

IRELAND

CONSUMER PROTECTION ACT 2007

PART 1 PRELIMINARY MATTERS

1.

(1) This Act may be cited as the Consumer Protection Act 2007.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions, including the application of *section 4* to different enactments specified in *Schedule 2* and to different provisions of those enactments.

2.

(1) In this Act—

“**advertisement**” includes any form of advertising or marketing;

“**Agency**” means the National Consumer Agency established by section 7;

“**authorised officer**” has the same meaning as it has in the Competition and Consumer Protection Act 2014;

“**chief executive**” means the chief executive officer of the Agency;

“**code of practice**” means any code, agreement or set of rules or standards that is not imposed by or under an enactment but purports to govern or define commercial practices of one or more traders (whether generally or in respect of a particular trade, business or professional sector or one or more commercial practices) who agree, commit or undertake to abide or be bound by such rules or standards;

“**commercial practice**” means any conduct (whether an act or omission), course of conduct or representation by the trader in relation to a consumer transaction, including any such conduct or representation made or engaged in before, during or after the consumer transaction;

“**consumer**” means a natural person (whether in the State or not) who is acting wholly or mainly for purposes unrelated to the person’s trade, business or profession;

“**consumer transaction**” means a promotion or supply of a product to a consumer;

“**contravene**”, in relation to a provision, includes fail to comply with the provision;

“**Directive**” means Directive No. 2005/29/EC of the European Parliament and of the Council of 11 May 2005¹ concerning unfair business to consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council;

“**Director**” means the Director of Consumer Affairs;

“**enactment**” means an Act (within the meaning of the Interpretation Act 2005) or any instrument made under a power conferred by an Act (within that meaning);

“**establishment day**” means the establishment day appointed under *section 6*;

“**existing enactments**” means the following enactments, to the extent to which those enactments confer functions on the Director which are transferred to the Agency pursuant to *section 37*:

(a) food legislation, within the meaning of the Food Safety Authority of Ireland Act 1998;

(b) the enactments specified in *Part 1 of Schedule 1* and any instruments made under those enactments for the time being in force; and

(c) the regulations made under the European Communities Act 1972 for the time being in force specified in *Part 2 of Schedule 1*;

“**financial year**” means a period of 12 months ending on 31 December in any year and, in the case of the first financial year of the Agency, means the period commencing on the establishment day and ending on 31 December in the year in which the establishment day falls;

“**goods**” means real or personal property of any nature or description, and includes—

(a) ships, aircraft or other vehicles,

(b) animals,

(c) minerals, trees or crops, whether on, under or attached to land or not,

(d) gas, electricity or water,

(e) computer software, including content stored in a digital format or content stored electronically in a format which is not digital,

(f) tickets or like evidence of a right to be in attendance at a particular place at a particular time or times or a right of transportation,

(g) any voucher, coupon or other document or thing intended to be used as a substitute for money in the payment, in whole or in part, for a product or otherwise exchanged for a product, and

(h) any description of interest (present or future, vested or contingent) or obligation arising out of or incidental to goods;

“**goods or services**” means goods or services or both;

“**invitation to purchase**” means a representation by the trader in a consumer transaction that—

(a) indicates characteristics of the product and includes its price, and

(b) enables the consumer to purchase the product;

“**Minister**” means the Minister for Enterprise, Trade and Employment;

“**prescribed**” means prescribed by regulations made by the Minister;

“**product**” means goods or services;

“**public body**” means—

(a) a board, authority or other body, other than a company under the Companies Acts, established by or under statute;

(b) a company under the Companies Acts in which all the shares are held—

(i) by or on behalf of a Minister of the Government, or

(ii) by directors appointed by a Minister of the Government;

(c) a company under the Companies Acts in which all the shares are held by a board, authority or body referred to in *paragraph (a)* or by a company referred to in *paragraph (b)*;

“**purchase**” means to buy, obtain or acquire by any method and includes accept, receive, be vested with, lease, take possession, control or occupation of, and agree to do any of those things (but does not include expropriate);

“**relevant State**” means a state that is a contracting State to the EEA Agreement within the meaning of the European Communities (Amendment) Act 1993;

“**relevant statutory instruments**” means the statutory instruments for the time being in force specified in Schedule 9;

“**relevant statutory provisions**” means—

(a) existing enactments,

(aa) relevant statutory instruments,

(b) the Merchandise Marks Act 1970 and any instruments made under that Act for the time being in force,

(c) certain provisions of the Prices Act 1958 referred to in section 92 and the enactments specified in subsection (1)(a) to

(e) of that section to the extent to which they remain in force for the purposes of this Act,

(d) the enactments specified in subsection (1)(a) to (c) of section 93,

(e) this Act and any instrument made under this Act for the time being in force,

(f) the European Communities (Names and Labelling of Textile Products) Regulations 2010 (S.I. No. 485 of 2010), and

(g) the European Communities (Safety of Toys) Regulations 2011;]]

(h) the European Union (Protection of Consumers in respect of Timeshare, Long-term Holiday Product, Resale and Exchange Contracts) Regulations 2011;

(i) the European Union (Textile Fibre Names and Related Labelling and Marking of the Fibre Composition of Textile Products) Regulations 2012;

(j) the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013;

(k) the European Union (Consumer Information, Cancellation and Other Rights) (Amendment) Regulations 2014

“**representation**” includes—

(a) any oral, written, visual, descriptive or other representation by a trader, including any commercial communication, marketing or advertising, and

(b) any term or form of a contract, notice or other document used or relied on by a trader in connection with a consumer transaction;

“**services**” means any service or facility provided for gain or reward or otherwise than free of charge, including, without limitation—

(a) services or facilities for (i) banking, insurance, grants, loans, credit or financing, (ii) amusement, cultural activities, entertainment, instruction, recreation or refreshment, (iii) accommodation, transport, travel, parking or storage, or (iv) the care of persons, animals or things,

(b) membership in a club or organisation or any service or facility provided by the club or organisation, and

(c) any rights, benefits, privileges, obligations or facilities that are, or are to be provided, granted or conferred in the course of services, but does not include services provided under a contract of employment;

“**supply**”, in relation to the supply of goods or services to a consumer, includes—

(a) sell, lease, take by way of mortgage or other security, assign, award by chance or otherwise effect a disposition of,

(b) offer or agree to supply or expose or display for supply;

“**trader**” means—

(a) a person who is acting for purposes related to the person’s trade, business or profession, and

(b) a person acting on behalf of a person referred to in paragraph (a);

“**transactional decision**” means, in relation to a consumer transaction, whether or not that transaction is completed, any decision by the consumer concerning whether, how or on what terms to do, or refrain from doing, any of the following:

(a) purchase the product;

(b) make payment in whole or in part for the product;

(c) retain or return the product after its purchase;

(d) dispose of the product;

(e) exercise a contractual right in relation to the product;

“**voluntary body**” means

(a) a body corporate, or

(b) an unincorporated body of persons, other than a public body.

(2) In this Act, “**the average consumer**” has the meaning assigned to it in the Directive, and when applied in relation to a particular commercial practice or product of a trader—

(a) if the commercial practice or product is directed at a particular group of consumers, the expression shall be read as “the average member of that group”, and

(b) if the commercial practice or the product is a practice or product that would be likely to materially distort the economic behaviour only of a clearly identifiable group of consumers whom the trader could reasonably be expected to foresee as being particularly vulnerable because of their mental or physical infirmity, age or credulity, the expression shall be read as “the average member of that vulnerable group”.

(3) A word or expression that is used in this Act and is also used in the Directive shall have in this Act the same meaning as it has in the Directive.

(4) A court shall construe this Act in a manner that gives effect to the Directive, and for this purpose the court shall have regard to the provisions of the Directive, including its preambles.

(5) Notwithstanding Article 3(10) of the Directive but subject to sections 5 to 6A (inserted by *section 99*) of the Hallmarking Act 1981, *Part 3* applies to commercial practices relating to indications of the standard of fineness of articles of precious metal.

PART 3 COMMERCIAL PRACTICES

Chapter 1 Unfair Commercial Practices

41

(General prohibition on unfair commercial practices)

(1) A trader shall not engage in an unfair commercial practice.

(2) A commercial practice is unfair if it—

(a) is contrary to one or both of the following (the requirements of professional diligence):

(i) the general principle of good faith in the trader’s field of activity;

(ii) the standard of skill and care that the trader may reasonably be expected to exercise in respect of consumers, and

(b) would be likely to—

(i) cause appreciable impairment of the average consumer’s ability to make an informed choice in relation to the product concerned, and

(ii) cause the average consumer to make a transactional decision that the average consumer would not otherwise make.

(3) In determining whether a commercial practice is unfair under subsection (2), the commercial practice shall be considered in its factual context, taking account of all of its features and the circumstances.

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PART 4 PYRAMID SCHEMES

64

(Definition)

(1) In this Part, “pyramid promotional scheme” means a scheme by which a person gives consideration in money or money’s worth, or gives a gift in money or money’s worth, for an opportunity to receive compensation derived primarily from the introduction of other persons into the scheme rather than from the supply or consumption of a product.

(2) The following apply in respect of subsection (1):

(a) the opportunity to receive compensation need not be limited to the person’s introduction of other persons into the scheme but may include their introduction by other persons;

(b) the scheme may but need not involve the supply of a product.

65.

(Indictable offence: participating in, establishing, operating or promoting pyramid promotional schemes)

(1) A person shall not—

(a) establish, operate or promote a pyramid promotional scheme,

(b) knowingly participate in such a scheme, or

(c) induce or attempt to induce another person to participate in such a scheme.

(2) A person who contravenes subsection (1) commits an offence.

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66.

(Pyramid promotional scheme agreements void)

(1) An agreement between a scheme promoter and another person is, to the extent it requires or provides for payment of money or money’s worth in respect of a pyramid promotional scheme, void and has no effect, and no action lies in any court for the recovery of such money or money’s worth under or pursuant to such agreement.

(2) For the purposes of subsection (1), a “scheme promoter” means a person who establishes, operates or promotes a pyramid promotional scheme or who induces or attempts to induce others to participate in such a scheme, and includes any person acting on a scheme promoter’s behalf.

PART 5 PROCEEDINGS, REMEDIES AND PENALTIES

Chapter 1

Interpretation and General Matters related to Proceedings

67.

In this Part “prohibited act or practice” means any of the following:

- (a) any unfair, misleading or aggressive commercial practice under *Part 3*;
 - (b) any contravention of *section 48(3)* or *49(1)*;
 - (c) any contravention of *section 55(1)* or (3), *59(2)* or *60(1)*;
 - (d) any contravention of *section 65(1)*;
 - (e) any contravention of a regulation under *section 50* or *57* or an order referred to in *section 92*;
 - (f) any contravention of an order under *section 62(1)*, but subject to the exclusion of one or more of the foregoing provisions provided for in *section 71, 73, 74* or *75*.
 - (g) any contravention of the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013),
- but subject to the exclusion of one or more of the foregoing provisions provided for in *section 71, 73, 74* or *75*.

Chapter 2 Civil Proceedings

71.

(Civil relief by way of prohibition orders)

(1) In this section “prohibited act or practice” does not include a contravention of *section 59(2)* (respecting weighing facilities in grocery retail) or *section 60(1)* (respecting preventing the reading of prices).

(2) Any person, including the Agency or any other public body that is prescribed for the purposes of this subsection, may apply to the Circuit Court or High Court for an order prohibiting a trader or person from committing or engaging in a prohibited act or practice.

(3) An application under subsection (2) shall be on notice to—

- (a) the trader or person against whom the order is sought, and
- (b) the Agency, if the applicant is not the Agency.

(4) In determining an application under this section, the court shall consider all interests involved and, in particular, the public interest.

(5) If the applicant for an order under this section is not the Agency, the court may not make the order unless the Agency has been afforded an opportunity to be heard and adduce evidence.

(6) If the court considers it necessary or appropriate in the circumstances, taking into account all interests involved and, in particular, the public interest, the court may make an order under this section without proof of any actual loss or damage or of any intention or negligence on the part of the trader.

(7) In making an order under this section, the court may impose terms or conditions in the order that the court considers appropriate, including a requirement that the trader or person publish a corrective statement, at the trader’s or person’s own expense and in any manner the court considers appropriate, in respect of the matters the subject of the order.

(8) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the prohibited act or practice concerned is being committed or engaged in.

(9) The Circuit Court shall have jurisdiction to hear and determine an application under this section which it is satisfied it is appropriate for it to deal with as a court of local and limited jurisdiction and, for the purpose of the court’s satisfying itself of that matter, the matters to which it shall have regard include—

- (a) the nature and extent of the prohibited act or practice concerned, and
- (b) the estimated cost of complying with the order to which the application relates.

(10) If, in relation to an application under this section to the Circuit Court, that court becomes of the opinion, during the hearing of the application, that it is not appropriate for the Circuit Court to deal with the application, it may, if it so thinks fit, transfer the application to the High Court.

(11) Subsection (10) is without prejudice to the jurisdiction of the Circuit Court to determine an application under this section which, at the time of the making of the application, it was satisfied it had jurisdiction to deal with.

(12) Where an application is transferred under subsection (10) to the High Court, the High Court shall be deemed to have made any order of a procedural nature that was made by the court from which it is so transferred in the proceedings in relation to the application.

(13) A trader commits an offence who, without reasonable excuse, fails to comply with an order under this section and is liable on conviction on indictment or on summary conviction, as the case may be, to the fines and penalties provided in Chapter 4.

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74.

(Consumer's right of action for damages)

(1) In this section, "prohibited act or practice" does not include

- (a) a misleading commercial practice described in section 45 ⁽¹⁾, or
- (b) a contravention of section 65(1) (respecting pyramid promotional schemes).

(2) A consumer who is aggrieved by a prohibited act or practice shall have a right of action for relief by way of damages, including exemplary damages, against the following:

- (a) any trader who commits or engages in the prohibited act or practice;
- (b) if such trader is a body corporate, any director, manager, secretary or other officer of the trader, or a person who purported to act in any such capacity, who authorised or consented to the doing of the act or the engaging in of the practice.

(3) Subject to subsection (4), an action under this section may be brought in the District Court, the Circuit Court or the High Court and such a court may, in that action, award such damages as the court considers appropriate, including exemplary damages.

(4) If the action is brought in the District Court or the Circuit Court, any relief by way of damages, including exemplary damages, shall not, except by consent of the necessary parties in such form as may be provided for by rules of court, be in excess of the limit of jurisdiction of the District Court or the Circuit Court, as the case may be, in an action founded on tort.

(5) Where in an action under this section it is proved that the act or practice complained of was done or engaged in by a body corporate it shall be presumed, until the contrary is proved, that each (if any) director of the body and person employed by it whose duties included making decisions that, to a significant extent, could have affected the management of the body, and any other person who purported to act in any such capacity at the material time, consented to the doing of that act or the engaging in of that practice.

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**PART 6
MISCELLANEOUS**

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91.

(Saving for certain contracts)

Subject to section 66(1), a contract for the supply of any goods or the provision of any services shall not be void or unenforceable by reason only of a contravention of any provision of this Act.

¹ (1) A commercial practice is misleading if—

- (a) it involves a representation that the trader abides, or is bound, by a code of practice,
- (b) the representation referred to in paragraph (a) would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make, and
- (c) the trader fails to comply with a firm commitment in that code of practice.

(2) In determining whether a commercial practice is misleading under subsection (1), the commercial practice shall be considered in its factual context, taking account of all of its features and the circumstances.

(3) For the purposes of this section, a firm commitment in a code of practice is one that is not merely aspirational but is capable of being verified.