



Consultation on Scheme of Consumer Rights Bill 2021
Submission from Commission for Communications Regulation (“ComReg”)

1. Introduction

ComReg welcomes this opportunity to respond to the Department of Enterprise, Trade and Employment, DETE’s Consultation on Scheme of Consumer Rights Bill 2021.

ComReg very much welcomes the substantive and wide-ranging enhancements to the rights afforded to consumers in respect of contracts for the supply of services and the remedies it is proposed should apply in cases where a service contract does not comply with the provisions of the Bill. The new provision that any oral or written statement to the consumer by or on behalf of the trader about the service becomes an implied term of the supply contract will extend an important protection to consumers in the communications space in which we operate.

We are also pleased to see the inclusion of negotiated contract terms in the scope of the unfair terms provisions, the creation of a black list of unfair terms and the considerable strengthening of the nature and content of the grey list, such that the terms concerned will be presumed to be unfair, consistent with proposals by ComReg at the time of the consultation. The more expansive transparency requirements are an important development, especially in an on-line context.

ComReg notes the extra rights for consumers proposed under the Scheme, in particular in relation to Part 7 of the Scheme that extend the provisions and strengthen the protections of the Unfair Contract Terms Directive and ComReg is largely supportive of the extra rights.

ComReg is broadly supportive of the provisions of Part 5 of the Scheme in relation to the Consumer Information and Cancellation Rights and it notes the proposal in relation to the Optional provisions in Consumer Rights Directive not implemented in Part 5.

ComReg notes generally that Part 9 of the Scheme provides for a number of amendments to the Consumer Protection Act 2007 to give effect to the amendments of the Unfair Commercial Practices Directive made by the Better Enforcement Directive and to enhance the enforcement measures available to the Competition and Consumer Protection Commission.

Furthermore, ComReg notes the amendments in Part 9 to the provisions of the Consumer Protection Act 2007 on unfair, misleading and aggressive commercial practices cover commercial practices relating to goods, digital content, digital services and services.

Article 3 of the Better Enforcement Directive provides for a sizeable number of amendments to Directive 2005/29/EC on unfair commercial practices (UCPD). The UCPD is given effect in Parts 3 and 4 of the Consumer Protection Act 2007 and Part 9 provides for the required amendments to the Act. The Part also makes a number of amendments and additions to the enforcement measures available to the Competition and Consumer Protection Commission.

DETE will be aware that, ComReg has been seeking for some considerable time now, provision for it for an enforcement function under the Consumer Protection Act, 2007 in respect of unfair, misleading and aggressive commercial practices in transactions for electronic communications networks and services and premium rate services. ComReg is actively seeking co-enforcement powers with CCPC in relation to the Unfair Commercial Practice Directive (Directive 2005/29/EC).

2. Specific Consultation Headings

Heading 6 of Consultation: Views on the optional provisions included in Part 5 of the Scheme. (limited to 500 words)

Regarding the implementation of optional provisions in Part 5 of the Scheme, ComReg welcomes the provision (referred to at Section 5.17 of the Consultation document) that the Minister for Enterprise, Trade and Employment may prescribe additional information requirements to apply to on-premises contracts or difference classes or types of on-premises contract. This provision may be useful in limiting adverse effects of possible future (and currently unforeseeable) developments and ensure ongoing consumer protection as appropriate.

Regarding the proposed extension of the cancellation period for certain off-premises contracts, referred to at Section 5.18 of the Consultation document, ComReg welcomes the extension of the withdrawal period to 30 days from 14 days for those consumers who claim to have fallen victim to aggressive or misleading marketing or sales practices. The extension may be of benefit to consumers particularly in instances where the visit was unsolicited and the customer did not proactively request a visit from a trader to their home.

Heading 7 of Consultation: Views on the non-implementation of the optional provisions in Part 5 of the Scheme (limited to 500 words)

ComReg would be in favour of the implementation of the optional provision 5.21 as it provides for the consumer to be fully informed of their rights by providing expressed consent and the acknowledgement of a loss of right of withdrawal.

This could be particularly important in the context of off-premises contracts such as where a trader has made an unsolicited visit to a consumer's home.

3. Comments on Specific Heads of Scheme of Consumer Rights Bill 2021

In general, ComReg welcomes the continued co-enforcement opportunity contained in the Bill in relation to the Consumer Rights Directive and the Unfair Contract Terms Directive. In particular we welcome the enforcement powers of Sections 5 to 7 referred to at Head 114(1)(b) of the Scheme.

We would welcome the amendment of Head 114(1)(b) (and Head 138) to extend ComReg's competence to include Part 4 of the Scheme.

On more specific aspects of the provisions we have the following observations:

Head 101: ComReg proposes that further account is taken of two Decisions of ComReg in defining 'basic rate'

1. The National Numbering Conventions published in 2011 have been replaced by the "Numbering Conditions of Use and Application Process", ComReg Document 15/136R2, available [here](#)¹.
2. The 'Review of Non-Geographic Numbers - Response to Consultation 18/65 and Decision' [here](#)².

We note that footnote 443 makes reference to ComReg's NGN Decision. However, Shared Cost (Fixed) / Shared Cost (Timed) no longer exist and we no longer refer to 0818 numbers as Universal Access numbers, which is a historic term. We now refer to them as Standard Rate numbers.

We would be pleased to propose specific changes to the proposed definition, if appropriate.

Head 114: ComReg notes and welcomes that "summary proceedings for an offence under this Act may be instituted at any time within 3 years of the date of the alleged commission of the offence."

Head 115: ComReg notes and welcomes the reference to "a class A fine" at 115(1)(a). We would ask the Department to consider whether it would be appropriate to increase the amount of the maximum fine of €60,000 as provided at 115(1)(b). In that context, we are of the view that the criteria set out at Head 115(2) provide ample guidance to a Court in establishing an appropriate quantum but that the upper limit of the quantum is too low. In this regard it would be useful to consider the fine that can be imposed for an "intra-union infringement" in comparable circumstances.

Head 124: ComReg welcomes the changes further specifying the varieties of orders that can be sought.

Head 128: This is a beneficial provision allowing a direction in a compliance notice to remedy the contravention of the matters occasioning that notice to include a requirement for the refund by the trader of payments made by consumers in transactions relating to that contravention.

Head 131: ComReg believes these are useful updates to the provisions for "fixed payment notices".

¹ https://www.comreg.ie/?dln_download=numbering-conditions-of-use-and-application-process-document

² <https://www.comreg.ie/publication/review-of-non-geographic-numbers-response-to-consultation-18-65-and-decision/>

Head 138: ComReg notes the amendments to the Communications Regulation Act 2002 as amended to reflect the provisions of the proposed Consumer Rights Act 2021. The scope of amendments could be considered in light of ComReg's request for extended enforcement functions and powers for relevant sectors.