

# **DRAFT REGULATIONS FOR CONSULTATION**

## **STATUTORY INSTRUMENTS**

S.I. No. XXXX of 2015

**CONSUMER PROTECTION ACT 2007 (SECTION 63B)  
(REGULATION OF ASPECTS OF THE COMMERCIAL  
RELATIONSHIPS BETWEEN SUPPLIERS AND RELEVANT  
GROCERY GOODS UNDERTAKINGS)  
REGULATIONS 2015.**

S.I. NO. XXXX of 2015

CONSUMER PROTECTION ACT 2007 (SECTION 63B) (REGULATION OF ASPECTS  
OF THE COMMERCIAL RELATIONSHIPS BETWEEN SUPPLIERS AND  
RELEVANT GROCERY GOODS UNDERTAKINGS) REGULATIONS 2015.

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Draft regulations for consultation December 2014

I, Richard Bruton, T.D., Minister for Jobs, Enterprise and Innovation, in exercise of the powers conferred on me by section 63B of the Consumer Protection Act 2007 (as inserted by section 83 of the Competition and Consumer Protection Act 2014 (No. 29 of 2014) hereby make the following regulations:

## PART 1

### PRELIMINARY MATTERS

#### *Citation and Commencement*

1.(1) These Regulations may be cited as the Consumer Protection Act 2007 (Section 63B) (Regulation of Aspects of the Commercial Relationships Between Suppliers and Relevant Grocery Goods Undertakings) Regulations 2015.

(2) These Regulations come into operation on [...] and apply to contracts entered into after that date.

(3) In the case of contracts in place prior to [...] these Regulations shall apply to any renewal of such contracts after that date.

#### **Explanatory Note**

Section 63B of the Consumer Protection Act 2007 (as inserted by section 83 of the Competition and Consumer Protection Act 2014) empowers the Minister for Jobs, Enterprise and Innovation, having consulted with the Competition and Consumer Protection Commission and such other persons as he considers appropriate, to make regulations in relation to particular aspects of the commercial relationships between relevant grocery goods undertakings and other grocery goods undertakings in relation to the sale or supply of grocery goods. These draft Regulations have been prepared, and are made available for consultation, in accordance with these provisions of the Act.

Section 63B(4) of the Act provides that regulations made under section 63B shall apply only to contracts entered into or renewed on or after the date on which the regulations come into operation.

## *Interpretation*

### 2.(1) In these Regulations -

‘Act of 2007’ means the Consumer Protection Act 2007;

‘Act of 2014’ means the Competition and Consumer Protection Act 2014;

‘annual compliance report’ means the report referred to in Regulation 21 of these Regulations;

‘Commission’ means the Competition and Consumer Protection Commission;

‘grocery goods’ means –

any food or drink that is intended to be sold for human consumption and includes -

- (i) any substance or thing sold or represented for use as food or drink for human consumption,
- (ii) any substance or thing sold or represented for use as an additive, ingredient or processing aid in the preparation or production of food or drink for human consumption, and that is intended to be sold by a retailer as such an additive, ingredient or processing aid, and
- (iii) intoxicating liquors,

but does not include food or drink served or supplied on the premises of a grocery goods undertaking in the course of providing catering, restaurant or take-away services or any similar hospitality services, or intoxicating liquor served or supplied for consumption on the premises of a grocery goods undertaking;

‘grocery goods contract’ means a contract for the sale or supply of grocery goods by a supplier to a relevant grocery goods undertaking;

‘writing’ has the meaning given in Part 1 of the Schedule to the Interpretation Act 2005;

‘relevant grocery goods undertaking’ means a grocery goods undertaking engaged in the wholesale or retail of grocery goods in the State that has, or is a member of a group of related undertakings that has, an annual worldwide turnover of more than €50 million;

‘supplier’ means a grocery goods undertaking carrying on (or actively seeking to carry on) a business in the direct supply to any wholesaler or retailer of grocery goods

for resale in the State, and includes any such business whether located in the State or not.

(2) In these Regulations -

the following words or expressions have the meaning given in section 63A of the Act of 2007 (as inserted by section 83 of the Act of 2014):

- a) 'contravention notice';
- b) 'grocery goods undertaking'
- c) 'marketing costs';
- d) 'payment';
- e) 'promotion';
- f) 'related undertaking';
- g) 'retailer';
- h) 'shrinkage';
- i) 'wastage'
- j) 'wholesaler'.

(3) 'Grocery goods', as defined in paragraph (1), are a prescribed class of grocery goods for the purposes of section 63(B)(3) of the Act of 2007.

(4) A 'relevant grocery goods undertaking', as defined in paragraph (1), is a prescribed class of relevant grocery goods undertaking for the purposes of section 63(B)(3) of the Act of 2007.

(5) For the purposes of these Regulations, a relevant grocery goods undertaking's annual turnover on any particular date will be the applicable turnover figure for the financial year preceding that date.

### **Explanatory Note**

Section 63B(3) of the Act of 2007 provides that, when making regulations under the section, the Minister may prescribe one or more classes (whether retailers, suppliers or wholesalers) of relevant grocery goods undertakings or grocery goods undertakings, or one or more classes of grocery goods, to which one or more of the regulations shall apply.

The definition of "grocery goods" in paragraph 1 is based on the definition of the term in section 63A of the Act, but excludes paragraphs (b) to (d) of that definition which refer to "household cleaning products", "toiletries" and "garden plants and garden plant bulbs".

These items may be the subject of separate regulations at a future time. Paragraph (3) of the Regulation provides accordingly that “grocery goods” as defined in paragraph (1) are a prescribed class of grocery goods for the purposes of section 63B(3) of the Act.

The definition of “relevant grocery goods undertaking” in paragraph 1 is based on the definition of the term in section 63A of the Act, but includes only such undertakings engaged in the wholesale or retail of grocery goods, and excludes those engaged in the production, supply or distribution of grocery goods. The commercial relationships between relevant grocery goods undertakings engaged in the production, supply or distribution of grocery goods and retailers may be the subject of separate regulations. Paragraph (4) of the Regulation provides accordingly that a “relevant grocery goods undertaking” as defined in paragraph (1) is a prescribed class of relevant grocery goods undertaking for the purposes of section 63B(3).

“Grocery goods contract” is not defined in the Act, but the definition in paragraph 1 is consistent with the provisions of section 63B.

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*Application*

3. These Regulations apply to commercial relationships and contracts between suppliers and relevant grocery goods undertakings engaged in the wholesale or retail of grocery goods.

**Explanatory Note**

This regulation sets out the scope of the Regulations. “Relevant grocery goods undertaking” and “supplier” are defined in Regulation 2(1).



## PART 2

### COMMERCIAL RELATIONSHIPS AND CONTRACTS BETWEEN SUPPLIERS AND RELEVANT GROCERY GOODS UNDERTAKINGS

#### *Good faith and transparency*

4. (1) Grocery goods undertakings shall conduct their trading relationships in good faith and in a fair, open and transparent manner.

(2) In assessing the compliance of a relevant grocery goods undertaking with the provisions of these Regulations, the Commission and a court may take into account the undertaking's compliance with the obligations of good faith, openness and transparency.

#### **Explanatory Note**

This regulation is based on section 63B(1)(c) of the Act of 2007. In preparing the draft Regulations, regard was had to the other factors specified in section 63(B)(1) of the Act.

*Grocery goods contracts to be in writing*

5. (1) A relevant grocery goods undertaking shall ensure that –

- a) all of the terms and conditions of a grocery goods contract to which it is a party,  
and
- b) any subsequent contractual agreements or arrangements made under or pursuant or  
in relation to that contract

are expressed in plain intelligible language and recorded in writing.

(2) The form of contract used by a relevant grocery goods undertaking shall require a written copy of any grocery goods contract to be signed by the supplier and the undertaking.

**Explanatory Note**

This regulation is based on section 63B(2)(a) of the Act of 2007.

*Unilateral variation, etc. of grocery goods contract*

6.(1) A relevant grocery goods undertaking shall not unilaterally vary, terminate or renew a grocery goods contract unless –

- a) that contract makes express provision for such variation, termination or renewal and the circumstances in which these can occur,
- b) specifies the period of written notice to be given by the relevant grocery goods undertaking prior to any such variation, termination or renewal, and
- c) the relevant grocery goods undertaking acts in accordance with the provisions of the contract in relation to variation, termination or renewal and gives the required written notice to the supplier.

(2) The period of notice to be given by a relevant grocery goods undertaking in accordance with paragraph 1 shall be reasonable, having regard to all the circumstances of the contract.

**Explanatory Note**

This regulation is based on section 63B(2)(b) of the Act of 2007.

*Goods or services from third party*

7.(1) A relevant grocery goods undertaking shall ensure that any grocery goods contract to which it is a party that provides for the supplier to obtain goods or services from a third party from whom the undertaking receives payment for this arrangement permits such payments only where the supplier's source for those goods or services -

- (a) fails to meet any reasonable quality standards laid down for the goods or services by the relevant grocery goods undertaking, or
- (b) charges more for the goods or services than is charged for the supply of goods or services of an equivalent quality and quantity by the third party proposed by the relevant grocery goods undertaking.

(2) In the absence of contract terms in accordance with those specified in paragraph (1), a relevant grocery goods undertaking shall not require a supplier to obtain goods or services from a third party from whom the undertaking receives payment for this arrangement.

**Explanatory Note**

This Regulation is based on sections 63B(2)(e)(i) and 63B(2)(m) of the Act of 2007.

*Non-performance due to factors beyond reasonable control of party to contract*

8.(1) A relevant grocery goods undertaking shall ensure that any grocery goods contract to which it is a party incorporates the terms and conditions specified in paragraphs (2) and (3).

(2) A party to a grocery goods contract shall not be liable for delays or failure in the performance of the contract resulting from circumstances beyond the reasonable control of that party.

(3) The party affected by the circumstances referred to in paragraph (2) shall promptly notify the other party in writing of –

- (a) of the specific circumstances causing the delay or failure in performance,
- (b) the time from which these circumstances caused the delay or failure in performance, and
- (c) where applicable, the time at which they ceased to do so.

(4) A grocery goods contract may provide that, if the circumstances referred to in paragraph (2) continue for a specified period, either party may terminate the contract by written notice.

**Explanatory Note**

This Regulation is based on section 63B(2)(e)(ii) of the Act of 2007.

*Forecasts of supply of grocery goods*

9. A relevant grocery goods undertaking shall –

- (a) prepare any forecast of the supply of grocery goods from a supplier in good faith and with due skill, care and diligence, and
- (b) communicate to the supplier in writing the basis on which the forecast has been prepared, and
- (c) on request from a supplier, consult with the supplier on the forecast and its basis.

**Explanatory Note**

This Regulation is based on section 63B(2)(h) of the Act of 2007.

*Payment for purchase of grocery goods*

10. (1) A relevant grocery goods undertaking shall not seek payment from a supplier for the purchase of grocery goods for resale by the relevant grocery goods undertaking unless -

(a) in the case of the supply of grocery goods from a supplier to an individual store of a relevant grocery goods undertaking, the payment –

(i) is sought in respect of grocery goods from that supplier which have not been stocked, displayed or listed in that store in the previous year, and

(ii) is based on an objective and reasonable estimate of the cost to the undertaking of stocking, displaying or listing those grocery goods, or

(b) in the case of the supply of grocery goods from a supplier to multiple stores of a relevant grocery goods undertaking, the payment -

(i) is sought in respect of grocery goods from that supplier that have not been stocked, displayed or listed in 25 per cent or more of those stores in the previous year, and

(ii) is based on an objective and reasonable estimate of the cost to the undertaking of stocking, displaying or listing those grocery goods.

(2) Where a relevant grocery goods undertaking seeks payment from a supplier in accordance with this Regulation, it shall, on request from the supplier, provide the supplier with its estimate of the cost of stocking, displaying or listing the grocery goods and the basis on which this estimate has been prepared.

(3) This Regulation does not apply to payments in respect of a promotion.

**Explanatory Note**

This Regulation is based on section 63B(2)(g) of the Act of 2007.

### *Payment terms and conditions*

11. (1) A relevant grocery goods undertaking shall ensure that any grocery goods contract to which it is a party incorporates terms and conditions specifying the manner and timeframe in which payments for grocery goods supplied to that undertaking are to be made.

(2) Unless otherwise agreed between the parties, the grocery goods contract shall, subject to paragraph 3, provide that payment shall be made to the supplier by the relevant grocery goods undertakings within 30 days of the date of receipt of the invoice for the grocery goods.

(3) Where the date of receipt of the invoice for the grocery goods is uncertain or the relevant grocery goods undertaking receives the invoice before the delivery of the grocery goods, the grocery goods contract shall provide that payment shall be made to the supplier by the undertaking within 30 days of the date of delivery of the goods.

(4) This Regulation is without prejudice to the provisions of the European Communities (Late Payment in Commercial Transactions) Regulations 2012 (S.I. No. 580/2012).

(5) In this Regulation –

‘invoice’ means a written document, electronic transmission or equivalent request for payment provided by a supplier to a relevant grocery goods undertaking in respect of the sale or supply of grocery goods.

### **Explanatory Note**

This Regulation is based on section 63B(2)(d)(i) of the Act of 2007. The European Communities (Late Payments in Commercial Transactions) Regulations 2012 provide, among other things, that, in commercial transactions between undertakings, the creditor is entitled to interest for late payment where specified conditions are met. The definition of “invoice” in paragraph (5) is based on the definition in Regulation 2(1) of the 2012 Regulations.



*Variation of supply or delivery arrangements*

12. (1) Where a relevant grocery goods undertaking requests a supplier to vary significantly previously agreed arrangements in relation to the supply or delivery of grocery goods, including the frequency and timing of such supply or delivery, it shall give reasonable notice in writing to the supplier.

(2) The reasonableness of the notice given under paragraph (1) will depend on the circumstances of the case, including:

- (a) the duration of the grocery goods contract;
- (b) the frequency with which the relevant grocery goods undertaking places orders for the grocery goods;
- (c) the characteristics of the grocery goods, including their durability, seasonality and external factors affecting their production; and
- (d) the value of any order for grocery goods affected by the variation in supply or delivery arrangements requested by the relevant grocery goods undertaking relative to the turnover of the supplier.

**Explanatory Note**

This Regulation is based on section 63B(2)(c) of the Act of 2007.

### *Promotions*

13. (1) A relevant grocery goods undertaking shall ensure that any grocery goods contract to which it is a party that provides for the participation of, or payment by, a supplier for a promotion in respect of the grocery goods of that supplier incorporates the terms and conditions specified in paragraph (2).

(2) The terms and conditions referred to in paragraph (1) shall -

(a) specify the period of written notice to be given to the supplier prior to any such promotion,

(b) provide that the written notice of the promotion shall specify

(i) the duration of the promotion, and

(ii) the quantity of grocery goods to be ordered for the promotion and the basis for this quantity, and

(c) provide that any payment sought by the relevant grocery goods undertaking in respect of the promotion of the grocery goods of the supplier is based on an objective and reasonable estimate of the cost of the promotion to the undertaking.

(3) In the absence of contract terms in accordance with those specified in paragraph (2), a relevant grocery goods undertaking shall not -

(a) require a supplier to participate in a promotion, or

(b) directly or indirectly compel a supplier to make any payment in respect of a promotion of the grocery goods of the supplier in the premises of the relevant grocery goods undertaking.

(4) Where a relevant grocery goods undertaking seeks payment from a supplier in accordance with this Regulation, it shall, on request from the supplier, provide the supplier with its estimate of the cost of the promotion and the basis on which this estimate has been prepared.

### **Explanatory Note**

This Regulation is based on sections 63(B)(2)(d)(ii), 63B(2)(k), 63(2)(l) and 63B(2)(j)(i) of the Act of 2007.

*Payment for marketing costs*

14. (1) A relevant grocery goods undertaking shall not seek payment from a supplier for marketing costs unless –

- (a) the grocery goods contract contains terms that make express provision for such payment,
- (b) the payment is sought in accordance with those contract terms, and
- (c) the payment is based on an objective and reasonable estimate of the marketing costs.

(2) Where a relevant grocery goods undertaking seeks payment from a supplier in accordance with this Regulation, it shall, on request from the supplier, provide the supplier with its estimate of the marketing costs and the basis on which this estimate has been prepared.

(3) This Regulation does not apply to payments in respect of a promotion.

**Explanatory Note**

This Regulation is based on section 63B(2)(f)(iii) of the Act of 2007.

*Payment for shelf space*

15. (1) A relevant grocery goods undertaking shall not seek payment from a supplier for the retention, increased allocation or better positioning of shelf space for the grocery goods of that supplier unless –

- (a) the grocery goods contract contains terms that make express provision for such payment, and
- (b) the payment is sought in accordance with those contract terms.

(2) In the absence of contract terms in accordance with those specified in paragraph 1, a relevant grocery goods undertaking shall not directly or indirectly compel a supplier to make any payment to retain shelf space, to secure better positioning on shelves, or an increase in the allocation of shelf space, for the grocery goods of that supplier.

(3) This Regulation does not apply to payments in respect of a promotion.

**Explanatory Note**

This Regulation is based on sections 63B(2)(i) and 63B(2)(j)(iii) of the Act of 2007.

*Payment for advertising, etc.*

16. (1) A relevant grocery goods undertaking shall not directly or indirectly compel a supplier to make any payment for the advertising or display of the grocery goods of the supplier in the premises of the relevant grocery goods undertaking.

(2) This Regulation does not apply to payments in respect of a promotion.

### **Explanatory Note**

This Regulation is based on section 63B(2)(j)(ii) of the Act of 2007.

*Payment for wastage*

17. A relevant grocery goods undertaking shall not seek payment from a supplier for wastage occurring at the premises of the undertaking unless –

- (a) the grocery goods contract contains terms that make express provision for such payment,
- (b) those contract terms provide that payment shall be sought only where wastage arises from the negligence or fault of the supplier, and specify the circumstances in which wastage is to be considered as due to negligence or fault on the part of the supplier,
- (c) the payment is sought in accordance with those terms, and
- (d) the payment is based on an objective and reasonable estimate of the cost of the wastage to the undertaking.

**Explanatory Note**

This Regulation is based on sections 63B(2)(d)(iii) and 63B(2)(f)(ii) of the Act of 2007.

*Payment for shrinkage*

18. A relevant grocery goods undertaking shall not seek payment from a supplier for shrinkage unless –

- (a) the grocery goods contract contains terms that make express provision for such payment,
- (b) the payment is sought in accordance with those contract terms, and
- (c) the payment is based on an objective and reasonable estimate of the cost of the shrinkage to the undertaking.

**Explanatory Note**

This Regulation is based on section 63B(2)(f)(i) of the Act of 2007.

*19. Payment for customer complaints*

(1) A relevant grocery goods undertaking shall ensure that any grocery goods contract to which it is a party that provides for a supplier to make any payment, either directly or indirectly, towards the resolution of a customer complaint incorporates the terms and conditions specified in paragraph (2).

(2) The terms and conditions referred to in paragraph (1) shall provide that the relevant grocery goods undertaking may require payment from a supplier for the resolution of a customer complaint only where –

- (a) the complaint is reasonably attributable to the negligence or fault of the supplier, and
- (b) the payment sought does not exceed the costs incurred by the relevant grocery goods undertaking in resolving the complaint.

(3) Where a relevant grocery goods undertaking seeks payment from a supplier in accordance with this Regulation, it shall, on request from the supplier, provide the supplier with details of the amount and composition of the costs incurred in resolving the customer complaint.

**Explanatory Note**

This Regulation is based on section 63B(2)(d)(iv) of the Act of 2007.



## PART 3

### COMPLIANCE REQUIREMENTS FOR RELEVANT GROCERY GOODS UNDERTAKINGS

#### *Designation and training of staff*

20. (1) A relevant grocery goods undertaking shall designate and train appropriate members of its staff to be responsible for compliance with these Regulations and for the dissemination of information on the implementation of the Regulations to other staff in the undertaking.

(2) A relevant grocery goods undertaking shall nominate a suitably qualified staff member designated under paragraph (1) as the contact person for dealings with the Commission in relation to these Regulations.

(3) The relevant grocery goods undertaking shall, before the start of each calendar year, inform the Commission in writing of the name, position and contact details of the person nominated under paragraph (2)

(4) The relevant grocery goods undertaking shall notify the Commission of any change to the name, position or contact details of the nominated contact person in a calendar year in writing and without undue delay.

#### **Explanatory Note**

This Regulation is based on section 63B(2)(r) of the Act of 2007.

*Annual compliance report*

21. (1) A relevant grocery goods undertaking shall, as soon as practicable, but not later than 3 months, after the end of each calendar year, submit a report to the Commission detailing the undertaking's compliance with these Regulations in that year.

(2) The report shall -

- (a) be signed by a director of, or secretary to, the relevant grocery goods undertaking
- (b) be submitted in a format and manner specified by the Commission and,
- (c) set out accurately and in detail -

- (i) the relevant grocery goods undertaking's compliance with the requirements of these Regulations, including instances where a breach or alleged breach of these Regulations has been identified by, or notified to, the undertaking, and the steps taken to rectify it,
- (ii) the name, location and function of the staff of the undertaking designated under Regulation 20 for the period of the annual compliance report,
- (iii) the training of staff undertaken in accordance with Regulation 20, including details of the number, position and location of staff trained, the person(s) undertaking such training, the nature of the training and the frequency of both new and refresher training undertaken, and
- (iv) the dissemination in accordance with Regulation 20 of information on the implementation of these Regulations to staff of the relevant grocery goods undertaking, including the nature, format and frequency of the dissemination of such information.

(3) Notwithstanding paragraph (1), the first such report shall cover the period from the date these Regulations come into operation up to, and including, 31 December 2015.

**Explanatory Note**

This Regulation is based on section 63B(2)(n) of the Act of 2007.

*Maintenance, etc. of records*

22. (1) A relevant grocery goods undertaking shall maintain any information, documents or records in relation to the sale or supply of grocery goods from suppliers that the Commission may specify for the purpose of exercising its functions under sections 63C to 63E of the Act of 2007 and section 10 of the Act of 2014.

(2) The information, documents and records referred to in paragraph (1) shall be retained by the relevant grocery goods undertaking for a period of 6 years after the end of the financial year to which the information, documents or records relate.

**Explanatory Note**

This Regulation is based on sections 63B(2)(o) and (p) of the Act of 2007.

## PART 4

### ENFORCEMENT

*Regulations cannot be waived, etc.*

23. (1) Any purported waiver by a supplier of a provision of these Regulations is of no effect.

(2) Any term of a grocery goods contract which directly or indirectly contravenes, waives or restricts a provision of these Regulations is not binding on, or enforceable against, the supplier.

#### **Explanatory Note**

This purpose of this Regulation is to prevent the circumvention of the provisions of these Regulations by means of waivers by suppliers, or terms in grocery goods contracts.

### *Penal provisions*

24. The following Regulations are penal provisions to which sections 63D and 63E(2) of the Act of 2007 apply:

- (a) Regulation 5(1) and 5(2);
- (b) Regulation 6;
- (c) Regulation 7(1) and 7(2);
- (d) Regulation 8(1), 8(2), and 8(3);
- (e) Regulation 9;
- (f) Regulation 10(1) and 10(2);
- (g) Regulation 11(1) and 11(2);
- (h) Regulation 12(1);
- (i) Regulation 13(1), 13(2), 13(3) and 13(4); ;
- (j) Regulation 14(1) and 14(2);
- (k) Regulation 15(1) and 15(2);
- (l) Regulation 16(1);
- (m) Regulation 17;
- (n) Regulation 18;
- (o) Regulation 19(1) and 19(2);
- (p) Regulation 20(1), 20(2), 20(3) and 20(4);
- (q) Regulation 21(1), 21(2) and 21(3); and
- (r) Regulation 22(1) and 22(2).

### **Explanatory Note**

Section 63D of the Act of 2007 provides that, where the Competition and Consumer Protection Commission is of opinion that a relevant grocery goods undertaking is in contravention of a provision of Regulations made under section 63B of the Act that is stated to be a penal provision, it may instruct an authorised officer to serve a contravention notice on the undertaking. The contravention notice shall, among other things, identify the relevant penal provision that, in the opinion of the Commission is being contravened and direct the undertaking to remedy the contravention by a date specified in the notice, The undertaking may confirm in writing to the Commission that the matters referred to in the contravention notice have been remedied, or may appeal against the notice to the Circuit Court. Section 63E(1) of the Act provides that a relevant grocery goods undertaking that contravenes a requirement in a contravention notice commits an offence and is liable to on conviction to the penalties provided for in section 79 of the Act of 2007.

Section 63E(2) of the Act provides that a relevant grocery goods undertaking that, without reasonable cause, contravenes a provision of Regulations made under section 63B that is

declared to be a penal provision commits an offence and is liable on conviction to the fines and penalties provided for section 79 of the Act.

Regulation 24 provides accordingly that the Commission may opt to deal with breaches of the Regulations which are stated in the Regulation to be penal provisions by means of either a contravention notice or criminal proceedings. It will be for the Commission to decide, in the light of the seriousness of the contravention and other relevant factors, which enforcement option to apply in a given case.

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