserts for the first time in Irish legislation a list of contractual terms which are always deemed unfair (i.e. a "blacklist" of terms). As the Department's

public consultation document notes, the majority of EU Member States include such a list in their unfair terms legislation. The CCPC welcomes the inclusion of “blacklist” terms in Part 7. This creates greater legal certainty and greater clarity for traders in formulating standard form consumer contracts. The CCPC agrees that the terms outlined in Head 110 are sufficiently serious to be regarded as blacklist terms. The CCPC notes that the inclusion of a blacklist term by a trader in a consumer contract is a criminal offence.

The CCPC welcomes head 111(4) of the Scheme, which provides that continued use in a consumer contract of a contract term presumed unfair in accordance with Part 1 of Schedule 4 (i.e. a “grey list” term) shall be a prohibited commercial practice. Where a trader engages in a prohibited act or practice, the CCPC may issue a compliance notice to remedy the contravention. The CCPC considers civil enforcement to be an appropriate enforcement tool in such circumstances.

#### **10. The non-implementation of the provision in Part 9 of the Scheme.**

The CCPC welcomes Head 120 which amends section 47 of the Consumer Protection Act 2007 (“CPA 2007”). In particular, the creation of an offence for a contravention of s.46 of the CPA 2007 will be of real assistance to the CCPC’s enforcement Divisions and, in particular, investigations of vehicle crime offences. The CCPC has observed repeated instances of vehicle traders withholding or omitting material information, including their status as a trader from consumers (‘disguised traders’). This would also go some way towards addressing issues of disguised trading in the context of social media influencers. Criminalising misleading omissions would address instances where traders do not declare their status as a trader.

The CCPC supports the amendments proposed at heads 124, 125, 128 and 131 in relation to the enforcement mechanisms available to the CCPC. The CCPC considers the proposed amendment to the Fixed Payment Notice (“FPN”), which would provide for a graduated scale of fine from €300 to €1,500, to be particularly welcome. Currently the payment under an FPN is fixed at a flat rate of €300. This has been the case for many years. The current regime does not differentiate between the nature of breaches, scale of breaches,

turnover of a trader or recidivism of a trader. In order to address the risk that a small minority of larger traders would view the current FPN regime as a cost of doing business, the sliding scale would be a good mitigating tool, allowing the CCPC some flexibility in levying the appropriate payment for the relevant offence committed.

Further, the CCPC considers the amendment of section 73 of the CPA 2007 at head 125 would strengthen the enforcement options available to the CCPC. Currently, the CCPC can agree to accept a written undertaking from a trader to, *inter alia*, refrain from committing or engaging in any act or practice or to compensate consumers or a class of consumers. However, if a trader does not comply with an undertaking entered into with the CCPC, at present the only recourse is for the CCPC to apply to the Circuit Court or High Court pursuant to section 71 of the CPA 2007 for an order against the trader. The amendment at head 125 of the Scheme would allow the CCPC issue a compliance notice to a trader for breach of an undertaking. This amendment would strengthen the CCPC's ability to enforce an undertaking and potentially deter traders from failing to abide by the terms of the undertaking.

#### **11. The implementation of the optional aspects of the amendment of the Price Indication Directive.**

The CCPC welcomes the amendments to Directive 98/6/EC introduced by the Better Enforcement Directive.

##### Article 6a: Announcement of a Price Reduction

The CCPC supports the clarity brought by Article 6a in relation to the operation of price reductions, in particular, the clear definition of "the prior price" to mean the lowest price applied by the trader during a period of time not shorter than 30 days prior to the application of the price reduction.

The CCPC has experience of receiving complaints from consumers who believe that prices advertised as prior or previous prices were never offered for sale at that prior or previous price. In addition, during periods of high sales (e.g. Black Friday, summer sales) the CCPC



has received media queries on the law in this area, suggesting that consumers and media are concerned about the transparency of the announcement of price reductions.

The CCPC considers that the introduction of the defined period of time for which the prior price must be applied is a helpful improvement on the current provisions available to consumers and removes any ambiguity on this issue.

The CCPC notes that new Article 6a(3) – (5) of Directive 98/6/EC leaves it to Member States to regulate three aspects of the implementation of the announcement of a price reduction. The CCPC has the following views on the options:

- (i) Member States may provide for different rules for goods which are liable to deteriorate or expire rapidly.

The CCPC acknowledges the practice in retailers selling foodstuffs which are close to their best before or expiry date, where the retailer reduces the price of the individual products to encourage their sale. If necessary, the CCPC considers it is reasonable to include a limited exception to allow retailers to reduce the price of foodstuffs which are close to and/or at the best before or expiry date. The CCPC is also of the view that any such exception should be strictly limited to individual products that are close to the “best before” or expiry date and that it does not provide a mechanism for retailers to avoid the prior price restriction for all foodstuffs. For example, in the case of perishable goods which are generally available the same rules should apply, e.g. dairy products, fruit and vegetable and meats. Promotions on these products should be subject to the changes introduced by Article 6a.

- (ii) Where the product has been on the market for less than 30 days, Member States may also provide for a shorter period of time than the period specified in paragraph 2.

The CCPC considers that it is not necessary to provide any different rules for a product that has been on the market for less than 30 days. The CCPC considers that such an exclusion could be used to circumvent the new provisions introduced in Article 6a(1) and (2). Further, the CCPC considers that this does not disadvantage the trader, as it seems that it is still possible for the trader to reduce the price of a product that has been on the market

for less than 30 days, the trader is simply prevented from announcing the price reduction in a manner that could be misleading or that could cause detriment to a consumer.

- (iii) Member States may provide that, when the price reduction is progressively increased, the prior price is the price without the price reduction before the first application of the price reduction.

What is important here is to establish the reference price against which the price reduction is measured. We would consider that reference price should be the original price of that product prior to the first application of the price reduction. This would enable consumers to make an informed transitional decision as to the price advantage being advertised.



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