

Mr Richard Bruton TD  
Minister for Jobs, Enterprise and Innovation  
Department of Jobs, Enterprise and Innovation  
Kildare Street  
Dublin 2

Cc:

Mr Kieran Grace, Department of Jobs, Enterprise and Innovation

26 February 2016

**Re: Consultation on Guidelines for Grocery Goods Regulations**

Dear Minister,

I write to you in response to the publication of the Grocery Goods Undertaking Regulations 2016 on February 1, and the subsequent request from your Department for comments relating to the draft guidelines for the regulations.

I would like to take this opportunity to highlight the disappointment of Retail Ireland and its member companies with the final regulations as published. Retail Ireland has engaged fully in the process to draw up these regulations and has dedicated a significant amount of time and energy to providing the Department with an insight into the operation of the grocery market in Ireland. It is in that context that we would like to express our disappointment at the apparent decision to disregard the points we made during the consultation phase following the publication of the draft Grocery Regulations in February 2015.

There are a number of practical problems with the regulations as published which wish to highlight and seek further clarification on:

**a) Timeline for application**

It is the view of the retail sector that the stated timeline for application of the regulations (April 30th 2016) poses a real challenge to retailers and is unrealistic and unworkable. While the process to draft the regulations has been underway for a considerable period, retailers could not put in place the extensive back office systems required to ensure compliance with the regulations until such a time that the final regulations were published. Furthermore, as demanded by the regulations, there will be a requirement for an extensive staff training programme within retail organisations in order that all relevant staff are aware of their

obligations under the new regulations. Such training could not be completed until the regulations were finalised due to the potential for change to the draft regulations as previously published.

Now that the final content of the regulations has been agreed, retailers have little more than two months to finalise all of these systems and training programmes. Such a timeline is overly ambitious and unrealistic for our sector. It is our firm belief that the April 30<sup>th</sup> date for enactment should be reconsidered and that a more realistic 6 month transition period (July 31<sup>st</sup>) be implemented, thereby giving all parties the required time and space to ensure full adherence to the regulations.

It is also worth considering that in the Part 3 of the final regulations, section 17 (1) refers to the fact that a “relevant grocery goods undertaking shall, as soon as practicable after commencement of these Regulations, designate and train appropriate members of its staff”. The deadline for compliance as currently outlined is not practicable for our members.

Taking the pragmatic decision to lengthen the period in which retailers can work to ensure staff and systems are ready to meet the significant demands imposed by the regulations will ensure the best possible chance of full compliance. Stakeholders and Government have worked for over 8 years to draft meaningful and useful regulations, to threaten the chances of ensuring widespread compliance by rushing their implementation at this point seems short sighted and unnecessary.

#### **b) Grocery Goods Undertaking Definition**

Retail Ireland is further disappointed that insufficient consideration has been given to how these regulations will impact upon the relationship between individual wholesalers/retailers and their subsidiaries. In our response to the consultation on the draft regulations, Retail Ireland highlighted that many wholesalers and retailers captured under the definition of a grocery goods undertaking would operate structures under which a parent company supplies wholesalers/retailers operating under license or some other such arrangement. Under certain interpretations of the code, a grocery goods undertaking could be required to report upon their relationship with their suppliers (i.e. their parent company/symbol group) should their turnover exceed the stated €50 million cap. This would introduce a completely unworkable layer of regulatory complexity and burdensome cost which is surely not the aim of the regulations.

From interactions with the Department we understand that this is not the intention of the regulations, therefore we strongly urge the Department to consider a form of wording in the guidelines that clearly outlines the fact that such interactions/supply activities do not fall within the scope of these regulations. Retail Ireland believes this area requires significant further consideration, clarification and amendment.

Furthermore, given that a number of our members currently comply with grocery codes in other jurisdictions, clarification on whether supply agreements that are already captured by such codes are in scope would be helpful.

### **c) Administrative burden for small suppliers**

Retail Ireland remains concerned about the potential impact these regulations may have on our sectors' ability to engage with smaller suppliers. Retail Ireland previously suggested that an 'opt out' option be retained within the regulations for smaller suppliers. This was aimed at ensuring that micro enterprises that regularly engage with our sector have the ability to decline to be covered by the regulations. We believe that the regulations as currently drafted will act as a disincentive to the cultivation of a strong relationship between cottage type industries and the retail/wholesale sectors, as the burden of administration will be too great for all parties, but most particularly for those smaller suppliers with limited administrative resources.

Retail Ireland strongly believes that this recommendation be re-examined in this context.

### **d) Singular focus on retailers**

Retail Ireland and its members remain concerned that the regulations retain a singular focus and burden on retailers. The regulations create obligations for relevant Grocery Goods Undertakings only, meaning there are no obligations on suppliers at all in these Regulations. This creates an obvious imbalance and given that in reality some suppliers are actually much larger than the retailer/wholesaler, they should be required to comply with the Regulations in full.

Due consideration should be given to the obligations of suppliers while engaging in a commercial relationship with a wholesaler/retailer regardless of size. These obligations should include complying with the terms of their agreements including in the areas of price, promotional activity and other normal trading practices.

In addition, suppliers should also be subject to the same record maintenance requirements as proposed under these regulations for grocery good undertakings. This would enable a more fulsome investigation should the requirement arise in future.

### **e) Clarification on regulations 12 & 14**

Our members have further expressed concerns over the vague language used to outline practices not permissible in certain parts of the regulations. Specific concerns remain around the use of language detailing the activities referred to in regulations 12 and 14, namely payment for marketing costs and payment for advertising or display of grocery goods. For example, what is deemed to be '*objective and reasonable*' under regulation 12 (2) (b), and what constitutes a '*promotion*' under regulation 14 (2).

Retail Ireland would urge the provision of further guidance on these regulations as there is considerable concern that the ambiguity in the wording of these sections may lead to further uncertainty around what practices are permissible under the new regulations. Further clarification, detail and guidance around these sections would be helpful.

Retail Ireland would welcome further clarification on the issues raised above and we look forward to further interactions with you and your office on this matter. Please do not hesitate to contact me at any time should you require further information.

Sincerely,

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THOMAS BURKE

Director, Retail Ireland  
Ibec

01 605 1558  
thomas.burke@ibec.ie