



New Regulations for the Grocery Sector

Introduction

On 1 February 2016, the Minister for Jobs, Enterprise and Innovation (the “Minister”) signed into law the Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulation 2016 (the “Regulations”) and at the same time issued draft guidelines (the “Draft Guidelines”) on the Regulations. The Regulations will come into effect on 30 April 2016.

Background

The Competition and Consumer Protection Act 2014 (the “2014 Act”) inserted Sections 63A – 63E into the Consumer Protection Act 2007. These new sections give the Minister wide powers to make regulations concerning the groceries sector following consultation with the Competition and Consumer Protection Commission (the “CCPC”) and others. In December 2014, the Minister issued draft regulations for consultation. Numerous retailers, suppliers and trade bodies made submissions, some of which were taken into account in the final version of the Regulations.

What is covered?

Under the 2014 Act, the Minister may make regulations covering food and drink, household cleaning products, toiletries and garden plants and bulbs. However, the new Regulations cover food and drink only and do not apply to household cleaning products, toiletries and garden plants and bulbs (or restaurant food). Specifically, the Regulations apply to:

- food and drink for human consumption;
- additives, ingredients and processing aids in the preparation of food and drink for human consumption; and
- intoxicating liquors.

“Food and drink” is not defined in any further detail in either the 2014 Act, the Regulations or the Draft Guidelines. For example, whether this covers borderline products such as chewing gum or lozenges is unclear.

Numerous responses to the 2014 consultation called for household cleaning products, toiletries and garden plants and bulbs to be brought within scope of the Regulations. The Department has said that the Minister may do so in the future but wants first to see how these Regulations operate in practice.

Who is covered?

The Regulations impose obligations only on “relevant grocery goods undertakings”, defined as retailers and wholesalers of the relevant grocery goods concerned with worldwide turnover of more than €50 million in their last financial year. The Draft Guidelines state that the €50 million threshold applies only to sales of food and drink - although this is not explicitly stated in the Regulations. Suppliers, producers and distributors of grocery goods are not subject to the Regulations although the 2014 Act gives the Minister the option of regulating them.

What does this mean for the grocery goods sector?

The Regulations impose a number of requirements on contracts between suppliers and relevant retailers/wholesalers, as follows:

- contracts must be in writing and in clear understandable language;
- contracts may only be varied, terminated or renewed where there is express provision in the contract to do so, including provision for a prior written notice period (which must be reasonable);

- relevant retailers/wholesalers can only require suppliers to purchase goods from third parties in restricted circumstances; and
- parties shall not be liable for non-performance beyond their reasonable control.

In addition, the Regulations give suppliers the right to request forecasts from relevant retailers/wholesalers together with an explanation of the basis on which such forecasts are prepared.

Further, under the Regulations, relevant retailers/wholesalers can only seek payments from suppliers for stocking, displaying and listing in respect of goods which have not been stocked in an individual store in the previous year or which have not been stocked in at least 25% of the relevant retailers'/wholesalers' stores in the previous year.

Payment terms must be within 30 days unless there is express contractual provision to the contrary.

The Regulations also restrict the circumstances in which relevant retailers/wholesalers can charge suppliers for promotions, marketing costs and retention, increased allocation or better positioning of shelf space. By contrast, a relevant retailer/wholesaler may not charge a supplier at all for advertising or display of that supplier's product in the premises of a relevant retailer/wholesaler.

Finally, the extent to which a relevant retailer/wholesaler may charge a supplier for wastage and shrinkage is restricted.

Compliance and reporting

Relevant retailers/wholesalers must designate a staff member to be responsible for compliance with, and dissemination of information regarding, the Regulations. They must also appoint a liaison officer to liaise with the CCPC and the Draft Guidelines indicate that the liaison officer should be independent of the purchasing role in the organisation. Preferably, he/she should also be in a compliance role within the organisation. Relevant retailers/wholesalers must also submit an annual compliance report to the CCPC. The CCPC is due to specify the form of this report (it has not done so yet).

Enforcement of the Regulations

As the statutory body with responsibility for enforcing the Regulations, the CCPC has a range of powers. In addition to a power to investigate complaints, the CCPC has a general power to inspect relevant retailers/wholesalers to monitor compliance. Where it is of the opinion that a relevant retailer/wholesaler has breached the Regulations, it can issue a Contravention Notice to the relevant retailer/wholesaler, directing it to remedy the breach. Failure to comply with a Contravention Notice is an offence.

When do the Regulations start to apply?

The Regulations come into effect on 30 April 2016. They will apply to contracts between suppliers and relevant retailers/wholesalers concluded or renewed on or after that date.

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April 2016