



**An Bille um Chearta do Thomhaltóirí, 2022**  
**Consumer Rights Bill 2022**

*Meabhrán Miniúcháin*  
*Explanatory Memorandum*





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**AN BILLE UM CHEARTA DO THOMHALTÓIRÍ, 2022  
CONSUMER RIGHTS BILL 2022**

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**EXPLANATORY MEMORANDUM**

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***Purpose of the Bill***

The purpose of this Bill is to consolidate and update the legislative provisions that regulate the main types of consumer contract. It also gives effect to Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services, Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods, and to the main provisions of Directive (EU) 2019/2161 on the better enforcement and modernisation of Union consumer protection rules.

***Provisions of the Bill***

The Consumer Rights Bill 2022 will give effect to Directives 2019/770 and 2019/771 and the main provisions of Directive 2019/2161. It includes provisions in consumer contracts for the rights and remedies for (i) the sale of goods, (ii) the supply of digital content and digital services, and (iii) the supply of non-digital services. Provisions for consumer information and related rights and consumer rights on the cancellation of distance and off-premises contracts and enhanced unfair terms in consumer contracts are included. It also amends the Consumer Protection Act 2007 which will strengthen the enforcement powers of the Competition and Consumer Protection Commission, the Consumer Credit Act 1995 to provide for rights and remedies in hire-purchase agreements and consumer-hire agreements and section 12(13) of the Competition and Consumer Protection Act 2014.

**PART 1**

**PRELIMINARY AND GENERAL**

This Part contains standard provisions and the necessary interpretations for the Bill.

**Section 1** contains the short title and commencement provisions.

**Section 2** contains definitions of terms used in the Act.

**Section 3** contains regulation making powers by the Minister under the Act.

**Section 4** contains the provision for making of a contract between a trader and a consumer in Parts 2 to 6 of the Act.

**Section 5** contains the provision that the Act cannot prohibit a more favourable contract term.

**Section 6** contains the provision that the courts have the jurisdiction to order the remedies provided for under Parts 2 to 4 of the Act.

*Section 7* contains an offence provision where a trader makes known representations purporting to restrict the rights of the consumer.

*Section 8* contains repeals and revocations for provisions of various Acts and Statutory Instruments.

*Section 9* contains a savings provision indicating when certain provisions of the Act apply where a contract or agreement is concluded at the time of enactment.

## PART 2

### SALES CONTRACTS

*Section 10* contains definition of terms used in Part 2.

*Section 11: Sales contracts* provides that the sales contract is one where the trader transfers or undertakes to transfer ownership of goods to a consumer and the consumer pays or undertakes to pay the price of the goods or transfers or undertakes to transfer ownership of the goods to the trader in payment of the price. Reference to paying a price by the consumer includes using by way of payment any facility by which payment has been made. A sales contract may be a transaction where the ownership of the goods is transferred from the trader to the consumer or will be transferred at a future time or subject to such a condition. An agreement to sell becomes a sale when time elapses or the condition is met for transfer of the ownership of the goods. A sales contract may be absolute or conditional. It is conditional if the trader retains ownership of the goods until the conditions are met. It is non-conditional if it is a hire-purchase agreement. In this section, 'hire-purchase agreement' has the same meaning as it has in the Consumer Credit Act 1995.

*Section 12:* contains application provisions for Part 2.

*Section 13: Power of Minister to extend application of Part 2* provides that the Minister may make regulations to apply this Part to contracts for the sale of goods with digital elements where the consumer provides, or undertakes to provide, personal data instead of paying the price to the trader. Provision of personal data in this case is separate to where personal data is processed by the trader for the purpose of supplying the goods with digital elements or complying with necessary legal requirements. The Minister may make regulations, having consulted as appropriate, where the specified contracts are on a significant scale and their regulation is in the interest of consumer protection and fair competition. The regulations may provide for the application of this Part, as provided for in the regulations, to be subject to modifications as specified.

*Section 14: Right to terminate sales contract where trader has no right to sell* provides that where a sales contract is concluded between a trader and consumer, the trader must ensure that he has the right to sell the goods when ownership of the goods is to be transferred under the contract. If the trader does not have this right, the consumer can terminate the contract. In this case, the consumer will exercise the right to terminate the contract under section 28 and the trader will comply with the obligations in section 30. In case of dispute, the burden of proof is on the trader to show he has the right to sell the goods under subsection (1).

*Section 15: Goods to be in conformity with sales contract* provides that where a sales contract is concluded between a trader and a consumer, the trader must deliver goods that are in conformity with the contract at the relevant time. To be in conformity, goods must comply with sections 16 to 19, where applicable. Otherwise, the remedies specified in Chapter 3 are available to the consumer. "Relevant time" is defined.

**Section 16: Goods to be free from charge and other encumbrance** provides that the trader must ensure that the goods must be free from any charge not disclosed to the consumer before entering into the contract and must remain so until ownership is transferred, and the consumer may only be affected by any person entitled to a benefit already disclosed. Where only limited title to the goods transfer, that the trader or person other than the trader may have, all charges must be disclosed before the contract is entered into and the consumer may only be affected by a claim under a charge already disclosed. The consumer will have the right to remedies where the goods are not in compliance, where all known charges are not disclosed by the trader and where a restriction prevents or limits the use of the goods. Where a dispute arises, the burden of proof rests on the trader to show that, the goods were in compliance with the contract, all known charges were disclosed, and the consumer had the right to possess the goods.

**Section 17: Subjective requirements for conformity with sales contract** provides that the goods delivered under a sales contract will be of such quantity, quality, functionality, interoperability; fit for the agreed purpose; installed and updated as specified in the sales contract. Information which the trader must provide to the consumer in a distance or off-premises contract under section 103, 104 or 106 will form part of the sale contract and the goods must comply with such terms also. The trader must provide spare parts and an adequate after-sale service, as stated in an offer, description or advertisement related to the goods on behalf of the producer or the trader's own behalf, for a stated or reasonable period of time.

**Section 18: Objective requirements for conformity with sales contract** provides that the goods delivered under a sales contract will comply with applicable laws, standards, or codes of conduct; correspond to any description of a sample or model made available to the consumer; delivered with instructions, where applicable; possess the features of durability, compatibility and security expected of the goods, particularly features referred to in any public statement. The reference to the durability of the goods means the ability of the goods to maintain their functions and performance through normal use and which the consumer could reasonably expect. The trader will not be bound by any public statement on the durability of the goods where he shows that he was not aware of it, or it had been corrected or the consumer could not have been influenced by it. Where a sales contract for the sale of goods with digital elements provides for a single act of supply of digital content or digital services, the trader must ensure that the consumer is informed of and supplied with the updates necessary to keep the goods in conformity with the contract for a reasonable time period. Where such a contract provides for a continuous supply of digital content or digital service for a period exceeding two years, the trader must ensure that the consumer is informed of and supplied with any updates (including a security update) necessary to keep the goods in conformity during that period. If the time period of supply does not exceed two years, the trader must ensure that the consumer is informed of and supplied with any updates (including a security update) necessary to keep the goods in conformity for two years beginning with the relevant time. The trader is not liable for any lack of conformity where the consumer fails to install updates supplied within a reasonable time and had been informed of the updates. There will be no lack of conformity with the sales contract under this section where the consumer was informed of and accepted a deviation from particular requirements when concluding the sales contract. In case of dispute, the burden of proof rests on the trader to show the consumer was informed of and accepted the deviation.

**Section 19: Incorrect installation of goods** provides that an incorrect installation of the goods will result in a lack of conformity of the goods with the sales contract where the installation forms part of the contract and was carried out under the trader's responsibility or the incorrect installation was due to shortcomings in the installation instructions provided by the trader.

**Section 20: Implied terms of sales contract** provides that the requirements of sections 14 and 16 to 19 will be implied in every sales contract and will have effect as if they were terms of such a contract.

**Section 21: Liability of trader under sales contract** provides that the trader will be liable to the consumer for a lack of conformity of the goods with the sales contract that exists at the relevant time. If the contract provides for delivery of goods on more than one occasion, liability of the trader applies on any of those occasions. If the contract is for goods with digital elements for a continuous supply of digital content or digital service for a specified period, liability applies for a lack of conformity of the digital content or digital service during that period. Where updates are supplied by the trader or any other person supplying the digital content or digital service, liability of the trader applies for lack of conformity caused by an update which exists at the time of supply or installation or caused by a failure to supply an update when it should have been supplied. The consumer's right to a remedy for lack of conformity with the sales contract where the trader is liable will apply for 6 years from (i) the relevant time for goods other than goods with digital elements and (ii) the time the lack of conformity of the digital content or digital service occurs or becomes apparent during the period they are supplied under the sales contract for goods with digital elements.

**Section 22: Burden of proof under sales contract** provides that a lack of conformity with the contract during the period of 12 months beginning with the relevant time that goods were supplied will be presumed to have existed at the relevant time unless proven otherwise or such presumption is unreasonable. For goods with digital elements where the contract provides for continuous supply of those elements for a specified period, the burden of proof is on the trader for a lack of conformity that becomes apparent during that period. The consumer will only need to prove that the goods are not in conformity and that this became apparent during the period of 12 months beginning with the relevant time. A consumer will not be restricted from seeking a remedy after the expiry of the period of 12 months beginning with the relevant time.

**Section 23: Right to remedies under sections 24 and 25** provides that where the goods are not in conformity with the sales contract at the relevant time, the consumer can exercise the short-term right to terminate the sales contract or has the right to have the goods brought into conformity through repair or replacement. The consumer may choose between the remedies of repair and replacement of the goods unless the chosen remedy would be impossible for the trader to carry out or would impose disproportionate costs on the trader taking account of all the circumstances. The trader may refuse to bring the goods into conformity if both repair and replacement are impossible for him to carry out or would impose disproportionate costs on him.

**Section 24: Short-term right to terminate sales contract** provides that the short-term right to terminate the contract expires at the end of the period of 30 days beginning with (i) where the contract requires the trader to install the goods after delivery or take any other action to enable the consumer to use the goods, the completion of that installation or other action or (ii)

when, in any other case, the relevant time. The consumer may terminate the contract prior to that time. Where the goods may expire or deteriorate in a shorter period, the short-term right to end the contract will be the end of the shorter period. In this case, the burden of proof is on the trader in a dispute. Where the consumer has the right to terminate the contract, the consumer will do so as provided for in section 28 and the trader will comply with the obligations in section 30.

**Section 25: Repair or replacement of goods** provides that, where goods are brought into conformity by repair or replacement, the trader must ensure repair or replacement of the goods is carried out free of charge, within a reasonable time period and without any significant inconvenience to the consumer. The reasonable time period will be determined objectively. The consumer must make the goods available to the trader. The trader will bear the expense of taking back the goods, including removal and reinstallation. The consumer will not be liable to pay for the normal use of the replaced goods during the period before they are replaced. The Minister may make regulations, as considered in the interest of consumer protection and fair competition, and having consulted with interested parties, regarding a reasonable time period for the repair or replacement of a specific category of goods.

**Section 26: Right to proportionate reduction in price and to final termination of sales contract** provides that this section applies where a consumer has exercised his right to remedies under section 23 and the trader has refused to bring the goods into conformity with the sales contract or the trader has not completed the repair or replacement of the goods in accordance with section 25; the same or different lack of conformity becomes apparent despite the trader's attempts to bring them into conformity; the lack of conformity is of such a serious nature to justify an immediate price reduction or the termination of the sales contract; or the trader has declared or it is clear from the circumstances that he will not bring the goods into conformity within a reasonable time or convenient to the consumer. The consumer will have the right to a proportionate reduction in the price in accordance with section 27 or the right to exercise the final right to terminate the contract under section 28. If the lack of conformity is only minor, there is no final right to terminate the contract. In this instance, the burden of proof is on the trader. Where subsection (1)(c) applies, it will be objectively determined as to the rights available to the consumer or if the consumer will be required to accept further attempts by the trader to bring the goods into conformity. Where subsection (1)(d) applies, it will be objectively determined if the lack of conformity is of such a serious nature to result in a proportionate price reduction or final right to terminate the contract. Where the consumer has the final right to terminate the contract due to some of the goods not being in conformity with the sales contract, the consumer may only do so in relation to those goods and any other goods acquired with them where it would not be reasonable to keep the conforming goods.

**Section 27: Price reduction: sales contract** provides that, where the consumer has the right to a proportionate price reduction, he may require the trader to reduce the price required under the contract or receive a reimbursement from the trader more than the amount of the reduction. The reduction in the price must be proportionate to the decrease in value of the goods received compared to their value if they were in conformity with the contract. Where the consumer transfers ownership of goods to the trader in full or part payment of the price, the right of the consumer to a proportionate price reduction will not apply if no agreed monetary value

was ascribed by the parties or the goods cannot be divided up to enable the trader to receive/retain only the reduced price.

**Section 28: Obligations of consumer in event of termination of sales contract** provides that, where certain rights apply, the consumer may terminate the contract by means of a statement to do so to the trader and return the goods delivered to the trader at the trader's expense. Otherwise, the consumer will be liable in damages for any loss or damage suffered by the trader as a result of the failure.

**Section 29: Remedies where contract also provides for supply of digital content etc.** provides that 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, the consumer can terminate the contract or obtain a price reduction of the contract where they would be entitled to terminate it if it were a sales contract for sale of goods only and the value of the content or service would be reduced in the absence of the goods. The latter will be determined taking all the circumstances into account. The entitlement to terminate a contract will not apply for terminal equipment and a bundle of services under the European Electronics Communications Code (Recast).

**Section 30: Obligations of trader where sales contract terminated** provides that this section applies where the consumer exercises the right to terminate a sales contract under sections 14, 36 or 37; the short-term right to terminate it under section 23; or the final right to terminate it under section 26. The trader, on receipt of the goods or evidence that they have been returned, will reimburse the consumer the price paid for the goods and any costs incurred by the consumer in returning the goods. Where the consumer exercises the final right to terminate the contract, the price reimbursed may be proportionately reduced for any depreciation in value of the goods, in excess of the depreciation expected to result from their normal use. In this case, the burden of proof is on the trader in a dispute. Where a conditional sales contract is terminated by a consumer before the entire price is paid, the reimbursement will be equal to the amount paid. Where ownership of the goods is transferred as full or part payment of the price, the trader will return those goods and may reimburse any price paid. Where it is not possible to return the goods, the trader will reimburse the consumer with the agreed monetary value of the goods when the contract was concluded or where no monetary value was agreed, a reasonable sum and justified exchange value of the goods at the time of conclusion of the contract.

**Section 31: Time limits and means of reimbursement by trader: sales contract** provides that in instances where reimbursement is owed to the consumer, the trader will do so no later than 14 days after the date on which the goods were returned or evidence received that they were returned and make payment in the same way as the consumer used to pay for the goods unless otherwise agreed to by the consumer, without any fees being incurred. If the trader fails to comply with the obligation to reimburse the consumer, he will be liable in damages for any loss or damage suffered by the consumer as a result of the failure.

**Section 32: General right of consumer to withhold payment under sales contract** provides that where the trader fails to comply with the obligations to deliver goods in conformity with the sales contract at the relevant time, the consumer will have the right to withhold payment of any outstanding part of the price until the trader fulfils his obligations. The price withheld will be proportionate to the decrease in value of the goods received compared to their value if they were in conformity with the contract. The consumer's decision to withhold payment will be expressed



in a statement to the trader until he has fulfilled his obligations to deliver goods in conformity with the contract.

**Section 33: Effect of termination of sales contract on ancillary contracts** provides that all ancillary contracts are terminated along with the termination of the sales contract without any cost to the consumer. The trader will inform any other trader with whom the consumer has an ancillary contract of its termination. Obligations apply to both trader and consumer where an ancillary contract is terminated. Any security provided under a terminated ancillary contract will be treated as having no effect and any property lodged in this regard must be returned immediately by the trader or third party. “Ancillary services” are defined.

**Section 34: Consumer’s right to pursue other remedies** provides that the remedies available under Chapters 3 and 4 are without prejudice to the right of the consumer to pursue other remedies provided that the same loss is not being recovered twice. Several remedies are available to the consumer, such as, claiming damages; relying on lack of conformity with the sales contract; seeking to recover money paid for goods that do not comply with this Part; having a lack of conformity remedied elsewhere and recovering the costs incurred from the trader or an order for specific performance under section 52 of the Sale of Goods Act 1893.

**Section 35: Passing of risk** provides that, where a sales contract is concluded between a trader and a consumer, the goods remain at the trader’s risk until the consumer acquires physical possession of the goods. Where the goods are delivered to a carrier commissioned by the consumer, the goods are then at the consumer’s risk, without prejudice to the rights of the consumer against the carrier.

**Section 36: Delivery of goods under sales contract** provides that, where a sales contract is concluded between a trader and a consumer, the trader must deliver the goods to the consumer in accordance with the contract. Unless otherwise agreed, the trader will deliver the goods by transferring the physical control of the goods to the consumer not later than 30 days after concluding the contract. If delivery does not happen within an agreed period or within the 30 days, the consumer will give appropriate additional time for delivery. This does not apply if the trader refused to deliver the goods or if delivery within the agreed period is essential. If delivery of the goods is refused or they are not delivered within the agreed period, the consumer will have the right to terminate the contract. Where the consumer has the right to terminate the contract, the consumer will do so as provided for in section 28 and the trader will comply with the obligations in section 30.

**Section 37: Instalment deliveries** provides that, unless agreed, the consumer is not required to accept delivery of goods by instalments. The consumer may terminate the contract if the delivery does not conform to the contract regarding instalments. The right to terminate only applies to the goods delivered in non-conforming instalment(s) unless the consumer cannot be expected to accept the goods delivered in the conforming instalment(s). The consumer will be entitled to reimbursement only for non-conforming instalment(s). Where the consumer has the right to terminate the contract he will do so as specified and the trader will comply with his obligations accordingly.

**Section 38: Right of redress of trader** provides that when the trader is liable to the consumer due to an act or omission of a person in the chain of transactions in the contract, he may pursue remedies against that person.

**Section 39: Exclusion or limitation of liability of trader (Part 2)** provides that a term of a contract between the trader and the consumer will not exclude or restrict a trader's liability under various listed provisions. Any such term will not be binding on the consumer. Liability will not be excluded or restricted in relation to rights or remedies or enforcement of such rights/remedies, being put at a disadvantage for pursuing such rights/remedies, for rules of evidence or procedure or preventing/limiting an obligation. An agreement in writing to engage with an alternative dispute resolution procedure does not exclude or restrict liability. A trader who contravenes subsection (1) commits an offence.

**Section 40: Liability for commercial guarantee** provides that a commercial guarantee is binding on the guarantor according to the commercial guarantee statement and associated advertising, at or before the conclusion of the contract. Where the producer offers a commercial guarantee of durability of the goods, the producer is liable during the period of the guarantee of durability for repair or replacement of the goods and may offer more favourable conditions. The commercial guarantee will be binding in relation to the most advantageous conditions, i.e., these may have been set out in the associated advertising.

**Section 41: Liability of trader for other guarantor's commercial guarantee** provides, in relation to a sales contract, that a trader will be liable for a commercial guarantee to a consumer that was provided by another guarantor unless the contrary is expressed by the trader. Where a trader gives his commercial guarantee to a consumer it is presumed that he is not liable under any commercial guarantee from another guarantor which the trader has given to the consumer. The liability of a trader to a consumer is without prejudice to the rights of the consumer under section 40.

**Section 42: Liability under a commercial guarantee to subsequent consumers** provides, in relation to a sales contract, where a commercial guarantee is provided to a consumer in relation to goods sold and during the period it subsists, the goods are acquired by another consumer, the benefits of the guarantee will apply to that consumer against the guarantor or the trader.

**Section 43: Right of action pursuant to commercial guarantee** provides that, without prejudice to section 40, a consumer may maintain an action against a guarantor, or person liable for guarantor's guarantee, who fails to comply with the terms of the guarantee, in relation to a sales contract, as if that person had sold the goods to the buyer and had committed a breach of warranty. Where an action is brought, a court may order the guarantor or other person liable to pay damages to the consumer. In such a case, the court may provide the opportunity to perform the obligations under the guarantee to the satisfaction of the court within a time set by the court.

**Section 44: Provision and content of commercial guarantee statement** provides that, where a commercial guarantee is provided in relation to goods sold under a sales contract, the statement will be given to the consumer on a durable medium by the relevant time and will contain specific details. The commercial guarantee will be binding for the guarantor irrespective of non-compliance with subsection (1) or (2) regarding the statement.

**Section 45: Exclusion or limitation of rights of consumer under commercial guarantee** provides, in relation to a sales contract, that a commercial guarantee will not exclude or limit the rights of the consumer under any enactment or rule of law, add extra obligations to those under the contract or purport to give the guarantor or person acting on the guarantor's behalf, the sole decision on conformity of the goods with the contract or whether the consumer is otherwise entitled to make a claim under the

commercial guarantee. Otherwise, a commercial guarantee will not be binding on the consumer. A guarantor who gives a commercial guarantee which contravenes subsection (1) commits an offence.

**Section 46: Rights of recipient of gift** provides that the rights and remedies that apply to the consumer, who is party to the sales contract under this Part, will also apply to another consumer who is given the goods as a gift under the sales contract.

**Section 47: Rights of certain users of motor vehicle** provides that a consumer who purchases a motor vehicle which is not in conformity with the sales contract and the lack of conformity makes it dangerous, any person using the vehicle with the consent of the consumer and suffers loss as a result, may claim an action for damages against the trader as if they were the consumer. “Motor vehicle” is defined. The Minister, following consultations as appropriate, may make regulations under subsection (2) (c) where he is satisfied that it is necessary in the interests of consumer protection.

### PART 3

#### DIGITAL CONTENT CONTRACTS AND DIGITAL SERVICE CONTRACTS

**Section 48:** contains definition of terms used in Part 3.

**Section 49:** contains application provisions for Part 3.

**Section 50: Right to supply the digital content or digital service** provides that where digital content or digital service is to be supplied under a digital content contract or a digital service contract the trader will ensure that he has the right to supply to the consumer at the time of supply. Where the trader does not have this right, the consumer will have the right to terminate the contract. Where the consumer has the right to terminate the contract and wishes to terminate it, he will do so in accordance with section 66 and the trader will comply with the obligations under section 67. The burden of proof rests with the trader regarding right of supply in case of dispute.

**Section 51: Duty to supply digital content or digital service** provides that where a digital content contract or digital service contract is concluded, the trader will supply the digital content or digital service to the consumer in accordance with the contract. Where the contract is concluded, the trader will supply the digital content or digital service to the consumer, unless otherwise agreed, without undue delay after the conclusion of the contract. Where the contract provides for continuous supply for a period specified in the contract, the trader must supply the digital content or digital service to the consumer for that period. Where a contract provides for the supply of the digital content or digital service on more than one occasion during the contract, the trader must do so on each of those occasions. The obligation to supply will be met when the digital content or digital service can be accessed or is made accessible to a physical or virtual facility chosen by the consumer. A facility under the trader’s control or the only facility offered by the trader will not be considered chosen by the consumer. Where the trader fails to supply the digital content or digital service to the consumer in accordance with this section, he will be liable for that failure and the consumer will have a right to the remedies under section 60.

**Section 52: Digital content or digital service to be in conformity with digital content contract or digital service contract** provides that where a digital content contract or a digital service contract is concluded, the trader must supply the digital content or a digital service in conformity with the contract and must meet the requirements of sections 53 and 54 and not

fall to be treated as not being in conformity under section 55. Otherwise, the consumer will have the right to the remedies in Chapter 3. Where a contract provides for continuous supply for the period specified in the contract, a short-term interruption which is more than negligible or recurs will be deemed to constitute a lack of conformity with the contract and the consumer will have the right to the remedies in Chapter 3. The right to remedies in Chapter 3 will also apply where non-compliance with the Data Protection Act 2018 or Regulation (EU) 2016/679 on personal data constitutes a lack of conformity with the contract.

***Section 53: Subjective requirements for conformity with digital content contract or digital service contract*** provides that the digital content or a digital service supplied under a digital content contract or digital service contract will conform, in particular, in regard to quantity, quality, functionality, interoperability; be fit for the agreed purpose; installed and updated as specified in the contract. Information which the trader must provide to the consumer in a distance or off-premises contract under sections 103, 104 or 106 will form part of the contract and the digital content or digital service must comply with such terms also. Where the digital content contract or digital service contract provides for a continuous supply for a period specified in the contract, compliance must be during that period.

***Section 54: Objective requirements for conformity with digital content contract or digital service contract*** provides that the digital content or digital service supplied under a digital content contract or digital service contract will comply with applicable laws, standards or codes of conduct; comply with any trial version made available prior to concluding the contract; be supplied with any accessories and instructions, including installation or integration of the digital content or digital service; and possessing the features of compatibility, accessibility and security expected of digital content or digital service, particularly features referred to in any public statement. The trader will not be bound by any public statement under specific conditions. Unless agreed otherwise, the digital content or a digital service must be supplied in the most recent version available. The trader must ensure that the consumer is informed of and supplied with the updates, including security updates, necessary to keep the digital content or digital service in conformity with the contract for the relevant period. Where the trader complies with the latter, in relation to an update, he is not liable for any lack of conformity, resulting solely from the lack of that update, unless, due to shortcomings in the installation instructions, the consumer fails to install updates supplied within a reasonable time or incorrectly installed them. Where the contract is for a continuous supply for a specified period, the digital content or digital service must be in conformity during that period. There will be no lack of conformity where the consumer was informed of and accepted a deviation from the requirements, including a lack of conformity with the contract due to a restriction resulting from a violation of an of intellectual property right or any other right of a third person, when concluding the contract. In this instance, the burden of proof rests on the trader. “Relevant period” is defined.

***Section 55: Incorrect integration of digital content or digital service*** provides that an incorrect integration of the digital content or digital service into the consumer’s digital environment will result in a lack of conformity with the digital content contract or digital service contract for this Part only if the integration was carried out under the trader’s responsibility or the incorrect integration was due to shortcomings in the integration instructions provided by the trader.

**Section 56: Implied terms of digital content contract or digital service contract** provides that sections 50 and 53 to 55 will be implied into every digital content contract or digital service contract and will have effect as if they were the terms of the contract.

**Section 57: Third party rights** provides that the consumer may pursue remedies for lack of conformity where a restriction resulting from a violation of any right of a third person, particularly an intellectual property right, prevents/limits the use of the digital content or digital service.

**Section 58: Liability of trader under digital content contract or digital service contract** provides that the trader will be liable to the consumer for any failure to supply the digital content or digital service under section 51 where the contract is concluded. The trader will be liable for any lack of conformity with the digital content contract or digital service contract where the contract is for a single act of supply, or a series of individual acts of supply, of the digital content or digital service, including any lack of conformity resulting from a violation of an intellectual property or other right of a third person which exists at the time of supply. Where updates are supplied by the trader or a person other than the trader for a single act of supply or a series of individual acts of supply of the digital content or digital service, liability applies for lack of conformity caused by an update which exists at the time of supply or installation or caused by a failure to supply an update when it should have been supplied. Where the contract is for a continuous supply of digital content or digital service for a specified period of time, the trader is liable for a lack of conformity that occurs or becomes apparent during that period. The consumer's right to a remedy for a lack of conformity for which the trader is liable will apply for six years from (i) the time of supply for a single act of supply or series of such acts and (ii) the time the lack of conformity occurs/becomes apparent in the time period of the contract for a continuous supply during a specified period. The failure to supply the digital content or digital service for which the trader is liable will apply for six years from the time he was required to supply either.

**Section 59: Burden of proof under digital content contract or digital service contract** provides that the burden of proof is on the trader for the digital content or digital service being supplied in accordance with section 51. The burden of proof is on the trader for any lack of conformity with a digital content contract or digital service contract for a single act of supply, or a series of individual acts of supply, of digital content or a digital service which becomes apparent during the period of 12 months beginning with the supply. Where the contract is for continuous supply of digital content or digital service for a specified period, the burden of proof is on the trader for a lack of conformity that becomes apparent during that period. The latter will not apply where the trader shows that the digital environment of the consumer is not compatible with the technical requirements of the digital content or digital service and informs the consumer of this before the contract is concluded. The consumer must cooperate in ascertaining the compatibility of his digital environment, otherwise the burden of proof is on the consumer. The obligations on the consumer will be limited to the technically least intrusive means available to him. Where the consumer fails to co-operate and the trader has informed the consumer in a clear manner, the burden of proof is on the consumer. A consumer will not be restricted from seeking a remedy after the expiry of the period of 12 months beginning with the date of supply of digital content or digital service.

**Section 60: Remedy for failure to supply digital content or digital service** provides that where a trader fails to supply the digital content or digital service and if they then fail to comply with a consumer's request

to do so without undue delay or within such agreed additional period, the consumer will have the right to terminate the contract. The consumer will have the right to terminate the contract immediately if the trader will not supply the digital content or digital service or fails to do so at a particular date and time for the supply which is essential for the consumer. The exercise of the rights of the consumer and the obligations complied with by the trader are those set out in sections 66 and 67, respectively.

***Section 61: Right to have digital content or digital service brought into conformity with contract*** provides that where there is a lack of conformity of the digital content or digital service with a digital content contract or digital service contract the consumer has the right to have it brought into conformity with the contract. The rights of the consumer will not apply if conformity is impossible or would impose disproportionate costs on the trader. The trader must bring the digital content or digital service into conformity with the contract free of charge, within a reasonable time and without any significant inconvenience to the consumer. The reasonable time will be the shortest possible time necessary and will be objectively determined having regard to specific criteria.

***Section 62: Right to proportionate reduction in price and to terminate contract*** provides that the section applies where the consumer does not have the right in section 61(1); the customer has exercised his right under section 61(1) and the trader has not brought the digital content or digital service into conformity; the same or different lack of conformity appears despite the trader's attempt to bring it into conformity; the lack of conformity is of such serious nature to justify immediate price reduction or termination of contract; the trader has declared or it is clear that he will not bring the digital content or digital service into conformity within a reasonable time or without inconvenience to the consumer. If under the contract the digital content or digital service is supplied in exchange for payment of the price, the consumer will have the right to a proportionate reduction in the price or to terminate the contract. The consumer may terminate the contract only if the lack of conformity is not minor. Where the digital content or digital service is supplied other than for payment of the price, the consumer will have the right to terminate the contract. In determining whether the lack of conformity is of such a serious nature to result in an immediate price reduction or termination of the contract account will be taken of the nature and severity of the lack of conformity. In this case, the burden of proof is on the trader in a dispute to show that the lack of conformity is minor.

***Section 63: Price Reduction: digital content contract or digital service contract*** provides that, where the consumer has the right to a price reduction, he may require the trader to reduce the price required under the digital content contract or digital service contract or receive a reimbursement in excess of the amount of the reduction applicable. The reduction in the price must be proportionate to the decrease in value of the digital content or digital service supplied compared to their value if in conformity. The reduction in price will apply for the period during which the digital content or digital service was not in conformity with the contract where the supply for a period specified was in exchange for the payment of a price. The trader will reimburse the consumer as required.

***Section 64: Modification of digital content or digital service*** provides that where the digital content contract or the digital service contract provides that the digital content or digital service supplied/made accessible to the consumer for a period specified in the contract and the specified conditions are met, they can be modified by the trader beyond what is necessary to keep it in conformity with the contract if certain conditions are met. The consumer may terminate the contract free of charge if the

modifications affect access/use by the consumer. The consumer does not have the right to terminate the contract if the negative effect of modification is minor or the unmodified content/service is maintained without extra cost and is in conformity with the contract. The effect of the modification of the digital content or digital service on the access/use by the consumer will be ascertained under specific criteria. Where the consumer has the right to terminate the contract, he can do so before the expiry of 30 days beginning on the day of being informed of the modification or on the day when modified by the trader, whichever is later. In such cases, the trader will comply with his obligations and reimburse the consumer as required. Where the trader has modified the digital content or digital service and enabled the consumer to maintain the unmodified version and it does not meet the requirements under sections 53 or 54 for conformity, the consumer will be entitled to the remedies that apply under sections 61, 62 and 69. This section does not apply to a bundle within the application of Directive (EU) 2018/1972.

***Section 65: Right to terminate contract other than digital content contract or digital service contract*** provides that this section applies where digital content or a digital service is supplied under a contract that also provides for the sale of goods or supply of a service. The consumer can terminate the contract if (i) they would be entitled to terminate the contract under this Part if it were a digital content contract or digital service contract only and (ii) the value of the goods or service would be reduced in the absence of the digital content or digital service. The latter will be determined taking the circumstances into account. This section will not apply to a bundle within the scope of Directive (EU) 2018/1972.

***Section 66: Obligations of consumer in event of termination of digital content contract or digital service contract*** provides that, where the consumer has a right to terminate a digital content contract or a digital service contract, he will do it by means of a statement to the trader. On and after terminating the contract, the consumer must not use or make available to any third person the digital content or digital service. The consumer must return the tangible medium where digital content was supplied without delay on request from the trader. The consumer will not be liable to pay for the use of the digital content or digital service which was not in conformity with the contract prior to termination. If the consumer fails to comply with the obligation of not using the digital content or digital service or not making it available to any third person or returning the digital content to the trader, the consumer will be liable in damages for any loss or damage suffered by the trader as a result of the failure. The consumer's liability in damages will be without prejudice to any other remedies available to the trader.

***Section 67: Obligations of trader where digital content contract or digital service contract terminated*** provides that, where the contract for supply of digital content or digital service is terminated, the trader will reimburse the consumer for payments made. Where supply is over a period specified in the contract in exchange for payment of a price and conformity has taken place for a period before termination of the contract, the reimbursement will be proportionate to the period of non-conformity and any price paid for any period of the contract that would have remained if not terminated. The trader may request return of the tangible medium without delay under which digital content was supplied. Such a request must be made within 14 days of the day the trader was informed of the decision to terminate the contract and the trader will be liable for the cost of returning the tangible medium. The trader must not use content provided or created by the consumer when using the digital content or digital service,

except in specific circumstances, where the content is not personal data. The trader will make available to the consumer, at their request, any digital content, other than personal data, which was provided or created by them except for some of the specified circumstances referred to. The consumer will be entitled to retrieve the digital content made available to him free of charge, without hindrance, within a reasonable time and in a commonly used format. Without prejudice to the above, the trader may prevent any further use of the digital content or digital service by the consumer.

**Section 68: Time limits and means of reimbursement by trader: digital content contract or digital service contract** provides that the trader is required to reimburse the consumer due to a price reduction or termination of a contract, the trader will do so without undue delay and before the expiry of 14 days beginning on the date when the trader was informed of the consumer's decision to invoke his rights, make payment in the same way as the consumer used to pay for the digital content or digital service unless otherwise agreed to by the consumer, without any fees being incurred. Where reimbursement relates to digital content supplied on a tangible medium, it may be withheld by the trader until he has received the tangible medium back or received evidence of its return. If a trader fails to reimburse the consumer, he will be liable in damages for any loss or damage suffered by the consumer as a result of the failure.

**Section 69: General right to withhold payment** provides that the consumer has the right to withhold any outstanding part of the payment to the trader until his obligations are fulfilled, in a proportionate manner to the decrease in value of the digital content or digital supply that does not conform with the contract. The consumer's decision to withhold payment will be expressed in a statement to the trader.

**Section 70: Effects of termination of digital content contract or digital service contract on ancillary contracts** provides that where a consumer terminates a digital content contract or a digital service contract under section 66, any ancillary contracts will be terminated also without any costs incurred. The trader so informed will inform any other trader who had ancillary contracts with the consumer. Obligations apply to both trader and consumer where an ancillary contract is terminated. Any security provided under a terminated ancillary contract will be treated as having no effect and any property lodged in this regard must be returned immediately by the trader or third party. "Ancillary contracts" are defined in this section.

**Section 71: Exclusion or limitation of liability of trader (Part 3)** provides that a term of a digital content contract or digital service contract or any other contract will not exclude or restrict the trader's liability under specified provisions and in specified ways. Any such term will not be binding on the consumer. A written agreement to submit present or future disputes to an alternative dispute resolution procedure will not contravene this section. A trader who contravenes subsection (1) commits an offence.

**Section 72: Right of redress** provides that when the trader is liable to the consumer due to any failure to supply or lack of conformity of the digital content or digital service under a digital content contract or digital service contract resulting from an act or omission of a person in the chain of transactions in the contract, he may pursue remedies against the person liable for the failure or lack of conformity.

**Section 73: Other remedies** provides that the remedies available under Chapter 3 will not affect the right of the consumer to pursue other specified remedies (without recovering for the same loss twice) where digital content or 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.

## PART 4

### SERVICE CONTRACTS

**Section 74:** contains definition of terms used in Part 4.

**Section 75:** contains application provisions for Part 4.

**Section 76: Power of Minister to restrict or extend application of Part 4** provides that the Minister may make regulations providing that this Part will not apply to a service specified or will only apply to a class or description of service in specific circumstances. The Minister may provide in regulations that this Part will apply to contracts as specified, for the supply of a service to a consumer where the consumer provides personal data instead of paying a price to the trader, other than where the personal data is processed under this Part or complying with other legal requirements to which the trader is subject. The Minister will only make such regulations, following consultations as appropriate, where the contracts are concluded on a significant scale and regulation of such contracts would be in the interests of consumer protection and fair competition. The regulations may provide for the application of this Part to be subject to such modifications as may be specified.

**Section 77: Effect of Part on other enactments etc.** provides that this Part will not affect any enactment or rule of law that imposes greater obligations on a trader for the supply of a service. This Part is subject to any other enactments and any international conventions to which the State or EU is party that defines or limits the rights, obligations, or liabilities in relation to a service.

**Section 78: Supply of service** provides that the trader must supply the service to the consumer in accordance with the contract. The trader will supply the service, where the service contract is a distance contract or an off-premises contract at such time as specified to the consumer and where no time is specified, at such time as agreed between the trader and the consumer. Where it is neither of these contracts, at such time as agreed between both parties. Where no time is specified or agreed, the trader will supply the service within a reasonable time of conclusion of the contract and this will be a question of fact. If the service is supplied on a continuous basis, the trader must supply it for a period specified in the contract and if it is supplied on more than one occasion during the period of the contract, the service will be supplied on each of those occasions. Where the trader fails to supply the service in accordance with this section, the consumer will have a right to remedies under section 84. Short term interruption of the service which is non-negligible or that recurs will attract remedies under sections 85 and 86.

**Section 79: Service to be in conformity with service contract** provides that the trader must supply a service to the consumer in conformity with the contract, as specified in sections 80 and 81. Otherwise the consumer will have the right to the remedies specified in Chapter 3.

**Section 80: Subjective requirements for conformity with service contract** provides that the service, or any goods or digital content produced by or resulting from the service, must comply with the terms of the service contract; comply with any oral or written statement on which the consumer relied before or after the contract; be reasonably fit for purpose; be of an expected nature or quality; for distance and off-premises contracts to comply with any additional terms on information requirements. The meaning/effect

of any oral or written statement is subject to any other statement made at the time which would have qualified the statement and any agreed change to the statement. Where a service contract provides for continuous supply for a period specified in the contract, the trader must supply a service to the consumer during that period. Where a service contract provides for the supply of a service on more than one occasion during the contract, the trader shall do so on each of those occasions. The burden of proof is on the trader in case of dispute.

**Section 81: Objective requirements for conformity with service contract** provides that in addition to complying with the subjective requirements for conformity, the trader must have the necessary skill to supply the service, supply it with reasonable care and skill, in accordance with any applicable laws, materials used in the supply must be fit for purpose and comply with any public statement about the service unless good cause can be shown by him. Where a trader purports to supply a service to a higher standard of care and skill, he must comply with that standard. A trader who is a member of a professional body of service must comply with the standards of care and skill of that body. A trader who is bound by a code of practice for the supply of a service must abide by that code in providing the service. Where a service contract provides for continuous supply during a period specified in the contract, the trader must supply a service to the consumer during that period. Where a service contract provides for the supply of a service on more than one occasion during the contract, the trader shall do so on each of those occasions. “Code of practice” is defined.

**Section 82: Implied terms of service contract** provide that section 78(2) (b) to (6), 80 and 81 are implied into every service contract and have effect as if they were terms of such a contract.

**Section 83: Reasonable price to be paid for service** provides that a reasonable price and no more will be paid for a service, where a price or consideration has not been paid, the price is not fixed in the contract or by an oral or written statement or by information provided by the trader for a distance or off-premises contract. A reasonable price for a service is a question of fact.

**Section 84: Remedy for failure to supply service** provides that the consumer has the right to terminate a service contract where the trader fails to supply the service and fails to comply with a request to do so within an additional period. The consumer will have the right to terminate the contract immediately if the trader will not supply the service which is essential and had been notified of this by the consumer prior to the conclusion of the contract. The exercise of the rights of the consumer and the obligations complied by the trader are those set out in sections 88 and 89 respectively.

**Section 85: Right to have a service brought into conformity with service contract** provides that the consumer has a right to have a service brought into conformity with a service contract, but this will not apply where it would be impossible to do so. The trader must ensure the service is brought into conformity within a reasonable time, without significant inconvenience and free of charge to the consumer. The reasonable time will be the shortest possible time necessary to remedy the lack of conformity and will meet specified criteria. Significant inconvenience will be determined by the nature of the service, its purpose, and other circumstances. The trader’s obligations include, where such is necessary to bring the service into conformity, the removal of goods and the installation, as applicable, of replacement goods or repaired goods or bearing the costs of that removal and installation.

**Section 86: Right to a proportionate reduction in price or termination of service contract** provides for various situations where the trader cannot or will not bring a service into conformity with a service contract and in such circumstances the consumer will have the right to a proportionate reduction in the price or to terminate the contract. This will be objectively determined and the consumer may be required to accept further attempts by the trader in specific circumstances. It will be objectively determined whether the lack of conformity is sufficiently serious to justify an immediate proportionate price reduction or termination of the contract having regard to the specific aspects of the nature and severity of the lack of conformity. The right to terminate the contract will not apply where the lack of conformity is minor, and the burden of proof is on the trader in case of dispute.

**Section 87: Price reduction: service contract** provides that where the consumer has a right to a proportionate price reduction, the right requires the trader to reduce the price required to be paid or for the consumer to receive a reimbursement of the price paid proportionate to the decrease in the value of the service supplied to the consumer if it was in conformity and to the period during which the service was not in conformity with the contract. The trader must reimburse the consumer where the right applies.

**Section 88: Obligations of consumer in event of termination of service contract** provides that a consumer must terminate the contract by a statement to the trader expressing such a decision. He must make available any goods/materials supplied for collection by the trader, refrain from using or making available to any third person any digital content or digital service supplied under the contract. The consumer will not be required to return the goods, if it would cause a disproportionate inconvenience to the consumer or damage to his property, unless the consumer and trader agree to it. Where the consumer fails to return goods or materials as required, he will be liable in damages for any loss/damage suffered by the trader as a result of the failure.

**Section 89: Obligations of trader where service contract terminated** provides that the trader must reimburse the consumer for all payments made under the service contract when he terminates it. The reimbursement will be proportionate to the time period the service was in non-conformity with the service contract and the part of the price paid in advance for any period the service contract would have remained if not terminated.

**Section 90: Time limits and means of reimbursement by trader: service contract** provides that the trader will make reimbursement that is owed to the consumer no later than 14 days beginning on the date he was informed of the consumer's right to seek a proportionate price reduction or to terminate the contract; make it by the same means of payment used by the consumer unless agreed otherwise and at no cost to the consumer. Such failure will result in the trader being liable in damages for any loss/damage suffered by the consumer as a result of the failure.

**Section 91: General right to withhold payment: service contract** provides that where a trader fails to comply with an obligation imposed on him by this Part, the consumer has the right to withhold any outstanding part of the payment, until the trader fulfils the obligation. The part of the price withheld will be proportionate to (i) the decrease in value of the service received by the consumer compared with its value if it was in conformity or (ii) the price payable for the period in which the service was not supplied by the trader. The decision of the consumer will be expressed in a statement to the trader.

**Section 92: Effect of termination of service contract on ancillary contract** provides that any ancillary contracts are terminated along with

the termination of a service contract without any cost to the consumer. The trader will inform any other trader with whom the consumer has an ancillary contract that it is terminated. Obligations apply to both trader and consumer where an ancillary contract is terminated. Any security provided under a terminated ancillary contract will be treated as having no effect and any property lodged in this regard must be returned immediately by the trader or a person other than the trader. "Ancillary contract" is defined.

**Section 93: Remedies where contract also provides for supply of goods etc.** provides that the consumer will have a right to obtain a proportionate price reduction or to terminate the contract, where the service also includes the supply of goods, digital content or digital service, under these conditions - as if it was a contract for the supply of a service only; the value of the goods, digital content or digital service would be reduced in the absence of the service. This will be objectively determined taking specific circumstances into account. The consumer's rights will not apply where a bundle of electronic communications services with/without terminal equipment includes elements of an internet access service or a number-based interpersonal communications service. This section does not apply to a consumer-hire agreement or a hire-purchase agreement.

**Section 94: Exclusion or limitation of liability of trader (Part 4)** provides that a term of a service contract or of any other contract between a trader and a consumer will not exclude or restrict a trader's liability under various listed provisions. Such a term of a contract will not be binding on the consumer. Liability will not be excluded or restricted in relation to a right or remedy or enforcement of such a right/remedy, being put at a disadvantage for pursuing such a right/remedy, for rules of evidence or procedure or preventing/limiting an obligation. An agreement in writing to engage with an alternative dispute resolution procedure does not exclude or restrict liability. A trader who contravenes subsection (1) commits an offence.

**Section 95: Continuing entitlement to pursue other remedies** provides that the remedies in Chapter 3 do not affect the right of a consumer to pursue other remedies where the service is not in conformity with a service contract provided that there is no duplication of claims. The other remedies include claiming damages; relying on failure of the trader to be compliant against a claim by the trader for payment of the price; seeking to recover money paid for a non-compliant service; recovery of costs from the trader for having the non-conforming service remedied elsewhere. An exclusion or limitation of a remedy in this section will be assessed for unfairness under Part 6.

## PART 5

### CONSUMER INFORMATION AND CANCELLATION RIGHTS

**Section 96:** contains definition of terms used in Part 5.

**Section 97:** contains application provisions for Part 5.

**Section 98: Off-premises contracts to which Part 5 does not apply** provides that this Part does not apply to off-premises contracts where the consumer pays no more than €50. Where two or more off-premises contracts with related subjects are concluded at the same time, the total payment to be made by the consumer will be taken into account.

**Section 99: Rights of consumers cannot be waived** provides that any purported waiver of rights by a consumer conferred by Part 5 has no effect and any term in a contract which purports to waive or restrict a right conferred by this Part is not binding on the consumer.

**Section 100: Burden of proof** provides that the burden of proof is on the trader to show compliance with the information requirements in this Part.

**Section 101: Information requirements for on-premises contracts** provides that the trader must provide the information specified in Schedule 2 in a clear and comprehensible manner, if not already available, before the consumer is bound to an on-premises contract. This does not apply to day-to-day transactions performed immediately on conclusion of the contract. A trader who contravenes subsection (1) commits an offence.

**Section 102: Power of Minister to specify further information requirements** provides that the Minister may, following consultation with relevant parties, by regulations specify further information requirements to apply to an on-premises contract or any corresponding offer or a particular on-premises contract or corresponding offer as may be specified. In making regulations he will have regard to specific aspects of the information so that it is adequate to enable informed decision making by consumers. In particular, he will consider any recommendation made by the Competition and Consumer Protection Commission under section 10(3) of the Competition and Consumer Protection Act 2014.

**Section 103: Information requirements for off-premises contracts** provides that the trader must provide the information specified in Schedule 3 in a clear and comprehensible manner and provide the model cancellation form set out in Part 2 of Schedule 4, where the right to cancel the contract exists, before the off-premises contract is binding. In the case of a public auction the relevant information may be provided in relation to the auctioneer rather than the trader on whose behalf the auctioneer has acted and, in this case, the specified information will be provided in relation to that trader. The information or the cancellation form must be completed by meeting specific criteria. All means of communication provided by the trader is to assist the consumer to contact and communicate with the trader efficiently. The information forms part of the contract and must not be altered without the express agreement of the trader and consumer. The consumer is not liable for charges/costs specified in Schedule 3 where the trader has not complied with the requirements in subsection (1). A trader who contravenes subsection (1) commits an offence. This section does not apply to an off-premises contract to which section 104 applies.

**Section 104: Information requirements for off-premises contracts for repairs or maintenance** provides that this section applies to an off-premises contracts where the consumer explicitly requested the trader to carry out repairs and maintenance; where both perform their obligations immediately and the payment by the consumer under the contract is not more than €200. Before the consumer is bound to the off-premises contract, the trader is required to provide specific information to the consumer and in a specific form unless the consumer expressly agrees otherwise. All means of communication provided by the trader will enable the consumer to contact the trader quickly and communicate efficiently. The information forms part of the contract and must not be altered without the express agreement of the trader and consumer. A trader who contravenes subsections (2) or (3) commits an offence.

**Section 105: Provision of copy or confirmation of off-premises contract** provides that a trader must provide a copy of the signed contract or confirmation of same to the consumer prior to or on conclusion of an off-premises contract in a specified form. The contract for the supply of digital content, not supplied on a tangible medium, and where performance began with the consumer's prior consent, must contain the consumer's

acceptance of the loss of the right to cancel. A trader who contravenes any of the provisions of this section commits an offence.

**Section 106: Information requirements for a distance contract** provides that the trader must provide the information specified in Schedule 3 in a clear and comprehensible manner and provide the model cancellation form set out in Part 2 of Schedule 4, where the right to cancel the contract exists, before the distance contract is binding. In the case of a public auction the relevant information may be provided in relation to the auctioneer rather than the trader on whose behalf the auctioneer has acted and in this case the specified information will be provided in relation to that trader. Information provided on a durable medium, must be legible. All means of communication provided by the trader will enable the consumer to contact the trader quickly and efficiently. The information or the cancellation form must be completed by meeting specific criteria. A trader who telephones the consumer to conclude the contract must, at the beginning of the call, disclose his identity and the purpose of the call. For a contract that is concluded through a trading website, the trader must ensure that it shows clearly whether any delivery restrictions apply, which means of payment are accepted and this information is indicated at or before the beginning of the ordering process. The information forms part of the contract and must not be altered without the express agreement of the trader and consumer. The consumer is not liable for charges/costs specified in Schedule 3 where the trader has not complied with the requirements in subsection (1). A trader who contravenes subsection (1), (6), (7) or (8) commits an offence.

**Section 107: Additional information requirements for distance contracts concluded on online marketplace** provides that the provider of the online marketplace must provide specific information to the consumer before he is bound by the distance contract or offer, such as the main parameters determining the ranking of offers presented; whether the third party offering goods, services or digital content is a trader or not; where the third party is not a trader that EU consumer rights do not apply to the contract and how any contract obligations are shared between the third party and the provider of the online marketplace. The information provided by the provider of the online marketplace must be made available in a specific section of the online interface. Ranking means the prominence given to goods, services, digital content or digital services by the provider. A provider of the online marketplace who contravenes subsection (1) commits an offence. Definitions of “online marketplace” and “provider of an online marketplace” are specified.

**Section 108: Additional information requirements for distance contracts concluded by electronic means** provides that distance contracts concluded by electronic means includes package travel contracts and contracts for passenger services and this section will apply with modifications to packages and linked travel arrangements regarding reference to trader/organiser, consumer/traveller, and package travel contract. The trader must provide the relevant information in Schedule 3 to the consumer, where they are required to pay, before an order is placed. The trader must ensure that the consumer explicitly acknowledges, when placing the order, the obligation to pay and any function used to place an order must be so labelled. Where the trader does not comply with this requirement, the consumer is not bound by the contract or order. A trader who contravenes sections (3), (4) or (5) commits an offence.

**Section 109: Provision of confirmation of distance contract** provides that a trader must provide the consumer with confirmation of the concluded distance contract on a durable medium. The information specified in Schedule 3 must be included in the confirmation unless previously

provided. The contract must contain the consumer's acceptance of the loss of the right to cancel in the case of digital content not supplied on a tangible medium where performance began with the consumer's prior consent. The confirmation must be supplied within certain time parameters. A trader who contravenes any of the provisions in this section commits an offence.

**Section 110: Interpretation (Chapter 5)** provides for the definition of "cancellation period" in relation to a distance contract or an off-premises contract.

**Section 111: Application (Chapter 5)** provides that Chapter 5 does not apply to specified distance and off-premises contracts concluded between a trader and a consumer. Chapter 5 does apply to contracts for (i) services in addition to urgent repairs or maintenance requested by the consumer and (ii) goods which are not replacement parts used in the maintenance or repair work, provided by the trader in the context of carrying out urgent repairs or maintenance.

**Section 112: Right to cancel** provides that a consumer may cancel a distance or an off-premises contract during the cancellation period without providing a reason. No costs or liability is incurred by the consumer for doing so except for liability under subsections 117(2), 118(5), 118(6)(b) and 119(3).

**Section 113: Duration of cancellation period** provides that the duration of the cancellation period for a distance contract or an off-premises contract expires in accordance with subsections (2) to (8). The cancellation period for service contracts, digital service contracts, contracts for the supply of digital content not supplied on a tangible medium, contracts for the supply of water, gas or electricity not supplied in a limited volume or set quantity or contracts for the supply of district heating expires on the expiry of 14 days beginning on the day the contract concluded. In the case of specific contracts, within the context of the latter contracts, concluded due to an unsolicited visit to a consumer's home or an excursion organised by a trader, the expiry of the cancellation period is 30 days beginning on the day the contract is concluded. The cancellation period for a sales contract expires on the expiry of 14 days beginning on the day the consumer acquires the physical possession of the goods. This cancellation period also applies to sales contracts for multiple goods that are ordered in one order and for goods consisting of multiple lots or pieces, where the consumer acquires physical possession of the last of the goods or the last lot or piece. The cancellation period for a sales contract for regular delivery of goods during a defined period expiring 14 days beginning the day the consumer acquires physical possession of the first of the goods. The cancellation period for sales contracts concluded by unsolicited visits/excursions organised by the trader expires on the expiry of the period of 30 days beginning on the day where the contract falls within subsections (5), (6) and (7). In subsections (4) to (8) "consumer" is the person who acquires the physical possession of the goods as nominated by the consumer.

**Section 114: Omission of information on right to cancel** provides that if a trader does not provide a consumer with required information on the right to cancel the contract, the cancellation period expires on the expiry of 12 months beginning from the day it would have expired under section 113. Where the trader provides the required information within 12 months of the day on which the cancellation period expires but for this subsection, the cancellation period will expire instead on the expiry of 14 days beginning the day the consumer is so informed. For off-premises contracts, concluded due to an unsolicited visit/excursion organised by a trader to a consumer's home, where the required information is notified, the expiry

of the cancellation period is 30 days beginning the day the consumer is so informed. The information on the right to cancel must be provided as set out in sections 103, 104 and 106.

**Section 115: Exercise of right to cancel** provides that the consumer must inform the trader of his decision to cancel a distance contract or an off-premises contract before the expiry of the cancellation period. To do so he may use the model cancellation form in Part 2 of Schedule 4 or make an unequivocal statement in this regard. Where the trader gives the option, the consumer may complete the form or statement on the trader's website. In this case the trader will acknowledge receipt of the cancellation on a durable medium. The right to cancel is exercised by the consumer once the communication is sent before the end of the expiry period. The burden of proof is on the consumer in case of dispute.

**Section 116: Effects of cancellation or withdrawal** provides that the exercise of the right to cancel a distance contract or an off-premises contract by the consumer terminates the obligations of consumer and trader to perform the contract. The withdrawal by the consumer of an offer to enter into a distance or an off-premises contract terminates any obligation on the consumer or trader to conclude the contact.

**Section 117: Obligations of trader in event of cancellation** provides that where the consumer has cancelled the contract, the trader must refund all payments, including for delivery, to the amount equal to the cost of the least expensive type of standard delivery offered by him. Refunds must be made no later than 14 days after the day when the trader is informed of the cancellation. In sales contracts, the trader may withhold a refund until the goods are returned or evidence of the return is provided, unless he offered to collect the goods. The same means of payment will be used for the refund as the consumer used, unless otherwise agreed. If a different means of payment is agreed, the consumer must not incur any fees as a result. The trader must not use any content, other than personal data, provided by the consumer when using digital content or digital services supplied by the trader except in specific circumstances. The trader must provide this content, or content to which subsection (7)(a), (b) or (c) applies to the consumer on request, free of charge, without hinderance and within a reasonable time. Where a consumer cancels a contract, the trader may prevent any further use of the digital content or digital service by the consumer. A trader who contravenes any of subsections (1) to (6), (7) and (8) commits an offence. Where the trader fails to refund the consumer, he will be liable in damages for any loss or damage suffered by the consumer as a result of that failure.

**Section 118: Return of goods and obligations of consumer in event of cancellation** provides that the trader must collect the goods if he has offered to do so or it would not be possible to return them by post in the case of an off-premises contract, when a consumer cancels a sales contract. In this instance, the trader must collect the goods at his own expense. Otherwise, the consumer must send them back or hand them over to the trader or his representative no later than 14 days after the day he informed the trader of cancellation. The consumer will pay the costs of return unless the trader has agreed to pay or has failed to inform the consumer that the latter must pay. The consumer who is required to return the goods must take reasonable care of them before returning and is liable for any diminished value of the goods. There is no obligation on the consumer where the trader has failed to provide the information on the right to cancel. Where the consumer fails to return the goods as required, he will be liable in damages to any loss or damage suffered by the trader as a result of that failure. Where a consumer cancels a contract for the supply of digital content not supplied



on a tangible medium or a digital service, he must not use it or make it available to any third person.

**Section 119: Performance of certain contracts during cancellation period** provides that this section applies in the case of specified contracts where the consumer is obliged to pay. Where the consumer wants the contract to begin during the cancellation period, the trader must require the consumer to request on a durable medium the performance of the contract during the cancellation period and to acknowledge that the right to cancel no longer exists once the contract is fully performed by the trader. Where the consumer cancels during the cancellation period before the specified contracts have been fully supplied, the consumer must pay a proportionate amount for the supply provided prior to cancellation of the contract. The amount is based on the total price agreed or, if that is excessive, based on the market value of the service supplied. The consumer is not required to pay for performance of the contract during the cancellation period if the trader has not provided information on the right to cancel or of the liability to pay reasonable costs or the consumer has not expressly requested performance during the cancellation period. The information on the right to cancel and on the consumer's liability to pay the trader reasonable costs will be provided as set out under sections 103, 104 or 106.

**Section 120: Supply of digital content during cancellation period** provides that the consumer who cancels a contract for the supply of digital content not supplied on a tangible medium during the cancellation period is not liable for the cost of supply during that period if they have not given prior express consent to the beginning of the performance before the expiry of the cancellation period, has not acknowledged in giving consent that the right to cancel would be lost or the trader has failed to provide confirmation of such consent or acknowledgement. The confirmation of such consent or acknowledgement must be provided as set down in section 105 for an off-premises contract and section 109 for a distance contract.

**Section 121: Effects of cancellation on ancillary contract** provides that where a distance or an off-premises contract is cancelled by the consumer, any ancillary contract is automatically terminated without cost, other than costs under sections 117(2), 118(5), 118(6)(b) and 119(3). In this instance, the trader will inform any other trader with whom the consumer has an ancillary contract that it is terminated. The trader will reimburse all payments received from the consumer and the latter must return any goods delivered to the trader at the trader's expense and not use any digital content or digital service supplied under the ancillary contract. Any security provided under a terminated ancillary contract will be treated as having no effect and any property lodged in this regard must be returned immediately by the trader or a person other than a trader. Subsection (1) is without prejudice to Regulation 18 of the European Communities (Consumer Credit Agreements) Regulation 2010. Contracts for financial services may be ancillary contracts for the purposes of this section. "Ancillary contract" is defined.

**Section 122: Fees for use of means of payment** provides that a trader will not charge fees to consumers above the costs borne to use the means of payment. If he does so, and the consumer pays that fee, the trader must reimburse the excess charged. Any provisions in a contract which requires excess fees to be paid is unenforceable regarding the excess charged. A trader who contravenes subsection (1) commits an offence. The trader will be liable in damages for any loss or damage suffered by the consumer as a result of the failure to comply with the obligation to reimburse the excess paid. The burden of proof is on the trader, in case of dispute. This provision

is without prejudice to the operation of Regulation 86 of the European Union (Payments Services) Regulations 2018.

**Section 123: Additional payments** provides that the trader must seek the consumer's express consent to any additional payment to that agreed before the consumer is bound by a contract or an offer. There is no express consent where consent is inferred from a default option that the consumer is required to reject to avoid the additional payment. Where the trader receives payment in this instance, he must reimburse the payment. Any provision in a contract which requires payment by the consumer is unenforceable. A trader who contravenes this provision commits an offence. Breach of the obligation to reimburse the consumer will result in the trader being liable in damages for any loss or damage suffered by the consumer. The burden of proof is on the trader, in case of dispute.

**Section 124: Charges for communication by telephone** provides that where a telephone line is permitted for contacting the trader about a concluded contract, calls by consumers to that line for that purpose must be charged at no more than the basic rate. Where a trader contravenes the latter, he must reimburse the consumer who paid more than the basic rate, the extent of the excess charged. Any provision of a contract which requires a payment in contravention is unenforceable. A trader who contravenes this provision commits an offence. Breach of the obligation to reimburse the consumer will result in the trader being liable in damages for any loss or damage suffered by the consumer. The burden of proof is on the trader, in case of dispute. The "basic rate" is defined. The Minister, having consulted as appropriate, may make regulations under paragraph (a)(v) where he is satisfied that it is necessary in the interests of consumer protection.

**Section 125: Inertia selling** provides that where a trader supplies goods/services unsolicited by the consumer, the latter is exempted from providing consideration for them and may treat them as an unconditional gift. The absence of a response from the consumer does not constitute consent to providing consideration for the goods/services or the return or safekeeping of any goods supplied.

## PART 6

### UNFAIR TERMS IN CONSUMER CONTRACTS

**Section 126:** contains definition of terms used in Part 6.

**Section 127:** contains application provisions for Part 6.

**Section 128: Application of Part in relation to implied term of consumer contract** provides that no term may be implied into a consumer contract that would be unfair under this Part if it were an express term of such a contract.

**Section 129: Unfair term not binding** provides that an unfair term of a consumer contract is not binding on the consumer. This does not prevent the consumer from relying on the unfair term if they so choose and if the contract can continue in existence without the unfair term, it will continue to be binding on the parties.

**Section 130: Meaning of "unfair"** provides that a term in a consumer contract is unfair if it causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer. The assessment of the transparency of a consumer contract term will take account of specific requirements. In assessing if a term complies with the requirements of good faith, regard will be given to the strength of the bargaining positions, whether there was consumer inducement to agree a term, whether the subject matter of the contract was sold/supplied to the special order of

the consumer, whether the trader has dealt fairly with the consumer. This section will not impact on the operation of sections 39, 71, 94 and 132.

**Section 131: Exclusion from assessment for unfairness** provides that a consumer contract term will not be assessed for unfairness when it relates to the main subject matter of the contract and lays down the essential obligations under it or relates to adequacy of price or remuneration payable in exchange for supply of the subject matter of the contract in exchange for such price or remuneration. A term is excluded from assessment only if it complies with the transparency requirements. Price or remuneration payable does not include payment that is incidental or ancillary to the price or remuneration payable under the contract in exchange for such price or remuneration or dependent on the occurrence/non-occurrence of a particular event. Subsection (1) does not apply to a term of a consumer contract that is presumed unfair under section 133(1).

**Section 132: Consumer contract terms that are always unfair** provides that a contract term will always be unfair where it has specific negative effects. Subsection (1)(a) will not apply to any consumer contract of insurance; transfer of an interest in land; liability of occupier of premises for recreational purposes; affect the validity of any discharge of indemnity. In this regard, a consumer will not be deemed to have voluntarily accepted any risk due to agreeing or knowing about a term that sought to exclude the trader's liability for death or personal injury. "Personal injury" is defined.

**Section 133: Consumer contract terms presumed to be unfair** provides that Part 1 of Schedule 5 (which is subject to Part 2 of the same Schedule) contains an indicative non-exhaustive list of consumer contract terms presumed to be unfair under this Part. Such a consumer contract term may be assessed for unfairness under section 130. The Minister, having consulted as appropriate, may make regulations under subsection (4) where he is satisfied that it is necessary in the interests of consumer protection and fair competition.

**Section 134: Consumer contract terms to be transparent** provides that the trader must ensure that the terms of a consumer contract are transparent. To be so they must meet several conditions, such as plain language, presented clearly, made easily available, any novel terms are brought to the consumer's attention, the financial consequences of the terms are understandable, and it complies with other prescribed requirements. The assessment of transparency of a consumer contract term will take several specified factors into account. The burden of proof is on the trader, in case of dispute. Where a consumer contract is directed at a group of consumers, the average consumer will be read as the average member of that group. Before making regulations under subsection (2)(f), the Minister will consult as appropriate. "Novel" and "the average consumer" are defined.

**Section 135: Interpretation of term of consumer contract** provides that where there is doubt about the meaning of a consumer contract term, the one most favourable to the consumer will be taken. This will apply in proceedings for an application to a court for a declaration or injunction under section 137.

**Section 136: Duty to court to consider whether term of consumer contract unfair** provides that the court will determine whether a term is unfair regardless of whether the matter is raised in proceedings before it relating to a term of a consumer contract. The court must have sufficient legal and factual material before it to assess whether the term is unfair for the requirement to apply.

**Section 137: Application to court for declaration or injunction** provides that, on application by an authorised body for a declaration that a consumer contract term is unfair, the court may declare the term unfair, prohibit the use or continued use of such a term or similar term or impose specified conditions on the trader. The court may make a declaration on application by an authorised body as to the proper interpretation of any term in a consumer contract. Before making such applications, an authorised body must publish a notice of its intention to apply to the court for a declaration in *Iris Oifigiúil* and at least two national newspapers or other manner directed to by the court. 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 body considers an unfair term. In this case, the court may grant an injunction as appropriate. An injunction granted may relate to the use of a particular contract term or to a similar term used or recommended for use by the trader. The court will take account of all the interests involved, particularly the public interest to protect consumers. Every person with an interest in an application under this section will be entitled to appear and be heard by the court on hearing of the application. An application by an authorised body, other than the Competition and Consumer Protection Commission (CCPC), will be on notice to the CCPC. The authorised body does not need to prove anything regarding loss or damage in an application. These provisions are without prejudice to the rights of a consumer to rely on this Part in any case before a court. An application to the Circuit Court will be to the district where the trader usually resides or does business. “Court” is defined as Circuit Court or High Court.

**Section 138: Transfer from Circuit Court to High Court** provides that where the Circuit Court is of the opinion that the application is not appropriate to it, it may transfer it to the High Court.

**Section 139: Publication of order made by court under section 137(1)** provides that where a court makes an order declaring that a term of a consumer contract is unfair, the authorised body that made the application for the order and where it did not do so, the CCPC, will publish a copy of the order on its website, before the expiration of 90 days beginning (i) the day on which the period for bringing an appeal expires, where no appeal is brought, or (ii) the day on which the appeal is finally determined, withdrawn or abandoned, where an appeal is brought. In certain circumstances, an authorised body and, where it did not make the application for the order, the CCPC may, instead of publishing a copy of the order, publish a notice which sets out the term of a consumer contract that the court declared to be unfair without disclosing information not permitted to be disclosed under legal or regulatory requirement. In this instance, both the authorised body and the CCPC will publish the same notice.

**Section 140: Offence** provides that where (i) an authorised body published an order declaring that the term of the consumer contract to which the order relates is unfair or a notice setting out the term of a consumer contract that the court has declared to be unfair and (ii) a trader uses the term in a consumer contract, the trader commits an offence.

## PART 7

### PROCEEDINGS AND PENALTIES

**Section 141: Interpretation** contains definition of terms used in Part 7.

**Section 142: Offences: penalties** provides that a person who commits an offence under the Act will be liable on summary conviction to a class A fine or to imprisonment for no more than 12 months or both or on conviction on

indictment to a fine no more than €60,000 or to imprisonment for no more than 18 months or both. In determining a sentence, the court will consider specific criteria.

**Section 143: Liability for offence by body corporate** provides that an offence committed under the Act by a body corporate and proved to have been committed with the involvement of an officer of the body corporate, that person, as well as the body corporate, commits an offence and will be liable to be prosecuted and punished as if that person is guilty of the first-mentioned offence. Where the affairs of the body corporate are managed by its members, subsection (1) applies to the omissions/commissions of the member in his functions of management as if he was a director or manager of the body corporate.

**Section 144: Defence of due diligence** provides that it will be a defence for the defendant to prove that they exercised due diligence and took reasonable precautions to avoid the commission of the offence.

**Section 145: Convicted persons liable for costs and expenses of proceedings and investigation** provides that a person convicted for an offence under the Act, unless there are good reasons, will be ordered by the court to pay the relevant authority the costs and expenses incurred by the latter in relation to the investigation, detection, and prosecution of the offence. These costs and expenses are in addition to any fine or penalty imposed by the court.

**Section 146: Convicted traders liable to compensate consumers for loss or damage** provides that if a trader is convicted of an offence under the Act, the relevant authority may apply (with the consumer's consent) to the court for an order requiring the trader to pay compensation to the consumer for any loss or damage resulting from that offence. The compensation order may be instead or in addition to any fine or penalty imposed by the court on the trader and the amount is decided by the court. An application will not be made under subsection (1) if the consumer has brought an action under sections 34, 73 or 95 against the trader for the same failure to comply with the Act for which the trader concerned is convicted. The compensation order will be deemed to be in satisfaction for the part of the awarded damages (if such are claimed subsequently and awarded under sections 34, 73 or 95) as equals the compensation payable. If the trader does not comply with the compensation order within the time ordered by the court or within 30 days after the order is made, the consumer may enter a judgement in the court which is enforceable against the trader.

**Section 147: Prosecution of summary offences** provides that summary proceedings under different Parts of the Act may be brought by the relevant regulator.

## PART 8

### AMENDMENT TO CONSUMER CREDIT ACT 1995

**Section 148** amends the Act of 1995. Section 2(1) is amended by the insertion of several definitions.

**Section 149: Interpretation – sections 73A to 73X** amends the Act of 1995. Section 56A is inserted as a new section after section 56 to provide that a reference in 73A to 73X to goods being in conformity with a hire-purchase agreement will be construed in accordance with section 73A(2).

**Section 150** amends the Act of 1995. The following sections, 73A to 73X, are inserted after section 73:

**Section 73A: Goods to be in conformity with the hire purchase agreement at time of delivery** provides that where a hire-purchase agreement is concluded between an owner and a hirer, the owner is required to deliver goods to the hirer that are in conformity with the agreement at the relevant time and comply with the requirements of sections 73B to 73D and not meet non-conformity under section 73E. Where they are not in conformity, the hirer will have the right to remedies in sections 73I and 73L. “Relevant time” is defined.

**Section 73B: Owner to have right to sell goods etc.** provides for the conditions of the hire-purchase agreement, such that the owner must have the right to sell the goods when ownership of them is to be transferred; the goods must be free from any charge not disclosed to the hirer before entering into the agreement and must remain so until ownership is transferred; and the hirer may only be affected by a benefit of the owner/ another person already disclosed on the goods. Where only limited title to the goods transfer, that an owner or third person may have, all charges must be disclosed before the agreement is entered into and the hirer may only be affected by a claim under a charge already disclosed. If the owner does not have the right to sell the goods, the hirer can terminate the agreement. Where the hirer has the right to terminate the agreement, he will do so under section 73N, and the owner will comply with his obligations in section 73O. The hirer will have the right to remedies in sections 73I and 73L where the goods are not in compliance, where all known charges are not disclosed by the owner and where a restriction prevents or limits the use of the goods. Where a dispute arises, the burden of proof rests on the owner to show that he had a right to sell the goods, that they complied with subsection (1)(b) and (c) and all known charges were disclosed.

**Section 73C: Subjective requirements for conformity with hire-purchase agreement** provides that to conform with the agreement, the goods must meet certain subjective requirements such as description, quantity, possess functionality and compatibility, be fit for purpose, be delivered with all accessories and instructions, and updated as stipulated. Also, spare parts and adequate after sales service must be made available by the owner in such circumstances as stated in the offer and for a reasonable time period, if not stated. “Interoperability” is defined.

**Section 73D: Objective requirements for conformity with hire-purchase agreement** provides that the goods delivered under a hire-purchase agreement comply with applicable laws, standards, or codes of conduct; correspond to the description of a sample or model made available to the hirer; delivered with instructions, where applicable; possess the features of durability, compatibility and security expected of the goods, particularly features referred to in any public statement. The durability of the goods means the ability of the goods to maintain their functions and performance through normal use and which the hirer could reasonably expect. The owner will not be bound by any public statement on the durability of the goods where he shows that he was not aware of it, or it had been corrected or the hirer could not have been influenced by it. Where a hire-purchase agreement for the letting of goods with digital elements provides for a single act of supply of digital content or digital services, the owner must ensure that the hirer is informed of and supplied with the updates necessary to keep the goods in conformity with the agreement for a reasonable time period. Where such an agreement provides for a continuous supply of digital content or digital service for a period exceeding two years, the owner must ensure that the hirer is informed of and supplied with the updates necessary to keep the goods in conformity with the agreement during that period. If the time period of supply does not exceed two years,

the owner must ensure that the hirer is informed of and supplied with the updates necessary to keep the goods in conformity for two years beginning with the delivery of the goods with digital elements. The owner is not liable for any lack of conformity where the hirer fails to install updates supplied within a reasonable time and had been informed of the updates. There will be no lack of conformity with a hire-purchase agreement under subsection (1), (4), (5) or (6) where the hirer was informed of and accepted a deviation from particular requirements when concluding the agreement. In this instance, the burden of proof rests on the owner to show the hirer was informed of and accepted the deviation.

**Section 73E: Incorrect installation of goods** provides that any lack of conformity with the hire-purchase agreement due to incorrect installation of the goods will be regarded as a lack of conformity of the goods if the installation is part of the agreement and was carried out by the owner or under his responsibility or if the installation was carried out by the hirer and the incorrect installation was due to the defective installation instructions provided to the hirer.

**Section 73F: Implied terms of hire-purchase agreement** provides that sections 73B to 73E will be implied into every hire-purchase agreement and will have effect as if they were the terms of such agreement.

**Section 73G: Liability of owner** provides that where the hire-purchase agreement for the letting of goods with digital elements provides for a continuous supply of digital content or digital service for a specified period, the owner will be liable for a lack of conformity within that period. Where the agreement provides for the delivery of goods on more than one occasion, the owner will be liable to the hirer during the period for a lack of conformity of the goods at the relevant time. Where an update is supplied by the owner or a third party for the letting of goods with digital elements, the owner will be liable for any lack of conformity with the agreement caused by the update or caused by the failure of the owner to supply the update. The hirer's right to a remedy for lack of conformity with the hire-purchase agreement where the owner is liable will apply for six years from (i) the relevant time for goods other than goods with digital elements and (ii) the time the lack of conformity of the digital content or digital service occurs or becomes apparent within the period they are supplied under the hire-purchase agreement for goods with digital elements. Relevant time is defined in section 73A.

**Section 73H: Burden of proof** provides that any lack of conformity with the hire-purchase agreement during the 12 months beginning with the relevant time that the goods were supplied will be presumed to have existed at the relevant time unless proven otherwise or such presumption is incompatible with the nature of the goods or lack of conformity. Where the agreement for the letting of goods with digital elements provides for continuous supply of those elements for a specified period, the burden of proof is on the owner for a lack of conformity that becomes apparent during that period. For the purposes of the presumption, the hirer will only need to prove lack of conformity of the goods with the agreement and that it became apparent during the 12 months beginning with the relevant time. A hirer will not be restricted from seeking a remedy after 12 months from delivery. Relevant time is defined in section 73A.

**Section 73I: Right to remedies under sections 73J and 73K** provides that where the goods are not in conformity with the hire-purchase agreement at the relevant time, the hirer can exercise the short-term right to terminate the agreement or has the right to have the goods brought into conformity through repair or replacement. The hirer may choose between the remedies

of repair and replacement of the goods unless the chosen remedy would be impossible for the owner to carry out or would impose disproportionate costs on the owner taking account of all the circumstances. The owner may refuse to bring the goods into conformity if both repair and replacement are impossible for him to carry out or would impose disproportionate costs on him taking account of all the circumstances. Relevant time is defined in section 73A.

**Section 73J: Short-term right to terminate hire-purchase agreement** provides that the period during which the hirer has the short-term right to terminate the contract begins (i) when the agreement requires the owner to install the goods after delivery or take any other action to enable the hirer to use the goods, is completed or (ii) when, in any other case, at the relevant time, and subject to subsection (3), expires 30 days after that day or the relevant time. Where the goods may expire or deteriorate in a shorter period, the short-term right to end the agreement will be the end of the shorter period. The hirer may terminate the agreement before the beginning of the period specified in subsections (2) or (3). In this case, the burden of proof is on the owner in a dispute. Where the hirer has the right to terminate the agreement, the hirer will do so as provided for in section 73M and the owner will comply with the obligations in section 73O. Relevant time is defined in section 73A.

**Section 73K: Repair or replacement of goods** provides that, where goods are brought into conformity with a hire-purchase agreement by repair or replacement, the owner must ensure repair or replacement of the goods is carried out free of charge, within a reasonable time period and without any significant inconvenience to the hirer. The reasonable time period will be determined objectively. The hirer must make the remedied goods available to the owner. The owner will bear the expense of taking back the replaced goods and goods to be repaired. Subsection (7) applies where it is necessary to remove goods in order to repair/replace them and the goods were installed correctly before any lack of conformity became apparent. The owner's obligations to repair/replace includes removal of the non-conforming goods; the installation of repaired non-conforming goods; the installation of goods that replace non-conforming goods and doing so at his own expense. The hirer will not be liable to pay for the normal use of the replaced goods during the period before they are replaced. The term "free of charge" is defined.

**Section 73L: Right to proportionate reduction in price and to final termination of hire-purchase agreement** provides that this section applies where a hirer has exercised his right to remedies under section 73I and the owner has not completed the repair or replacement of the goods and in accordance with section 73K or the owner has refused to bring the goods into conformity with the agreement; the goods are not in conformity at the relevant time and the same or a different lack of conformity becomes apparent despite the owner's attempts to bring them into conformity; the lack of conformity is of such a serious nature to justify an immediate price reduction or the termination of the agreement; or the owner has declared or will not bring the goods into conformity within a reasonable time or convenient to the hirer. The hirer will have the right to a proportionate reduction of the price under section 73M or the right to exercise the final right to terminate the agreement under section 73N. If the lack of conformity is only minor, there is no final right to terminate the agreement. In this instance, the burden of proof is on the owner. Where subsection (1) (c) applies, it will be objectively determined as to the rights available to the hirer or to have to accept further attempts by the owner to bring the goods into conformity. Where subsection (1)(d) applies, it will be objectively



determined if the lack of conformity is of a serious nature to result in a proportionate price reduction or final right to terminate the agreement. Where the hirer has the final right to terminate the agreement due to some of the goods not being in conformity with the agreement, the hirer may only do so in relation to those goods and any other goods acquired with them where it would not be reasonable to keep the conforming goods. Relevant time is defined in section 73A.

**Section 73M: Price reduction** provides that, where the hirer has the right to a price reduction, he may require the owner to reduce the price required under the hire-purchase agreement or receive a reimbursement from the owner more than the amount of the reduction. The reduction of the price must be proportionate to the decrease in value of the goods received and the owner must reimburse the amount in accordance with section 73P. Where the hirer transfers ownership of goods to the owner in full or part payment of the price, the right of the hirer to a price reduction will not apply if no agreed monetary value was ascribed by the parties or the goods cannot be divided up to enable the hirer to receive/retain the reduced price.

**Section 73N: Obligations of hirer in event of termination of hire-purchase agreement** provides that the hirer may only terminate the hire-purchase agreement, either a short term or final right, by means of a statement to do so to the owner and return the goods or materials delivered to the owner at the owner's expense. Otherwise, the hirer will be liable in damages for loss or damage suffered by the owner as a result of that failure.

**Section 73O: Obligations of owner where hire-purchase agreement terminated** provides that, where a hire-purchase agreement is terminated by the hirer (either a short term or final right), the owner on receipt of the goods or evidence that they have been returned, will reimburse the hirer the price paid for the goods and any costs incurred by the hirer in returning the goods. If the agreement is terminated before the full price is paid, only the part of the price paid is subject to reimbursement. Where the hirer exercises the final right to terminate the agreement, the price reimbursed may be proportionately reduced for any depreciation in value of the goods due to normal use. In this case, the burden of proof is on the owner in a dispute. Where ownership of the goods is transferred by the hirer as full or part payment of the price, the owner will return the transferred goods and may reimburse any part of the price paid. Where it is not possible to return the transferred goods, the owner will reimburse the hirer with the agreed monetary value of the goods at the time the agreement was concluded or to a reasonable market value at that time if no monetary value was agreed.

**Section 73P: Time limits and means of reimbursement by owner** provides that in instances where reimbursement is owed to the hirer, the owner will do so no later than 14 days after the day the goods were returned or evidence received that they were returned and make payment in the same way as the hirer used to pay for the goods unless otherwise agreed to by the hirer, without any fees being incurred. The owner will reimburse the hirer without imposing any fee for it. Any failure by the owner to comply with the reimbursement obligation will be liable in damages for any loss or damage suffered by the hirer as a result of that failure.

**Section 73Q: Effects of termination of hire-purchase agreement on ancillary contract** provides that, where a hirer terminates a hire-purchase agreement under section 73N, any ancillary contract will be terminated also without any cost to the hirer. The owner so informed will inform any other owner who had ancillary contracts with the hirer. Obligations apply to both owner and hirer where an ancillary contract is terminated. Any security provided under a terminated ancillary contract will be treated as having no

effect and any property lodged in this regard must be returned immediately by the owner or trader. “Ancillary contract” and “trader” are defined.

**Section 73R: Representations purporting to restrict rights of hirer: offences** provides that it will be an offence for an owner to make relevant representation by means of a display, publication, supply goods or digital content or a digital service etc. A relevant representation is defined as means of communications used by an owner to restrict the right, where goods are not in conformity with the agreement, to a refund or a refund will only be made in a particular way or goods will not be repaired or replaced or will not be brought into conformity. “Representation” is defined.

**Section 73S: Exclusion or limitation of liability of owner** provides that a term of a hire-purchase agreement or any other contract between a hirer and the owner will not exclude or restrict an owner’s liability under various listed provisions. A term of an agreement or other contract that purports to exclude or restrict an owner’s liability will not be binding on the hirer. Liability will not be excluded or restricted in relation to rights or remedies or enforcement of such rights/remedies, being put at a disadvantage for pursuing such rights/remedies, for rules of evidence or procedure or preventing/limiting an obligation. An agreement in writing to engage with an alternative dispute resolution procedure does not exclude or restrict liability. An owner who contravenes subsection (1) commits an offence.

**Section 73T: Liability for commercial guarantee** provides that a commercial guarantee is binding on the guarantor according to the commercial guarantee statement and associated advertising, at or before the conclusion of the hire-purchase agreement. Where the producer offers a commercial guarantee of durability for the repair or replacement of the goods, the producer is liable during the period of the guarantee of durability for repair or replacement of the goods and may offer more favourable conditions. The commercial guarantee will be binding in relation to the most advantageous conditions, i.e., these may have been set out in the associated advertising.

**Section 73U: Liability of owner for another’s commercial guarantee** provides that where the owner gives a hirer a commercial guarantee provided by another guarantor, the owner is liable for the observance of the guarantee to the hirer as if he was the guarantor, unless he expressly stated otherwise. Where the owner gives his own commercial guarantee to the hirer, it will be presumed that he has not made himself liable under any commercial guarantee from another guarantor which the owner has given to the hirer. The liability of the owner to the hirer is without prejudice to the rights of the hirer under section 73T.

**Section 73V: Liability under commercial guarantee to subsequent hirers** provides that where goods covered by a commercial guarantee provided to a hirer are acquired by another hirer during the guarantee period, the other hirer will be able to rely on the guarantee against the guarantor or the owner as if they were the hirer to whom the guarantee was provided.

**Section 73W: Provision and content of commercial guarantee statement** provides that the statement will be given to the hirer on a durable medium by the time of delivery of the goods and will contain specific details. The commercial guarantee will be binding for the guarantor irrespective of non-compliance with the statement. “Durable medium” and “free of charge” are defined for this section.

**Section 73X: Exclusion or limitation of rights of hirer under commercial guarantee** provides that a commercial guarantee will not limit the rights of the hirer at common law or under statute or add extra

obligations to those under the hire-purchase agreement or purport to give the guarantor the sole decision on conformity of the goods with the agreement. Otherwise, a commercial guarantee will not be binding on the hirer. A guarantor who gives a commercial guarantee which contravenes subsection (1) commits an offence.

An amendment made by subsection (1) will apply in relation to a hire-purchase agreement concluded on or after the day this section comes into operation.

**Section 151** amends the Act of 1995. The Act is amended by the substitution of section 88 in order to apply sections 73A to 83 to consumer-hire agreements. It provides that where goods are let under a consumer-hire agreement the provisions of sections 73A to 83 will apply as if it were a hire-purchase agreement. In a consumer-hire agreement, where the hirer is entitled to be reimbursed for the price, it applies only to any price paid by the hirer for a period of hire where he no longer possesses the goods due to the termination of the agreement. In a consumer-hire agreement the owner will ensure that the goods will be free from any charge or encumbrance not disclosed before the agreement and the hirer will be entitled to enjoy the goods without any charge or encumbrance except those disclosed. The amendment made by subsection (1) will apply in relation to a consumer-hire agreement that is concluded on or after the day this section comes into operation.

## **PART 9**

### **AMENDMENT OF CONSUMER PROTECTION ACT 2007**

**Section 152** amends the Act of 2007. Section 2(1) is amended by substituting the definition for “product”, amending the definition for “relevant statutory provisions” and inserting definitions for “Act of 2022”, “digital content”, “digital service”, “distance contract”, “online marketplace” and “ranking”.

**Section 153** amends the Act of 2007. Section 41 is amended by inserting a new subsection after subsection (3). It provides that a trader who continues to engage in a commercial practice found to be unfair by a court commits an offence and is liable to fines and penalties provided in Chapter 4 of Part 5.

**Section 154** amends the Act of 2007. Section 44A is inserted as a new section after section 44. It provides that a commercial practice is misleading if, unless justified, it involves marketing of goods as identical to those in other Member States where they are significantly different and could cause an average consumer to make a transactional decision which otherwise they would not make. In determining if the commercial practice is misleading, it will be considered in its factual context.

**Section 155** amends the Act of 2007. Section 46 is amended in subsection (3) by substituting paragraph (e), inserting a new paragraph (g), and inserting new subsections (3A) and (3B). Paragraph (e) provides that, if the arrangements for payment, delivery and performance do not meet the standard of skill and care expected or the general principle of good faith in the trader’s activity, it may constitute material information under section 46. Paragraph (g) provides that products offered on online marketplaces, on the basis of the declaration of the third party offering the products, whether a trader or not, to the provider of the online marketplace, may constitute material information under section 46. Subsection (3A) provides that general information on the parameters determining ranking of products presented as a result of a search query and how they relate to other parameters made available on the online interface easily accessible along with the query results will be considered material information. The

latter does not apply to a person who provides or offers to provide an online search engine to consumers. Subsection (3B) provides that where a trader provides access to consumer reviews of products, information by the trader ensuring that the reviews are genuine will be considered material information.

**Section 156** amends the Act of 2007. Section 47 is amended by substituting and expanding references to some sections. It provides that a trader who engages in any misleading commercial practice described in the broader range of sections commits an offence.

**Section 157** amends the Act of 2007. Section 55 is amended by inserting paragraphs (qa), (z), (za) and (zb). Section 55 provides that a trader will not engage in any commercial practices that are listed. Paragraph (qa) is added to the list as providing search results in response to an online search query without clearly disclosing any paid advertisement or payment specifically for achieving high ranking of products within search results. Paragraph (z) is added to the list as reselling event tickets if the trader acquired them by automated means to circumvent limit on numbers or other rules to purchase of tickets. Paragraph (za) is added to the list as stating product reviews are genuine without checking the validity of the reviews. Paragraph (zb) is added to the list as submitting/commissioning another person to submit false reviews or misrepresenting reviews or endorsements in order to promote products.

**Section 158** amends the Act of 2007. Section 67 is amended by deleting paragraph (g) and inserting new paragraphs (o) to (t). Section 67 defines prohibited act or practice, and these paragraphs provide that any contravention of the specified provisions of the Consumer Rights Act 2022 will be a prohibited act or practice.

**Section 159** amends the Act of 2007. Section 71 is amended by substituting subsection (1), inserting a new subsection (2A), and inserting a new subsection (6A). Subsection (1) provides that a contravention of specified provisions is not included as a prohibited act or practice under section 71. Subsection (2A) provides that an application to the court for an order under subsection (2) may be for an interim order, an interlocutory order, an order of definite or indefinite duration. Subsection (6A) provides that where an application under this section relates to a particular prohibited act or practice to which Parts 2 to 5 of the Consumer Rights Act 2022 relates, an order may be made concerning any similar prohibited act or practice committed or engaged in by a trader.

**Section 160** amends the Act of 2007. Section 73 is amended by substituting subsection (7). Subsection (7) provides for the inclusion in the subsection of the Competition and Consumer Protection Commission serving a compliance notice on a trader under section 75, as an option to the existing provision of it being able to apply for an order against a trader under section 71.

**Section 161** amends the Act of 2007. Section 74A is inserted as a new section after section 74. Section 74A provides that a consumer who is aggrieved by a prohibited act or practice will have a right to a price reduction or termination of the contract. The conditions for these rights and the obligations of the trader and consumer in this regard will be prescribed.

**Section 162** amends the Act of 2007. Section 75 is amended by amending subsection (3)(d), inserting a new subsection after subsection (3), amending subsection (5) and inserting a new subsection (15). Subsection (3)(d) substitutes “relevant court specified in the notice” for “District Court”. Subsection (3A) provides that a compliance notice may direct the trader to refund payments made by consumers in transactions the subject of a contravention. Subsection (5) makes a similar substitution to subsection

(3)(d) above. Subsection 15 specifies that relevant court means the District, Circuit or High Court.

**Section 163** amends the Act of 2007. Section 77A is inserted as a new section after section 77. Section 77A provides that summary proceedings for an offence under the Act may be instituted within three years of the date of the alleged commission of the offence.

**Section 164** amends the Act of 2007. Section 79 is amended by the substitution of “a Class A fine” for “a fine not exceeding €3,000” in subsection (1)(a).

**Section 165** amends the Act of 2007. Section 85 is amended by amending subsections (1) and (3)(c) and by inserting a new subsection (6A). Subsection (1) provides that section 85 (fixed payment notices) applies to any offence under the provisions in the enactments listed. Subsection (3) (c) provides for the substitution of “the prescribed amount specified in the notice” for “the amount of €300”. Subsection (6A) provides that the amount appropriate to the payment of a fixed payment notice may be prescribed, but not more than €1,500 and different amounts for the different offences specified in subsection (1) may be prescribed.

**Section 166** amends the Act of 2007. Section 90(1) is amended by the substitution of paragraph (e) to refer to the Act of 2022.

**Section 167** amends the Act of 2007. Section 91 is amended by inserting “and section 74A” after “section 66(1)” and by substituting “any product” for “any goods or the provision of any services”.

**Section 168** amends the Act of 2007. Schedule 4 is amended by deleting some references to legislation and by inserting a new reference.

**Section 169** amends the Act of 2007. Schedule 5 is amended by deleting some references to legislation and by inserting a new reference.

## **PART 10**

### **AMENDMENT OF CENTRAL BANK ACT 1942**

**Section 170** amends the Central Bank Act 1942. That Act is amended by updating a reference in it to the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000 and replacing it with Parts 4 and 6 of the Consumer Rights Act 2022.

## **PART 11**

### **AMENDMENT OF COMMUNICATIONS REGULATION ACT 2002**

**Section 171** amends the Communications Regulation Act 2002. The Act is amended at section 10(1), by the deletion of paragraphs (ab) and (ac) and the insertion of paragraphs (af) and (ag), by the substitution of subsection (1A) and subsection (1B) with new provisions and including a substitution in subsection (1D)(b). Subsection (1)(af) is inserted to ensure compliance by undertakings and premium rate service providers with sections 41 to 56 (excluding section 50) of the Consumer Protection Act 2007. Subsection (1)(ag) is inserted to ensure compliance by undertakings and premium rate service providers with Parts 4 to 6 of the Consumer Rights Act 2022. Subsection (1A) provides the same functions of the Competition and Consumer Protection Commission (in so far as they relate to the provision of electronic communications networks, electronic communications services, associated facilities and premium rate services) specified in subsection (1B) to the Commission for Communications Regulation, stating that subsections (1B) to (1E) have effect for the purposes of subsection (1A). The new subsection (1B) sets out the functions of the Competition and Consumer Protection Commission referred to in subsection (1A) that are

also to be the functions of the Commission for Communications Regulation under Parts 4, 5 and 6 of the Consumer Rights Act 2022. Subsection (1D) (b) is amended by the substitution of “Consumer Protection Act 2007” for “Act”.

## PART 12

### AMENDMENT OF COMPETITION AND CONSUMER PROTECTION ACT 2014

*Section 172* amends the Competition and Consumer Protection Act 2014. The Act is amended at section 12(13) so as to make it explicit that temporary periods of appointment, under section 12(3)(b) or (5) of the Act, are not deemed to be a “*term of office*” for the purpose of the two-term limit as provided for in subsection (13).

## PART 13

### MINOR AND CONSEQUENTIAL AMENDMENTS OF ENACTMENTS

*Section 173: Minor and consequential amendments of enactments* provides that the Acts listed in Part 1 of Schedule 6 and the statutory instruments listed in Part 2 of Schedule 6 are amended as specified.

## SCHEDULES

### Schedule 1 – Repeals and Revocations

Part 1 Repeals – Acts

Part 2 Revocations – Statutory Instruments

**Schedule 2 – Information to be provided: on-premises contract** provides that the information to be provided by the trader to the consumer in accordance with section 101 is set out in Schedule 2.

**Schedule 3 – Information to be provided: off-premises contracts and distance contracts** provides that the information to be provided by the trader to the consumer in accordance with section 104 for off-premises contracts and section 106 for distance contracts is set out in Schedule 3.

**Schedule 4 – Information concerning the exercise of the right to cancel** provides that information regarding the right to cancel for contracts other than off-premises contracts concluded in the context of unsolicited visits to the consumer’s home or excursions organised by the trader with the aim or effect of promoting or selling products to consumers is set out in Schedule 4.

Part 1 – Model instructions on right to cancel

Part 2 – Model cancellation form

**Schedule 5 – Part 1 – Contract terms presumed unfair**

Part 2 – Restrictions on the application of Part 1

**Schedule 6 – Part 1 – Amendment of Acts**

Part 2 – Amendment of Statutory Instruments

*Department of Enterprise, Trade and Employment,  
Aibreán, 2022.*