



STATUTORY INSTRUMENTS.

S.I. No. 35 of 2016



CONSUMER PROTECTION ACT 2007 (GROCERY GOODS
UNDERTAKINGS) REGULATIONS 2016

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ARRANGEMENT OF REGULATIONS

PART 1

PRELIMINARY MATTERS

1. Citation and commencement
2. Interpretation

PART 2

CONTRACTS BETWEEN SUPPLIERS AND RELEVANT GROCERY
GOODS UNDERTAKINGS

3. Prescribed classes
4. Grocery goods contracts
5. Variation, termination or renewal of grocery goods contracts
6. Goods or services from third party
7. Non-performance due to factors beyond reasonable control of party to contract
8. Forecasts of supply of grocery goods
9. Payment from supplier as a condition of stocking, displaying or listing
10. Payment terms and conditions
11. Promotions
12. Payment for marketing costs
13. Payment for retention, increased allocation or better positioning of shelf space
14. Payment for advertising or display of grocery goods
15. Payment for wastage
16. Payment for shrinkage

PART 3

COMPLIANCE REQUIREMENTS FOR RELEVANT GROCERY
GOODS UNDERTAKINGS

17. Designation and training of staff

18. Annual compliance report

19. Maintenance of records

PART 4

ENFORCEMENT

20. Penal provisions

CONSUMER PROTECTION ACT 2007 (GROCERY GOODS
UNDERTAKINGS) REGULATIONS 2016

I, RICHARD BRUTON, Minister for Jobs, Enterprise and Innovation, in exercise of the powers conferred on me by section 63B (inserted by section 83 of the Competition and Consumer Protection Act 2014 (No. 29 of 2014)) of the Consumer Protection Act 2007 (No. 19 of 2007) considering it appropriate to do so having regard to the matters specified in subsection (1) of the said section 63B and having consulted with the Competition and Consumer Protection Commission, hereby make the following regulations:

PART 1

PRELIMINARY MATTERS

Citation and commencement

1. (1) These Regulations may be cited as the Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016.

(2) These Regulations shall come into operation on 30 April 2016 and, subject to paragraph (3), shall apply to grocery goods contracts entered into on or after that date.

(3) Where a grocery goods contract entered into before 30 April 2016 is renewed on or after that date, these Regulations shall apply to the contract on and after the date of its renewal.

Interpretation

2. (1) In these Regulations—

“annual compliance report” has the meaning assigned to it by Regulation 18;

“grocery goods contract” means a contract for the sale or supply of grocery goods by a supplier to a relevant grocery goods undertaking;

“invoice” means a written document, electronic transmission or equivalent request for payment provided by a supplier to a relevant grocery goods undertaking in respect of the sale or supply of grocery goods.

(2) For the purposes of these Regulations, the annual turnover of a relevant grocery goods undertaking on any particular date is the annual turnover figure of the relevant grocery goods undertaking concerned for the financial year preceding that date.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 5th February, 2016.*

PART 2

CONTRACTS BETWEEN SUPPLIERS AND RELEVANT GROCERY
GOODS UNDERTAKINGS*Prescribed classes*

3. (1) Any food or drink that is intended to be sold for human consumption including—

- (a) any substance or thing sold or represented for use as food or drink for human consumption,
- (b) any substance or thing sold or represented for use as an additive, ingredient or processing aid in the preparation or production of food or drink for human consumption, and that is intended to be sold by a retailer as such an additive, ingredient or processing aid, and
- (c) intoxicating liquors,

other than food or drink served or supplied on the premises of a grocery goods undertaking in the course of providing catering, restaurant or take-away services or any similar hospitality services, or intoxicating liquor served or supplied for consumption on the premises of a grocery goods undertaking, is prescribed as the class of grocery goods to which these Regulations apply.

(2) A grocery goods undertaking engaged in the retail or wholesale of grocery goods in the State that has, or is a member of a group of related undertakings that has, an annual worldwide turnover of more than €50 million, is prescribed as a relevant grocery goods undertaking to which these Regulations shall apply.

Grocery goods contracts

4. (1) A relevant grocery goods undertaking shall ensure that all of the terms and conditions of a grocery goods contract to which it is a party, are expressed in clear understandable language and recorded in writing.

(2) A copy of a contract referred to in paragraph (1) shall be signed and retained by the supplier and the relevant grocery goods undertaking.

Variation, termination or renewal of grocery goods contracts

5. (1) Subject to paragraph (2), a relevant grocery goods undertaking shall not vary, terminate or renew a grocery goods contract.

(2) Paragraph (1) shall not apply where—

- (a) the contract makes express provision for such variation, termination or renewal or agreed circumstances in which such variation, termination or renewal may occur, and
- (b) the contract specifies the period of written notice to be given prior to the variation, termination or renewal of the contract.

(3) The period of notice in relation to the variation, termination or renewal of the contract to be given by a relevant grocery goods undertaking in accordance with paragraph (2) shall be reasonable, having regard to all the circumstances of the contract, including:

- (a) the duration of the contract;
- (b) the frequency with which the relevant grocery goods undertaking places orders;
- (c) the characteristics of the grocery goods, including their durability, seasonality and the external factors affecting their production;
- (d) in the case of a significant variation to previously agreed arrangements in relation to the supply or delivery of grocery goods, the value of any order for grocery goods affected by the variation in supply or delivery arrangements requested by the relevant grocery goods undertaking relative to the annual turnover of the supplier concerned.

(4) For the purposes of this Regulation, “variation” includes variation in the frequency, timing or volume of the supply or delivery of grocery goods.

Goods or services from third party

6. (1) Subject to paragraph (2), a relevant grocery goods undertaking shall not require a supplier to obtain goods or services from a third party from whom the undertaking receives payment for the arrangement.

(2) Paragraph (1) shall not apply where-

- (a) the supplier’s source for the goods or services fails to meet reasonable quality standards laid down for the goods or services by the relevant grocery goods undertaking, or
- (b) the undertaking who provides the goods or services to the supplier charges more for the goods or services than is charged for the supply of an equivalent quality and quantity of goods or services by the third party proposed by the relevant grocery goods undertaking.

Non-performance due to factors beyond reasonable control of party to contract

7. (1) A party to a grocery goods contract shall not be liable for a delay or failure to perform the contract concerned resulting from circumstances beyond the reasonable control of the party concerned.

(2) A party affected by circumstances referred to in paragraph (1) shall notify, in accordance with the terms specified in the contract, the other party of—

- (a) the specific circumstances which caused the delay or failure in the performance of the contract,
- (b) the date and time in relation to which the circumstances causing the delay or failure in the performance arose, and

- (c) where applicable, the date and time in relation to which the circumstances causing the delay or failure of the performance of the contract ceased.

(3) Where the circumstances referred to in paragraph (1) continue for a specified continuous period as provided for in the grocery goods contract, either party may terminate the grocery goods contract by written notice in accordance with the terms specified in the contract.

Forecasts of supply of grocery goods

8. (1) A relevant grocery goods undertaking shall, at the request of a supplier and following consultation with the supplier as to the basis of its preparation, prepare in good faith and with due skill, care and diligence, a forecast of grocery goods required by the relevant grocery goods undertaking in respect of a specified period.

(2) The relevant grocery goods undertaking shall forward the supplier a copy of the forecast prepared under paragraph (1) together with confirmation in writing of the basis on which it was prepared.

Payment from supplier as a condition of stocking, displaying or listing

9. (1) A relevant grocery goods undertaking shall not seek payment from a supplier as a condition of stocking, displaying or listing that supplier's grocery goods unless such payment is based on an objective and reasonable estimate of the cost to the undertaking of stocking, displaying or listing those grocery goods, and—

- (a) in the case of the supply of grocery goods from a supplier to an individual store of a relevant grocery goods undertaking, payment is sought from the supplier in respect of grocery goods which have not been stocked, displayed or listed in that store in the previous year, or
- (b) in the case of the supply of grocery goods from a supplier to multiple stores of a relevant grocery goods undertaking, payment is sought from the supplier in respect of grocery goods from that supplier that have not been stocked, displayed or listed in at least 25 per cent of those stores in the previous year.

(2) Where a relevant grocery goods undertaking seeks payment from a supplier in accordance with this Regulation, it shall, on request from the supplier, provide the supplier with—

- (a) an estimate of the cost of stocking, displaying or listing the grocery goods, and
- (b) the basis on which this estimate has been prepared.

(3) This Regulation shall not apply to payments made in respect of a promotion.

Payment terms and conditions

10. (1) Subject to paragraph (2), a relevant grocery goods undertaking shall pay a supplier for any grocery goods supplied to that undertaking—

- (a) within 30 days of the date of receipt of the invoice for the grocery goods, or
- (b) within 30 days of the date of delivery of the grocery goods,

whichever is the later.

(2) Paragraph (1) shall not apply where the contract makes express provision for a different timeframe in respect of payments.

(3) This Regulation is subject to the provisions of the European Communities (Late Payment in Commercial Transactions) Regulations 2012 (S.I. No. 580 of 2012).

Promotions

11. (1) Subject to paragraph (2), a relevant grocery goods undertaking shall not, either directly or indirectly, compel a supplier to make a payment or grant any allowance in respect of a promotion of the grocery goods of that supplier in the premises of the relevant grocery goods undertaking.

(2) Paragraph (1) shall not apply where the contract makes express provision for the making of a payment or granting of an allowance.

(3) A relevant grocery goods undertaking shall give written notice to the supplier in accordance with the terms of the contract prior to a promotion, which notice shall specify—

- (a) the duration of the promotion,
- (b) the frequency of the promotion, and
- (c) the quantity of grocery goods to be ordered for the promotion including the basis for such quantity.

(4) Where a relevant grocery goods undertaking seeks payment from a supplier in accordance with this Regulation, it shall, on request from the supplier, provide the supplier with its estimate of the cost of the promotion and the basis on which this estimate has been prepared.

Payment for marketing costs

12. (1) Subject to paragraph (2), a relevant grocery goods undertaking shall not seek payment from a supplier for marketing costs.

(2) Paragraph (1) shall not apply where—

- (a) the grocery goods contract makes express provision for such payment,

- (b) the payment is based on an objective and reasonable estimate of the marketing costs, and
- (c) the payment is sought in accordance with the contract.

(3) Where a relevant grocery goods undertaking seeks payment from a supplier in accordance with this Regulation, it shall, on request from the supplier, provide the supplier with an estimate of the marketing costs and the basis on which the estimate has been prepared.

(4) This Regulation shall not apply to payments made in respect of a promotion.

Payment for retention, increased allocation or better positioning of shelf space

13. (1) Subject to paragraph (2), a relevant grocery goods undertaking shall not, either directly or indirectly, compel a supplier to make a payment or grant any allowance for the retention, increased allocation or better positioning of shelf space for the grocery goods of the supplier.

(2) Paragraph (1) shall not apply where the grocery goods contract makes express provision for such payment or allowance, and the payment or allowance is sought in accordance with the contract.

(3) This Regulation shall not apply to a payment or allowance made or granted in respect of a promotion.

Payment for advertising or display of grocery goods

14. (1) Subject to paragraph (2), a relevant grocery goods undertaking shall not, either directly or indirectly, compel a supplier to make any payment or grant any allowance for the advertising or display of the grocery goods of the supplier in the premises of the relevant grocery goods undertaking.

(2) Paragraph (1) shall not apply to payments made in respect of a promotion.

Payment for wastage

15. (1) Subject to paragraph (2), a relevant grocery goods undertaking shall not seek payment from a supplier for wastage occurring at the premises of the undertaking.

(2) Paragraph (1) shall not apply where:

- (a) the grocery goods contract makes express provision for such payment;
- (b) the grocery goods contract makes express provision for an agreed average wastage cost;
- (c) the grocery goods contract makes express provision for the circumstances, where wastage arises from the negligence or fault of the supplier, in which the supplier will be required to make payments to cover wastage of the supplier's goods at premises of the relevant grocery goods undertaking;

- (d) the payment is sought in accordance with the contract;
- (e) the payment is based on an objective and reasonable estimate of the cost of the wastage to the undertaking.

(3) Where a relevant grocery goods undertaking seeks payment from a supplier in accordance with this Regulation, it shall, on request from the supplier, provide the supplier with its estimate of the cost for wastage and the basis on which this estimate has been prepared.

Payment for shrinkage

16. (1) Subject to paragraphs (2) and (4), a relevant grocery goods undertaking shall not seek payment from a supplier for shrinkage.

(2) Paragraph (1) shall not apply where—

- (a) the grocery goods contract makes express provision for such payment,
- (b) the payment is sought in accordance with the contract, and
- (c) the payment is based on an objective and reasonable estimate of the cost of the shrinkage to the undertaking.

(3) Where a relevant grocery goods undertaking seeks payment from a supplier in accordance with this Regulation, it shall, on request from the supplier, provide the supplier with its estimate of the cost for shrinkage and the basis on which this estimate has been prepared.

(4) This Regulation shall not apply to a relevant grocery goods undertaking engaged in the wholesale of grocery goods.

PART 3

COMPLIANCE REQUIREMENTS FOR RELEVANT GROCERY GOODS UNDERTAKINGS

Designation and training of staff

17. (1) A relevant grocery goods undertaking shall, as soon as practicable after the commencement of these Regulations (but not later than 3 months after such commencement), designate and train appropriate members of its staff to be responsible—

- (a) for compliance with these Regulations, and
- (b) for the dissemination of information in relation to the implementation of the Regulations to other staff in the undertaking.

(2) A relevant grocery goods undertaking shall nominate a suitably qualified staff member designated under paragraph (1), (in this Regulation referred to as a “liaison officer”) to liaise with the Commission in relation to these Regulations.

(3) A relevant grocery goods undertaking shall, as soon as practicable after the nomination of a liaison officer (and any replacement liaison officer), confirm his or her name, position and contact details to the Commission.

Annual compliance report

18. (1) Subject to paragraph (4), a relevant grocery goods undertaking shall, as soon as practicable, but not later than 31 March each year, submit a report (in these Regulations referred to as an “annual compliance report”) to the Commission detailing the undertaking’s compliance with these Regulations.

(2) The annual compliance report shall—

- (a) be signed by a director of, or secretary to, the relevant grocery goods undertaking, and
- (b) be submitted in such form and manner as may be specified by the Commission.

(3) The annual compliance report shall include—

- (a) a detailed and accurate account of the relevant grocery goods undertaking’s compliance with the requirements of these Regulations, including where a breach or alleged breach of these Regulations has been identified by, or notified to, the undertaking, and the steps taken to rectify it,
- (b) the name, position and contact details of the staff of the undertaking designated under Regulation 17 for the period of the annual compliance report,
- (c) details of the training of staff undertaken in accordance with Regulation 17, including the number, position and location of staff trained, the person or persons undertaking such training, the nature of the training and the frequency of both new and refresher training undertaken,
- (d) the dissemination in accordance with Regulation 17 of information on the implementation of these Regulations to staff of the relevant grocery goods undertaking, including the nature, format and frequency of the dissemination of such information, and
- (e) the names and addresses of all suppliers with whom the relevant grocery goods undertaking entered into, renewed or terminated contracts during the period covered by the annual compliance report.

(4) Notwithstanding paragraph (1), the first annual compliance report of a relevant grocery goods undertaking shall cover the period from 30 April 2016 up to, and including, 31 December 2016.

Maintenance of records

19. (1) A relevant grocery goods undertaking shall maintain copies of the following documents and records for inspection by the Commission:

- (a) contracts between the relevant grocery goods undertaking and its suppliers (including a contract varied, terminated or renewed in accordance with its terms);
- (b) records of payments made by the relevant grocery goods undertaking to its suppliers including invoices, receipts, rebates, discounts, bank statements, electronic fund transfers and cheques;
- (c) records of payments made by a supplier to the relevant grocery goods undertaking including invoices, receipts, rebates, discounts, bank statements, electronic fund transfers and cheques;
- (d) records of forecasts and estimates provided to suppliers by the relevant grocery goods undertaking under Regulations 8, 9, 11, 12, 15 and 16;
- (e) the names and addresses of each supplier with whom the relevant grocery goods undertaking entered into, renewed or terminated a contract;
- (f) records of training and dissemination of information provided by the relevant grocery goods undertaking under Regulation 17;
- (g) records of the board of directors of the relevant grocery goods undertaking;
- (h) records used in the preparation and submission of annual compliance reports.

(2) The documents and records referred to in paragraph (1) shall be retained by a relevant grocery goods undertaking for a period of 6 years after the end of the financial year in relation to which the information, documents or records relate.

PART 4

ENFORCEMENT

Penal provisions

20. The following Regulations are declared to be penal provisions for the purposes of Chapter 5 (inserted by section 83 of the Competition and Consumer Protection Act of 2014 (No. 29 of 2014)) of Part 3 of the Consumer Protection Act of 2007 (No. 19 of 2007):

- (a) Regulation 4(1) and 4(2);
- (b) Regulation 5(1) and 5(3);

- (c) Regulation 6(1);
- (d) Regulation 7(2);
- (e) Regulation 8(1) and 8(2);
- (f) Regulation 9(1) and 9(2);
- (g) Regulation 10(1);
- (h) Regulation 11(1), 11(3) and 11(4);
- (i) Regulation 12(1) and 12(3);
- (j) Regulation 13(1);
- (k) Regulation 14(1);
- (l) Regulation 15(1) and 15(3);
- (m) Regulation 16(1) and 16(3);
- (n) Regulation 17;
- (o) Regulation 18;
- (p) Regulation 19.



GIVEN under my Official Seal,
27 January 2016.

RICHARD BRUTON,
Minister for Jobs, Enterprise and Innovation.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This Statutory Instrument introduces regulations governing certain practices in the commercial relationship between suppliers and retailers/wholesalers relating to the supply of food and drink and sets out the compliance requirements on retailers/wholesalers in that regard.

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