



Law Society of Ireland

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**SUBMISSION BY THE BUSINESS LAW COMMITTEE OF THE LAW SOCIETY
OF IRELAND TO THE DEPARTMENT OF JOBS, ENTERPRISE AND
INNOVATION IN RELATION TO THE CONSULTATION PAPER ON DIRECTIVE
2011/83/EU ON CONSUMER RIGHTS**

INTRODUCTION

The Society is pleased to respond to the request for a response to the questions raised by the Department in its consultation on the implementation of Directive 2011/83EU on Consumer Rights published in May 2013. The responses of the Society to the questions raised by the Department are set out below.

1. QUESTION

Should the implementing Regulations avail of the option to exempt off-premises contracts with a value of less than €50 from the Directive's provisions on consumer information and the right of the consumer to withdraw from the contract? If not, should there be (a) no threshold or (b) a threshold set at an amount less than €50? If the latter, please state the threshold that should apply in your view.

ANSWER

YES.

The Society sees the force of the Department's view that low-value off-premises transactions, which tend to be informal in nature, are not appropriate to regulation in this fashion.

2. QUESTION

Should the implementing Regulations exempt on-premises contracts of a day-to-day kind that are performed immediately from the information requirements of Article 5 of the Directive? If not, why not?

ANSWER

YES.

The Society agrees with the Department's view that Ireland should avail of such an exemption in relation to routine on-premises transactions that are performed immediately.

3. QUESTION

Please give details of any mandatory pre-contractual information requirements of which you are aware (other than those indicated in paragraph 29) that apply to on-premises transactions and which require traders to provide information additional to that required by Article 5 of the Consumer Rights Directive.

ANSWER

Section 68(1) of the Solicitors (Amendment) Act 1994 provides:- “On the taking of instructions to provide legal services to a client, or as soon as is practicable thereafter, a solicitor shall provide the client with particulars in writing of—

(a) the actual charges, or

(b) where the provision of particulars of the actual charges is not in the circumstances possible or practicable, an estimate (as near as may be) of the charges, or

(c) where the provision of particulars of the actual charges or an estimate of such charges is not in the circumstances possible or practicable, the basis on which the charges are to be made,

by that solicitor or his firm for the provision of such legal services and, where those legal services involve contentious business, with particulars in writing of the circumstances in which the client may be required to pay costs to any other party or parties and the circumstances, if any, in which the client's liability to meet the charges which will be made by the solicitor of that client for those services will not be fully discharged by the amount, if any, of the costs recovered in the contentious business from any other party or parties (or any insurers of such party or parties).”

Accordingly, insofar as the solicitor’s own costs are concerned, this provision reflects the same principles as Article 5.1(c) of the Directive.

However, it will be seen from the section that the solicitor must give further information in relation to contentious matters.

4. **QUESTION**

Should the implementing Regulations avail of the option to provide for a lighter information regime for off-premises contracts for immediate repair and maintenance work costing less than €200? If not, why not?

ANSWER

YES.

It would be an unreasonable burden to apply the full information regime to such contracts.

5. **QUESTION**

Should the implementing Regulations require the consumer’s written consent to the trader’s offer and/or the trader’s confirmation of that offer on a durable

medium:

- 5.1. in all distance contracts to be concluded by telephone, or
- 5.2. in distance contracts to be concluded by telephone where the telephone contact leading to the contract was made by the trader, or
- 5.3. in no distance contracts to be concluded by telephone.

ANSWER

The Society sees merit in the approach set out at 5.2. However, the Society has not canvassed the views of clients on this point and would urge the Department to attach weight to the views of those involved in relevant businesses as to the practicality of such a measure.

6. QUESTION

Should the implementing Regulations avail of the option to extend the Directive's consumer information provisions to off-premises and distance contracts for social services? If not, why not?

ANSWER

YES.

As this sector is covered by the existing Directives, it would be appropriate to avail of this option to preserve the status quo.

7. QUESTION

Should the implementing Regulations avail of the option to extend the Directive's consumer information provisions to off-premises and distance contracts for healthcare? If not, why not?

ANSWER

YES.

The answer to Question 6 applies.

8. QUESTION

Should the implementing Regulations avail of the option to extend the Directive's consumer information provisions to gambling contracts? If not, why not.

ANSWER

YES.

However, appropriate consumer information provisions should be included in the proposed Gambling Control Bill.

9. **QUESTION**

Are the proposed rules relating to the cancellation of ancillary contracts clear and fair? Do they need to be supplemented in general or in respect of particular types of ancillary contract? Is requiring the trader party to the ancillary contract to reimburse the consumer the best way to proceed, or should the trader party to the principal contract be responsible for reimbursements arising from the ancillary contract?

ANSWER

It appears to the Society that, where the trader party to the ancillary contract is chosen or at least associated with the principal trader, a consumer is entitled to expect the principal trader to resolve all issues.

10. **QUESTION**

Should the implementing Regulations avail of the option to extend the right of withdrawal to off-premises and distance contracts for social services? If not, why not.

ANSWER

YES.

The answer to Question 6 applies.

11. **QUESTION**

Should the implementing Regulations avail of the option to extend the right of withdrawal to off-premises and distance contracts for healthcare? If not, why not.

ANSWER

YES.

The answer to Question 6 applies.

12. **QUESTION**

Should Article 21 of the Directive on communication by telephone apply to all consumer contracts for goods, services or digital content? If not, what exceptions should apply and why?

ANSWER

There seems no reason in principle why the rule proposed by the Directive (that where the trader operates a telephone line for the purpose of contacting him by telephone in relation to the contract concluded, the consumer, when contacting the trader, is not bound to pay more than the basic rate) should not apply to all consumer contracts.

13. **QUESTION**

Should the National Consumer Agency be empowered to apply for a court order in respect of a breach of the Directive's provisions in the District as well as the Circuit Order? If not, why not?

ANSWER

Although an individual breach would of itself be appropriate to be determined by the District Court, that determination could have very significant implications for other consumers and businesses. The Society notes that an action may be forwarded from the District Court to the Circuit Court or the High Court where the lower Court is of the opinion that the action is one fit to be tried in the higher Court. However, a judge would have no means of determining the wider significance of the issue and may feel constrained by the facts as they relate to the defendant before the court. The Society is of the view accordingly that the NCA in making its decision as to what court jurisdiction to invoke, should be required to take into account the potential significance of the decision for the general public and businesses concerned.

14. **QUESTION**

Should breaches of all of the Directive's provisions other than Articles 18 and 20 on delivery and the passing of risk be subject to criminal law proceedings? If not, which provisions of the Directive are inappropriate for criminal law enforcement and why?

ANSWER

The Society is conscious that the existing Directives provide for criminal sanctions as does the Consumer Protection Act 2007. It would seem appropriate and consistent with other consumer protection measures that criminal sanctions should apply as suggested.

15. **QUESTION**

What form should the consumer's right of redress take in cases where he or she seeks to recover payments made to the trader that the trader is obliged to return under the Directive?

ANSWER

It would appear that the simplest form of redress would be a statutory right of reimbursement.

16. **QUESTION**

What form should the trader's right of redress take in the event of a failure by consumers to return goods in accordance with their obligations under the Directive?

ANSWER

Again the simplest form of redress would be statutory right to recover the value of the goods or amount payable by the consumer under Article.

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