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Department of Enterprise,
Trade and Employment

Regulatory Impact Analysis

Consumer Rights Bill 2022



Table of Contents

1 Summary of RIA	3
2 Statement of policy context and objectives	6
3 Consultation	9
4 Analysis of costs, benefits and impacts	10
5 Enforcement and Compliance for each option	12
6 Review mechanisms	14
7 Publication	15

1 Summary of RIA

Summary of Regulatory Impact Analysis (RIA)	
Department/Office: Department of Enterprise, Trade and Employment	Title of Legislation: Consumer Rights Bill 2022
Stage: Approval of Text of Bill	Date: February 2022
Related Publications: Consultation-on-Scheme-of-Consumer-Rights-Bill-2021.pdf (enterprise.gov.ie)	
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Policy Objectives	
<p>The Consumer Rights Bill gives effect to two EU Directives on contracts for the sale of goods and contracts for the supply of digital content and digital services. In order to implement parts of a third EU Directive, namely the Better Enforcement and Modernisation Directive of 2019, the Scheme also proposes to revoke and replace the 1995 Unfair Terms in Consumer Contracts Regulations and the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013. It also updates and consolidates existing legislation on consumer rights and remedies. Finally, it makes amendments to the Consumer Protection Act 2007, an element of which will be to strengthen the enforcement powers of the Competition and Consumer Protection Commission.</p> <p>A comprehensive and consolidated Consumer Rights Act will bring about a legislative framework more appropriate to present day conditions and requirements, create clearer rules for businesses and improve protections for consumers. As the provisions of consumer contract legislation affect virtually every citizen and business in the State, it is desirable that the key statutory rules applying to these contracts can be accessed in a single comprehensive enactment.</p>	
Policy Options	
1.	No Policy Change – maintain the status quo
2.	Introduce Legislation
<p>Preferred Option: To introduce legislation.</p> <p>Parts 2,3 and 5 of the Bill are maximum harmonisation measures of a number of EU Directives and must be transposed into law (with an application date of 1st January 2022 for certain provisions). This has provided a timely opportunity to update and consolidate existing domestic consumer rights legislation.</p>	

OPTIONS		
Option 1: No policy change		
COSTS	BENEFITS	IMPACTS
<p>No additional cost to Exchequer or to businesses.</p> <p>While existing legislation on consumer contracts offers consumers necessary protections, it is disjointed and deficient in a number of respects and this will continue to be the case, if consolidated and updated legislation is not introduced.</p>		<p>The Government would not fulfil its obligation to transpose a number of EU Directives and infringement proceedings would be issued. Meaning that the European Court of Justice may impose financial penalties pursuant to Article 260(3) of the Treaty on the Functioning of the European Union.</p>
Option 2: Introduction of legislation		
COSTS	BENEFITS	IMPACTS
<p>The enforcement of the legislation by the Competition and Consumer Protection Commission (CCPC) will give rise to costs for the Exchequer. Additional costs to facilitate the enhanced enforcement functions were factored into the Budget 2022 Estimates process and the CCPC received a 9% increase in its annual budget as a result.</p> <p>There will also be additional but minor resources required of the Department of Enterprise, Trade and Employment regarding its governance and oversight of the legislation and of the CCPC. As neither the Central Bank nor the Commission for Communications Regulation are funded from the Exchequer,</p>	<p>The Government will fulfil its obligation to the EU by transposing the relevant Directives into Irish law.</p> <p>Consumers and business will benefit from a legislative landscape that is easier to understand and navigate.</p> <p>New statutory rights and remedies in contracts for digital content (audio and video files, computer games etc.) and digital services (streaming services, cloud computing, social media etc.), including contracts in which the consumer provides personal data to the supplier of the digital content or digital service rather than paying a price. Digital content and digital</p>	<p>Notwithstanding that the Bill is focused on consumer rights, it should not be seen as a measure that will harm businesses.</p> <p>Indeed, it will give a legislative framework to the terms and practices responsible businesses already adopt in their dealings with customers and will ensure that those businesses which do not will face effective enforcement action.</p>

<p>their enforcement functions under the Act will not give rise to similar costs for the Exchequer.</p>	<p>services have not previously been the subject of the type of statutory rights that have applied to contracts for goods.</p> <p>Strengthened consumer rights relating to the quality, fitness for purpose and other aspects of consumer contracts for the full range of non-digital services and, for the first time, statutory remedies for consumers where the services supplied by providers do not comply with those quality and other standards.</p> <p>Stronger transparency requirements for terms and conditions in standard form consumer contracts and for the first time a 'blacklist' of contract terms that are always and automatically unfair.</p> <p>New enforcement powers for the CCPC where traders do not provide the remedies or reimbursement to which consumers are entitled under the Act.</p>	
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2 Statement of policy context and objectives

(i) Policy Background and Context

Developments in European Union consumer law

In December 2015, the European Commission published proposals for Directives on contracts for the online and other distance sale of goods and contracts for the supply of digital content. In May 2019 following lengthy negotiations, Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services, and Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods, were adopted. The Directive on contracts for the supply of digital content and digital services breaks new ground in that it applies to contracts where the consumer provides personal data to the trader as well as to contracts where the consumer pays the price of the digital content or digital service. Member States are required to transpose both Directives by 1 July 2021 and to apply their provisions from 1 January 2022¹.

In April 2018, the European Commission published a proposal for a Directive on the better enforcement and modernisation of EU consumer protection rules. Its provisions provided for extensive amendments to the following EU Directives:

- Directive 93/13/EEC on unfair terms in consumer contracts;
- Directive 98/6/EC on the indication of the prices of products offered to consumers;
- Directive 2005/29/EC on unfair business-to-consumer commercial practices;
- Directive 2011/83/EU on consumer rights.

Directive (EU) 2019/2161 on the better enforcement and modernisation of Union consumer protection rules was adopted in November 2019. Member States are required to transpose the Directive by 28 November 2021 and to apply its provisions from 28 May 2022.

Consolidation and modernisation of Irish consumer contract law

While existing legislation on consumer contracts offers consumers necessary protections, it is disjointed and deficient in a number of respects, among them:

- The rights and remedies of consumers in respect of the quality and other aspects of goods purchased under contracts of sale are regulated by two separate and not always consistent sets of statutory provisions – the Sale of Goods Acts 1893 and 1980 and the European Union (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003.

¹ The Department of Enterprise, Trade and Employment received a formal notice of commencement of infringement proceedings on 29th September in relation to these two Directives. A response to that letter was submitted which outlined the progress (to date and expected) of the Consumer Rights Bill 2022. There has been no further escalation of infringement proceedings, to date.

- While services now account for an increasingly large part of consumer activity and expenditure, the statutory provisions on the supply of services comprise just four sections of the Sale of Goods and Supply of Services Act 1980 (compared with the over sixty sections on the sale of goods in the Sale of Goods Acts 1893 and 1980) and are silent on key issues such as the remedies for services that do not conform to the contract.
- While digital content supplied in tangible form such as a CD or DVD is subject to the rights and remedies in the Sale of Goods Acts 1893 and 1980, digital content supplied – as is now mainly the case – in intangible form through downloads, streaming or other means is not currently subject to similar statutory regulation.

The deficiencies of the current legislative regime for consumer contracts were analysed in detail in the final report of the Sales Law Review Group in 2011. The Group concluded that the time for a thorough revision of the Sale of Goods Acts 1893 and 1980 was long overdue and that the existing legislative framework, with its mix of primary and secondary legislation of domestic and European Union origin, had resulted in a confusing, complex and, in some respects, contradictory body of statutory rules. The Group considered that there would be considerable benefit to both consumers and businesses in bringing together in an accessible way the main statutory provisions applicable to consumer rights. Accordingly, it recommended the enactment of a Consumer Contract Rights Act that would incorporate the key statutory provisions applicable to consumer contracts.

(ii) Policy Objectives

In response to the Review Group's report and recommendations, the then Minister for Jobs, Enterprise and Innovation published a Consultation Paper on the Reform of the Law on Consumer Contract Rights in 2014. This was followed in May 2015 by the issue for public consultation of the Scheme of a Proposed Consumer Rights Bill. While it was intended to submit the General Scheme to Government in early 2016, its submission was not proceeded with due to the publication in December 2015 of the proposed EU Directives on contracts for the sale of goods and the supply of digital content. The view was taken that there would be little advantage for consumers, businesses and enforcement bodies in proceeding with a legislative proposal that was likely to require substantial amendment within a relatively short time of its enactment in order to give effect to the provisions of the two EU Directives.

The Consumer Rights Bill aims to give effect to the Directives on the sale of goods and the supply of digital content and digital services and to the main provisions of the Directive on the better enforcement and modernisation of Union consumer protection rules.² It will also

² The amendments to Directive 98/6/EC on the indication of product prices are not included in the Scheme but will be implemented by means of an amendment to S.I. No. 639/2002 which gives effect to the Directive.

achieve the desired and necessary consolidation and modernisation of consumer contract law by bringing provisions in the following areas together in a single enactment:

- rights and remedies in consumer contracts for the sale of goods (Part 2);
- rights and remedies in consumer contracts for the supply of digital content and digital services (Part 3);
- rights and remedies in consumer contracts for the supply of non-digital services (Part 4);
- consumer information and related rights and consumer rights on the cancellation of distance and off-premises contracts (Part 5);
- unfair terms in consumer contracts (Part 6).

The Bill also provides in Part 9 for a number of amendments of the provisions of the Consumer Protection Act 2007 to extend and enhance the enforcement measures available to the Competition and Consumer Protection Commission. Further information is available at Chapter 6 *Enforcement and Compliance for Each Option*.

Government decision and Pre-Legislative Scrutiny

On 20th April 2021, the Government approved the drafting of the Bill along the lines of the General Scheme submitted to the Government, subject to such further changes of a drafting nature as might be agreed between the Tánaiste and Minister for Enterprise, Trade and Employment and the Attorney General on the provisions of the General Scheme.

The General Scheme passed through Pre-Legislative Scrutiny by the Joint Oireachtas Committee on Enterprise, Trade and Employment (with no substantive observations) on 13th October 2021.

3 Consultation

A public consultation on the General Scheme of the Consumer Rights Bill was held over summer 2021. With limited exceptions, Parts 2, 3, and 5, 6 and 10 of the Scheme gave effect to the provisions of maximum harmonisation Directives that leave Member States little discretion in respect of their implementation. The Directives in question contain a small number of regulatory options for Member States and these options were the focus of the public consultation on these Parts of the Scheme.

Importantly, the Directive on contracts for the sale of goods includes a provision that permits Member States to ‘allow consumers to choose a specific remedy if the lack of conformity of the goods becomes apparent within a period after delivery, not exceeding 30 days’. This has enabled the inclusion in Part 2 of the Scheme of a provision under which, in line with the recommendation of the Sales Law Review Group, consumers can reject faulty goods within a thirty-day period of their delivery, and thus preserves in updated form a long-established right for consumers under Irish sales law.

The provisions on contracts for the supply of non-digital services in Part 4 of the Scheme do not implement EU legislation and the provisions on unfair contract terms in Part 7 provide for significant additions to the minimum harmonisation Directive in this area. The provisions of these Parts of the Scheme were a key element of the public consultation.

Several organisations responded to the consultation including: the CCPC, the Banking and Payments Federation of Ireland, the Consumer Association of Ireland, IBEC, ComReg, ALTO (Alternative Operators in the Telecommunications Market) the Bar Council, the Law Society and the Irish Dental Association. The response to the consultation was, generally, very supportive and a number of useful observations were provided on the discretionary aspects of the Directives as well as on Part 4, particularly in relation to the supply of professional services. These observations have been analysed and informed the drafting of the Bill.

Some respondents raised concerns regarding Part 4, particularly in relation to the supply of professional services. For instance, the Bar Council of Ireland suggested that, in the event that barristers are permitted to provide services directly to consumers, those services should be exempted from the application of Part 4 of the scheme on contracts for the supply of services. Having sought legal advice, the Department could not establish a reason in principle for the exclusion of legal services provided by barristers from the scope of Part 4. The Irish Dental Association argued that the provisions of Part 4 on the fitness for a service for a particular purpose or result are inappropriate to dental services. As these provisions apply only to a purpose or result accepted by the service provider, the Department remained of the opinion that they are proportionate and offer adequate safeguards to the providers of dental or other services.

The Department engaged with Government Departments with responsibility for redress schemes in areas such as property and legal services in order to protect against regulatory overlap and confusion. The Department is grateful to all of the responders to the consultation, and while there may have been some divergence of opinion on some of the points of concern, all observations were analysed and informed the drafting of this Bill.

4 Analysis of costs, benefits and impacts

Option 1: No policy change

Costs

No additional cost to Exchequer or to businesses.

Benefits

Impacts

The Government would not fulfil its obligation to transpose a number of EU Directives and infringement proceedings would be issued. Meaning that the European Court of Justice may impose financial penalties pursuant to Article 260(3) of the Treaty on the Functioning of the European Union.

While existing legislation on consumer contracts offers consumers necessary protections, it is disjointed and deficient in several respects and this will continue to be the case, if consolidated and updated legislation is not introduced.

Option 2: Introduction of legislation

Costs and benefits to State

The enforcement of the legislation by the CCPC will give rise to costs for the Exchequer. Additional costs to facilitate the enhanced enforcement functions were factored into the Budget 2022 Estimates process and the CCPC received a 9% increase in its annual budget as a result.

There will be need to modestly increase the resources involved in the CCPC policy, oversight and governance function in the Department of Enterprise, Trade and Employment given the significant increase in the size and functions of the CCPC and these will also be factored into, and subject to, the annual budgetary exercise. As neither the Central Bank nor the Commission for Communications Regulation are funded from the Exchequer, their enforcement functions under the Act will not give rise to similar costs for the Exchequer.

Costs and benefits to consumers

The Government will fulfil its obligation to the EU by transposing the relevant Directives into Irish law.

Consumers and business will benefit from a legislative landscape that is easier to understand and navigate.

New statutory rights and remedies in contracts for digital content (audio and video files, computer games etc.) and digital services (streaming services, cloud computing, social media etc.), including contracts in which the consumer provides personal data to the supplier of the digital content or digital service rather than paying a price. Digital content and digital services have not previously been the subject of the type of statutory rights that have applied to contracts for goods.

Strengthened consumer rights relating to the quality, fitness for purpose and other aspects of consumer contracts for the full range of non-digital services and, for the first time, statutory remedies for consumers where the services supplied by providers do not comply with those quality and other standards.

Stronger transparency requirements for terms and conditions in standard form consumer contracts and for the first time a 'blacklist' of contract terms that are always and automatically unfair.

New enforcement powers for the CCPC where traders do not provide the remedies or reimbursement to which consumers are entitled under the Act.

Costs, benefits and impact on business

The Department applied the SME test to the proposed legislation and did not find that it places a disproportionate burden on SMEs or that there was a need for exemptions.

Notwithstanding that the Bill is focused on consumer rights, it should not be seen as a measure that will harm businesses. Indeed, it will give a legislative framework to the terms and practices responsible businesses already adopt in their dealings with customers and will ensure that those businesses which do not will face effective enforcement action.

Other impacts

Impacts on the socially excluded and vulnerable groups, the environment, rights of citizens, North-South and East-West relations.

No impact in these areas.

5 Enforcement and Compliance for each option

1. No policy change

The CCPC would continue to be responsible for the enforcement of the provisions of general consumer protection. Sectoral regulators will maintain their current enforcement responsibility for their own areas.

2. Introduction of proposed legislation on consumer rights

The CCPC will have new powers to uphold consumer rights, including where traders do not provide the remedies or reimbursement to which consumers are entitled under the Act.

For instance, where a trader fails or refuses to provide a remedy or reimbursement to which consumers are entitled, the CCPC will have the power to:

- accept a written undertaking from the trader to rectify the failure or refusal;
- issue a compliance notice to the trader setting out the actions to be taken to rectify the failure or refusal;
- apply to the Circuit Court or High Court for a declaration or injunction regarding the failure or refusal.

The amendments to the 2007 Act include new provisions with regard to:

- (i) a trader who continues to engage in a commercial practice that has been found unfair by a court commits an offence.
- (ii) proceedings, remedies and penalties
 - a compliance notice may (a) be served on a trader who fails to comply with an undertaking that the trader has given the CCPC under the legislation, or (b) require the trader to refund payments made by the consumer in a transaction involving a contravention of the legislation.
 - summary proceedings for an offence under the Act may be instituted within three years of the date of the alleged commission of the offence.
 - increasing the level of fines applying to offences and substantially increasing the amounts payable under fixed payment notices.

The Bill further provides that ComReg will be given an enforcement role in respect of the provisions of the Consumer Protection Act 2007 on unfair, misleading and aggressive commercial practices involving electronic communications services and premium rate services.

ComReg and the Central Bank of Ireland and other sectoral regulators will continue to have an enforcement role in relation to consumer rights relating to their own sectors.

How will enforcement work?

The legislation provides rights to consumers which they can exercise through the courts, particularly the Small Claims procedure of the District Court. Consumers can also notify the

CCPC of activities in breach of the legislation which the CCPC can pursue. The CCPC will be able to take enforcement action where traders fail or refuse to provide consumers with a remedy or a reimbursement to which consumers are entitled.

While the CCPC is not generally in a position to take action on behalf of consumers in individual cases, it can take such action where it considers that a trader's actions have a wider adverse effect on consumers. Consumers may also make a complaint, where applicable, to ComReg or the Central Bank or other sectoral regulators.

6 Review mechanisms

The legislation will be reviewed as part of the ongoing review of consumer protection legislation by the Department of Enterprise, Trade and Employment and subject to a Post Enactment Report.

7 Publication

This Regulatory Impact Analysis will be published on the website of the Department of Enterprise, Trade and Employment (<https://enterprise.gov.ie/en/Consultations/>).