
Briefing

The Consumer Rights Bill 2022: “Buyer Beware” or “Trader Beware”?



INSTITUTE OF DIRECTORS
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The Consumer Rights Bill 2022 will bring about a number of positive changes for consumers. The Bill will strengthen consumer rights, protections and remedies in a range of key areas. However, for every enhanced right of a consumer there will be a more onerous obligation on a trader.

The Consumer Rights Bill will not merely consolidate, but will also significantly enhance and modernise, many consumer protection laws and will align them more closely with rules applying across the EU. Consumer protections will be extended to digital goods and services so that consumers are protected when they use cloud-based services or buy downloadable or streamed goods and services, such as games, films, music and software.

The Bill sets out a regime for how faulty goods and services must be repaired or replaced and confers new powers on the Competition and Consumer Protection Commission (“CCPC”)¹ to act where traders do not comply with the new law. These increased enforcement powers include increased penalties, for particular breaches of the laws, of up to 4% of turnover in the relevant Member State(s), or up to a maximum of €2 million.

The Bill tackles areas where consumers are particularly vulnerable with a strong focus on regulating terms and conditions as well as the online shopping environment. Traders will be banned from using certain ‘black list’ unfair terms and are warned that other ‘grey-list’ terms can only be used in limited circumstances. In the online environment, the Bill will specifically outlaw fake reviews and put a legal obligation on traders to ensure that any reviews on their website are from real and verified consumers.

For the sale of goods (only one part of what the Bill will address), the Bill will create a new regime to replace the Sale of Goods Act 1893 with updated and more extensive requirements (the 1893 Act will continue to apply to relevant contracts that exist when the Bill comes into force).

¹ This is part of a wider enhancement of the consumer-related powers of the CCPC, including to under EU Directive 2020/1828 on representative actions for the protection of the collective interests of consumers.

For the purposes of the Bill:

- a “consumer” means an *individual* who is acting for purposes that are “wholly or mainly outside the person’s trade, business, craft or profession.” The “wholly or mainly” requirement is new and is designed to clarify dual- purpose contract situations (*ie* where the contract is concluded for purposes partly within and partly outside the person’s trade, and the trade purposes is not predominant, such that the person should still be considered a consumer); and
- a “trader” means a natural person (*ie* a human being), or a legal person² (such as a company) who is acting for purposes relating to the person’s trade, business, craft or profession, and includes any person acting in the name, or on behalf, of the trader.

What should traders do?

Know the Law

It will be important for every trader to become familiar with the provisions of the new law, when enacted, and to consider what changes will be required to their business practices in dealing with consumers (as opposed to business to business transactions). Identifying who is a consumer will be essential.

After sale obligations on traders will increase, for example, consumers must be informed of and supplied with updates that are necessary to maintain the goods in conformity with the original sales contract.

Digital Goods and Services

Contracts governing the supply of digital content or digital services to consumers (*eg* governing downloads, streaming, cloud-based services, etc) will be subject to new legislative obligations and provisions that will be deemed to form part of the relevant contract (without an ability to exclude or override them).

These requirements will apply generally to such contracts, subject to limited exceptions, such as where the contract is for the supply of gambling or financial services. The trader will be required to supply the digital content or digital services in conformity with the relevant contract, with the consumer becoming entitled to various remedies if the trader fails to do this.

Notably, traders will also be prohibited from using content that was provided or created by the consumer under the contract, subject to limited exceptions.

² Whether that legal person is owned privately or publicly or is owned partly privately and partly publicly.

Review Terms and Conditions

Contractual terms and conditions will require alteration to comply with the Bill. Particular emphasis will be required to avoid the use of unfair terms and any statements that might suggest a consumer's rights are being unlawfully restricted (as well as being unenforceable against the consumer, the restriction could also lead to a criminal prosecution of the trader and, where relevant, directors and officers of a body corporate).

Advertising and Consumer Practices

Particular care will be required to ensure that pre-contractual advertising, in whatever form, is honest, accurate and not misleading. Practices used to attract consumers, for example, customer product reviews, must be real.

Compliance Programme

Depending on the nature and extent of the consumer related business, it may be appropriate for a trader to consider implementing a compliance programme to help ensure that the impact of the Bill is properly considered and that appropriate compliance measures are taken. Keeping consumer rights compliance as an agenda item in governance related meetings is beneficial. Were, nonetheless breaches of law to occur, the existence of a compliance programme might help mitigate penalties.

Apart from the Bill, there also are proposals to update EU regulations on product safety and a likely reworking of the Product Liability Directive.

Review Insurance Cover

A conversation by a trader with their insurance broker might be warranted to determine whether the trader carries appropriate and available insurance cover (given that investigations of breaches under the Bill can be time consuming and expensive and that following a successful prosecution the trader will be liable for the costs of the investigation and prosecution unless a court determines otherwise).

Timing

The Bill will, somewhat belatedly, transpose into national law a number of EU Directives. It is expected that the Bill (having been passed by the Dáil on 29 June) will be enacted soon after the Houses of the Oireachtas reconvene in mid-September 2022 and come into force later this year.

Further information is available from



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Alternatively, your usual contact in McCann FitzGerald will be happy to help you further.



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