

Draft Model Consumer Protection Bill, 2016

A BILL

ENTITLED

An Act to provide for the promotion and protection of consumer rights and interests in relation to the supply of goods and the provision of services; to ensure the protection of life, health and safety of consumers; to establish the Consumer Affairs Commission; to establish the Complaints and Investigations Division; to establish the Consumer Protection Tribunal and for connected purposes.

BE it enacted

PART I. Preliminary

Short title. 1. This Act may be cited as the Consumer Protection Act, 2015.

Interpretation. 2. In this Act –

“acquire” in relation to –

(a) goods or services, includes obtaining by way of gift, purchase, or exchange, the taking on lease, hire or hire purchase; and

(b) services, includes accepting the provision of services;

“advertisement” means any form of communication made to the public or a section of the public for the purpose of promoting goods or services;

“appropriate laboratory” means a laboratory that is –

(a) staffed with trained personnel;

(b) accredited by an accreditation body; and

(c) equipped to undertake the testing of goods;

"business" includes a professional practice or any other undertaking that is carried on for gain or reward or in the course of which goods or services are supplied otherwise than free of charge;

“Commission” means the Consumer Affairs Commission established by section 5;

“Community” means the Caribbean Community established by Article 2 of the Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy and includes the CSME (hereinafter referred to as the “Treaty”);

“complainant” means a person or entity who lodges a complaint under section 13;

“complaint” means any allegation made by a complainant that—

(a) an unfair trade practice, unfair transaction or an unfair term has been adopted by a supplier contrary to Parts VII and VIII, respectively;

(b) the goods acquired or agreed to be acquired by him suffer from one or more defects;

(c) the services acquired or agreed to be acquired by him suffer from deficiency in any respect;

(d) the supplier has charged, for the goods or for the service mentioned in the complaint, a price in excess of the price –

(i) fixed by or under any law for the time being in force;

(ii) displayed on the goods or any package

containing such goods;

(iii) displayed on the price list exhibited by him by
or under any law for the time being in force; or

(iv) agreed between the parties;

(e) goods, which are hazardous to life and safety when
used, are being offered for sale to the public -

(i) in contravention of any standards relating
to safety of such goods as required to be
complied with by or under any law for the time
being in force; and

(ii) under circumstances where the supplier could
have known, with due diligence, that the goods
so offered are unsafe to the public;

(f) services which are hazardous or likely to be
hazardous to life and safety of the public, when
used, are being offered by the supplier where
such person could have known, with due
diligence, that the service is hazardous to life and
safety; or

(g) the supplier has contravened any of the provisions
of this Act, which are not included in the
proceeding paragraphs;

“consumer” -

(a) means a person who acquires -

(i) any good under an agreement or transaction and
includes any other user of the good, when such
use is made with the consent of the person who
acquires the good; or

(ii) a service under an agreement or transaction
and includes any other beneficiary of such

service, when such service is used with the consent of the person who acquires the service; but

(b) does not include a person who acquires -

(i) goods for resale or for any business; or

(ii) a service under an agreement or transaction for any business.

“Consumer Protection Tribunal” means the tribunal established by section 24;

“consumer agreement” means any written, oral or implied agreement between a supplier and a consumer in which the supplier agrees to supply goods or services for payment;

“defect” means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard –

(a) which is required to be maintained by or under –

(i) any law for the time being in force; or

(ii) an express or implied term of a contract; or

(b) as is claimed by the supplier in any manner whatsoever in relation to any goods;

"document" includes electronic records;

"goods" includes all types of property other than real or immovable property, securities, money or chose in action;

“Member State” means a Member State of the Community excluding an Associate Member State within the meaning of Article 231 of the Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy;

“Minister” means the Minister [of] [responsible for]
Consumer Affairs;

“negligence” includes the breach of -

(a) any obligation, arising from the express or implied terms of a contract, to take reasonable care to exercise reasonable skill in the performance of the contract; and

(b) any common law duty to take reasonable care;

“payment” means consideration of any kind, including a deposit fee;

“price” includes any representation that may reasonably be inferred to be a representation of a price;

“pyramid selling scheme” means a scheme -

(a) that provides for the supply of goods or services, or both, for reward;

(b) that, to many participants in the scheme, constitutes primarily an opportunity to sell an investment opportunity rather than an opportunity to sell goods or services; and

(c) in relation to which –

(i) the financial rewards of many of the participants are dependent on the recruitment of additional participants; and

(ii) the number of additional participants to be recruited to produce reasonable rewards to participants is either not attainable, or is not likely to be attained, by many of the participants;

“recognized consumer organisation” means any non-profit organisation that –

(a) purports to provide services for the protection of

consumers by –

- (i) promoting and protecting consumer rights;
- (ii) representing the collective interests of consumers before judicial and administrative bodies;
- (iii) promoting consumer interests to the Government and persons engaged in the business of producing, supplying or distributing goods or providing services; and
- (iv) collecting, processing and disseminating objective information for the benefit of consumers; and

(b) is registered under the Companies Act or any other enactment;

“services” –

- (a) means a service of any description which is made available to users and includes, but is not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging (or both), housing construction, entertainment, amusement or the purveying of news or other information;
- (b) does not include the rendering of any service free of charge or under a contract of personal service or employment services ;

“supplier” includes a person who -

- (a) sells goods or services;
- (b) provides a service;
- (c) who is responsible for the provision of goods or

services including a manufacturer, producer,
distributor or agent; or

(d) operates a business;

“supply of services” -

(a) includes -

(i) the undertaking and performance, for gain or
reward, of engagements for any matter other
than the supply of goods; and

(ii) both the rendering of services to order and the
provision of services by making them available
to potential users;

(b) does not include the rendering of personal services
under a contract of employment.

Purpose.

3. The purpose of this Act is to promote and advance the social
and economic welfare of consumers by –

(a) establishing a legal framework for the achievement
and maintenance of a consumer market that is fair,
accessible, efficient, sustainable and responsible;

(b) promoting fair business practices;

(c) protecting consumers from –

(i) unfair, unconscionable or otherwise improper
trade practices; and

(ii) deceptive, misleading, unfair or fraudulent
conduct;

(d) promoting social, economic and environmental
responsibility in consumer markets;

(e) improving consumer awareness and information;

(f) encouraging responsible and informed consumer
choice and behaviour; and

(g) providing for an accessible, consistent, harmonised, effective and efficient system of redress for consumers.

Application of the Act. 4. (1) Subject to subsection (3), this Act applies to all persons involved in trade or business whether through the purchasing, acquisition or supplying of goods or services.

(2) In determining whether this Act applies to an entity or transaction, the Tribunal or a court shall consider the real substance of the entity or transaction and in so doing may disregard the outward form.

(3) The Minister may by order, subject to affirmative resolution, exempt categories of trade or business from the application of this Act.

(4) Subject to section 105, this Act binds the [State] [Crown].

PART II. *Consumer Affairs Commission*

Establishment of Consumer Affairs Commission. 5. (1) There is established a Commission to be known as the Consumer Affairs Commission which shall be a body corporate to which section [] of the Interpretation [and General Clauses] Act shall apply.

First Schedule. (2) The provisions of the First Schedule shall have effect as to the constitution of the Commission and otherwise in relation thereto.

Functions of the Commission. 6. (1) The Commission shall –

(a) subject to Part III, through the Complaints and Investigations Division –

(i) investigate any action alleged in a consumer

- complaint to have been taken by a supplier which adversely affects the complainant or is in contravention of any provision of this Act and, where appropriate, make reports and recommendations to the Minister and;
- (ii) on its own initiative, investigate any alleged breach by a supplier of any provision of this Act;
- (iii) on its own initiative and as it thinks fit, carry out investigations other than investigations to which subparagraph (i) refers and submit reports and recommendations, as it thinks fit, to the Minister;
- (b) upon the complainant's request, make arrangements for the appointment of a legal representative for the complainant at hearings before the Consumer Protection Tribunal;
- (c) as a personal representative under section 13, institute proceedings under section 23;
- (d) promote the development and monitor the operations of recognized consumer organisations and ensure that the consumer's interests receive due consideration;
- (e) collect, compile and analyse information in relation to any trade or business and the marketing of goods and services;
- (f) provide information to consumers regarding their rights and obligations as consumers, thereby enabling them to make informed choices about goods and services;

- (g) conduct education programmes for the benefit of consumers and suppliers;
- (h) report each year to the Minister on the availability of goods and services to persons referred to in subsection (3), including price and market conditions and the performance of public and private suppliers in ensuring the realization and full enjoyment of their consumer rights by categories of persons to whom subsection (3) refers; and
- (i) carry out such other functions as the Minister may assign to the Commission from time to time.

(2) Subject to the provisions of this Act, the Commission may, for the purpose of discharging its functions, do such other things which, in the opinion of the Commission, are necessary to ensure the proper discharge of its functions.

(3) The Commission, shall take reasonable and practical measures, in a manner consistent with the purposes of this Act, to promote and support the development of a fair, transparent, sustainable, responsible, efficient, effective and accessible consumer market generally, and in particular, shall meet the needs of the following persons –

- (i) minors, the elderly and other similarly vulnerable consumers; and
- (ii) consumers whose ability to read and comprehend advertisements, agreements, marks, instructions, labels, warnings or notices is limited by reason of low literacy, vision impairment or limited fluency in the language in which any such text is produced, published or presented.

(4) The Commission may provide guidelines on the concept of sustainable consumption with respect to the provision of goods and services so that the present and future generations may be able to use goods and services in an equitable and just manner.

Appointment of Chief Executive Officer.

7. (1) The Commission shall, with the approval of the Minister, appoint a Chief Executive Officer for a term not exceeding 5 years and on such terms and conditions as the Commission may determine.

(2) The Chief Executive Officer shall be eligible for re-appointment.

(3) The Chief Executive Officer shall be –

- (a) responsible to the Commission for the administration of this Act;
- (b) an *ex-officio* member of the Commission; and
- (c) responsible for the supervision of the work and staff of the Commission.

(4) The Commission shall, with the approval of the Minister, pay the Chief Executive Officer such remuneration and allowances as the Commission determines.

Confidential information.

8. (1) Every –

- (a) Commissioner;
- (b) officer, employee and agent of the Commission; and
- (c) expert retained to assist the Commission,

shall keep secret all confidential information coming to his knowledge during the course of the administration of this Act, except to the extent that the Commission authorises that person to release the information.

(2) Where –

- (a) a person claims that confidential information –
 - (i) made available, or to be made available by or on behalf of the person, whether orally or in writing;
or
 - (ii) furnished, or contained in a document produced by the person,

is information the disclosure of which would be injurious to the interest of the person; and

- (b) the Commission is satisfied that the claim is justified and is not of the opinion that disclosure of the confidential information is necessary in all the circumstances,

the Commission shall take all reasonable steps to ensure that the confidential information is not, without the consent of that person disclosed to a person other than a member of the staff of the Commission who receives the relevant information in the course of his duties.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding [] or to imprisonment for a term of [] years, or to both.

Experts.

9. (1) The Commission may appoint or engage persons having special or technical knowledge to assist the Commission in carrying out its functions.

(2) A person engaged pursuant to subsection (1) shall receive such remuneration as the Commission determines.

PART III. *Complaints and Investigations*

Complaints and Investigations Division

**Establishment
and functions of**

10. (1) There is established a division of the Commission to be known as Complaints and Investigations Division (hereinafter

Complaints and Investigations Division. referred to as the “Division”).
 (2) Section 6 (1) (a) applies in relation to the functions of the Division.

Appointment and functions of Director of Complaints and Investigations. 11. (1) The Commission shall, with the approval of the Minister, appoint a Director of Complaints and Investigations (hereinafter after referred to as the “Director”) for a term not exceeding 5 years.

- (2) The Director shall –
- (a) be an employee of the Commission;
 - (b) perform the functions assigned to him by the Chief Executive Officer;
 - (c) be responsible for the day-to-day operations of the Division; and
 - (d) be eligible for re-appointment.

(3) The Commission shall, with the approval of the Minister, pay the Director such remuneration and allowances as the Commission determines.

Functions of officers, employees and agents. First Schedule. 12. The officers, employees and agents appointed pursuant to paragraph 8 of the First Schedule shall investigate such matters as are stipulated by the Chief Executive Officer in the prescribed form and manner and shall report their findings to the Chief Executive Officer for submission to the Commission.

Complaints Procedure

Who may lodge a complaint. 13. (1) Subject to subsections (2) and (4), a consumer who alleges that he has been adversely affected in relation to goods or services he has acquired or agreed to acquire may lodge a complaint to the Division in accordance with the procedure set out in section 14.

(2) Notwithstanding subsection (1), in relation to any goods

or services acquired or agreed to be acquired the following persons may lodge complaints to the Division –

- (a) a recognized consumer organisation;
- (b) subject to subsection (3), one or more consumers jointly where a number of consumers have the same interest and the lodging of the complaint would be for the benefit of all consumers with that interest; or
- (c) the State, either in its individual capacity or as a representative of the interest of consumers in general.

(3) Consumers referred to in subsection (2) (c) may lodge a complaint only upon their receipt of written permission to lodge the complaint from the Commission.

(4) Where a consumer is –

- (a) a minor, a complaint may be lodged by the consumer's parent or legal guardian; or
- (b) unable to lodge a complaint himself by reason of infirmity, death or any other cause, the complaint may be lodged by the consumer's parent or legal guardian or any other person suitable to be his personal representative.

(5) For the purposes of this section, the Commission shall be construed to be a person suitable to be the personal representative of a consumer.

(6) Where a person lodges a complaint under any of the circumstances referred to in this section, the person who lodges the complaint shall, for the purpose of lodging and resolving the complaint, be referred to as the "complainant".

(7) For the purposes of this section –

“minor” has the meaning assigned in section [] of [name of national legislation for the protection of children’s rights]; and

“parent or legal guardian” means –

- (a) the mother of the consumer;
- (b) the putative father of the consumer;
- (c) an individual having custody of the consumer;
- (d) an individual residing with and having care of the consumer;
- (e) the step-mother or step-father of the consumer;
- (f) an individual who, under a written agreement or court order, is required to provide support for the consumer or has a right of access to the consumer; or
- (g) a foster caregiver of the consumer.

(8) This section does not affect a person’s right to file a complaint in a court of law, except that proceedings shall not be instituted before both the Consumer Protection Tribunal and a court in respect of the same complaint.

Procedure for lodging complaints.

14. (1) Subject to subsection (2), a complainant may lodge a complaint to the Division orally or in writing.

(2) Where a complainant is contemplating litigation or any further action in relation to the complaint, he shall make the complaint in writing.

(3) Upon receipt of the complaint and receipt of payment of the prescribed fee, a member of staff of the Division shall –

- (a) record the complaint in writing; and

(b) direct the complainant to read and sign the written record.

(4) Where the complainant is visually impaired, unable to read or unable to write, the member of staff shall read the written record in the complainant's hearing and request that complainant affix his mark to the written record.

(5) A complaint made pursuant to this section shall set out any alleged act or omission on the part of a supplier who is in breach of this Act.

Investigative powers of the Division.

15. (1) The Division shall only investigate a complaint made against a supplier where the complainant satisfies the Division that he has submitted a complaint to the supplier and has failed to obtain reasonable redress.

(2) The Division shall not be precluded from conducting an investigation in respect of any matter by reason only that it is open to the complainant to apply to a court for redress under any other enactment.

(3) Unless the court otherwise directs, the commencement of an action in court in connection with a complaint under investigation by the Division shall not preclude the investigation.

(4) If a question arises as to whether the Division has jurisdiction to investigate a complaint made under this Act, the Commission may apply to the High Court for a declaration as to jurisdiction.

(5) Upon receipt of a complaint, the Division shall proceed to investigate the complaint unless the Division is satisfied that

—

(a) the subject matter of the complaint is trivial;

(b) the complaint is frivolous, vexatious or not made

in good faith;

(c) the complaint was filed more than two years from the date on which the cause of action arose;

(d) the complainant does not have a sufficient interest in the subject matter of the complaint;

(e) the subject matter of the complaint could be dealt with more appropriately by another body or in another forum; or

(f) having regard to all the circumstances surrounding the complaint, it is not necessary to admit the complaint.

(6) Notwithstanding subsection (5) (c), a complaint may be admitted for investigation where the complaint was filed more than two years from the date on which the cause of action arose if the complainant satisfies the Division that he had sufficient cause for not filing within two years from the date on which the cause of action arose.

(7) Where the Division accepts a complaint which was filed more than two years from the date on which the cause of action arose, the Chief Executive Officer shall, in writing, admit the complaint for investigation and state the reasons for condoning the delay.

**Duty to notify
opposite party of
investigation.**

16. (1) Where the Chief Executive Officer decides to investigate a complaint, the Division shall –

(a) refer a copy of the complaint to the opposite party mentioned in the complaint; and

(b) in writing, direct the opposite party to submit to the Division a written response to the complaint.

(2) A written response submitted pursuant to subsection (1)

(b) shall –

(a) set out the opposite party’s version of events; and

(b) be returned to the Division within thirty days of the opposite party’s receipt of the documents referred to in subsection (1) or such extended period, not exceeding fifteen days, as may be specified by the Division.

Failure of opposite party to respond.

17. (1) If the opposite party fails to make a written response in accordance with section 16 (2), the Division shall complete its investigation based solely on the complaint and any other evidence or supporting materials or documents submitted by the complainant.

Division to examine complaint and response.

18. Upon receipt of the response of the opposite party, the Division shall –

(a) examine the complaint and supporting materials or documents;

(b) examine the response of the opposite party and any supporting materials and documents; and

(c) conduct any further investigations that the Division considers necessary.

Power to discontinue investigation.

19. (1) The Division may, in its absolute discretion, refuse to continue an investigation where it is of the opinion that the matter being investigated does not justify further investigation.

(2) Where the Division decides –

(a) not to conduct an investigation; or

(b) to discontinue an investigation,

it shall, in writing, inform the complainant of the decision and

state the reasons for the decision.

Power to summon persons to give evidence.

20. (1) The Chief Executive Officer or his delegate may summon any person to attend before it in relation to an investigation being conducted by it and to give evidence or to produce any document which is –

(a) in the possession or under the control of such person; and

(b) relevant to the matter under investigation.

Second Schedule.

(2) A summons issued under this section –

(a) shall be in the form prescribed in the Second Schedule; and

(b) may be served by a district constable, bailiff, or an officer of the Division so authorized.

Obligations of persons summoned.

21. (1) A person summoned to attend and give evidence or to produce a document before the Division shall be entitled –

(a) in respect of his attendance, the giving of evidence, the disclosure of any communication or the production of any document, to the same rights and privileges as a person summoned before a court of law; and

(b) to be paid his expenses, including travelling expenses, at the rates prescribed for witnesses in civil proceedings who are entitled to have their expenses paid from the public fund.

(2) The Division may, if it thinks fit, disallow the whole or any part of any expenses referred to in subsection (1)(b).

(3) Where, under subsection (2), the Division decides to disallow the whole or any part of any expenses, the Division shall give written reasons for its decision.

(4) A person who without sufficient cause –

(a) fails or refuses to obey a summons issued by the Division; or

(b) refuses to answer any question put to him by the Division,

commits an offence and is liable, on summary conviction, to [a fine not exceeding [] dollars and in default of payment of the fine, to imprisonment for a term not exceeding [two years].

Service of outcomes of investigation on parties.

22. On the conclusion of an investigation by the Division, where the Division determines that there may be a breach of a provision of this Act, the Division shall, in a timely manner serve –

(a) a copy of the findings of its investigation on the supplier; and

(b) a notice requiring the supplier to –

(i) satisfy the finding; or

(ii) respond to the finding in writing,

within such reasonable time as may be specified in the notice.

Failure to comply with notice.

23. Subject to section 26, where a supplier who is in receipt of a notice issued pursuant to section 22 (b) fails to satisfy or respond to the finding made pursuant to section 22 (b), the Division shall notify the Commission of the failure and the Commission shall institute proceedings before the Tribunal or in the Court.

PART IV. *Settlement of Consumer Complaints*

Consumer Protection Tribunal

- Establishment and constitution of Consumer Protection Tribunal.**
24. (1) There is established a tribunal to be known as the Consumer Protection Tribunal (hereinafter referred to as the “Tribunal”).
- (2) The provisions of the Third Schedule shall have effect as to the constitution of the Tribunal and otherwise in relation thereto.
- Third Schedule.**
- Functions and powers of Tribunal.**
25. (1) The functions of the Tribunal shall be –
- (a) subject to subsection (2), to hear and determine matters referred to it pursuant to section 26;
 - (b) to resolve disputes between consumers and suppliers in relation to goods or services; and
 - (c) where appropriate, to dismiss complaints.
- (2) Notwithstanding subsection (1), where the complainant is seeking damages, the Tribunal’s jurisdiction is limited to compensatory damages.
- (3) For the purposes of this part, the Tribunal may –
- (a) issue a summons and enforce the attendance of any party or witness and examine the party or witness on oath;
 - (b) order the discovery and production of any document or other object producible as evidence;
 - (c) call and examine witnesses;
 - (d) requisition the report of the analysis or test from the appropriate laboratory or from any other relevant source;

(e) require that any document or article submitted to the Commission be verified by affidavit; and

(f) make orders pursuant to section 34.

(3) Where a summons is issued under subsection (3) (a), the summons shall be –

(a) in the form set out in the Fourth Schedule; and

(b) served by-

Fourth Schedule.

(i) a member of the [Police] [Constabulary] Force;

(ii) a bailiff; or

(iii) any other person authorized by the Tribunal.

(4) In all proceedings, any paper, book, record or other document produced to the Tribunal pursuant to this section, shall be received as *prima facie* evidence of the truth of the statement contained therein.

(5) For the purposes of this section “compensatory damages” does not include aggravated damages.

Instituting proceedings before Tribunal.

26. (1) A complainant may institute proceedings before the Tribunal regardless of whether he submitted the complaint to the Commission for investigation.

(2) A complainant shall not institute proceedings in both the Tribunal and the court in respect of the same complaint.

(3) Notwithstanding section 23 the complainant may –

(a) in writing, request that the Commission refrain from instituting proceedings in the Court; and

(b) institute proceedings before the Tribunal.

- Request for legal representation for complainant.** 27. Upon the request of the complainant, the Commission may make arrangements for the appointment of a legal representative for the complainant at a hearing before the Tribunal.
- Rights and obligations of person summoned.** 28. (1) A person summoned to attend and give evidence or to produce a document before the Tribunal shall be entitled –
- (a) in respect of his attendance, the giving of evidence, the disclosure of any communication or the production of any document, to the same rights and privileges as a person summoned before a court of law; and
 - (b) to be paid his expenses, including travelling expenses, at the rates prescribed for witnesses in civil proceedings who are entitled to have their expenses paid from the public fund.
- (2) The Tribunal may, if it thinks fit, disallow the whole or any part of any expenses referred to in subsection (1)(b).
- (3) Where, under subsection (2), the Tribunal decides to disallow the whole or any part of any expenses, the Tribunal shall give written reasons for its decision.
- (4) A person who, without sufficient cause fails or refuses to obey a summons issued by the Tribunal commits an offence and is liable, on summary conviction, to a fine not exceeding [] dollars and in default of payment of the fine, to imprisonment for a term not exceeding [].
- Failure of party to attend hearing.** 29. (1) Where a complainant fails to appear before the Tribunal on the date of hearing, the Tribunal may either dismiss the complaint for default or decide the matter on its merits.
- (2) Where, on the date of the hearing, the supplier fails to

appear on before the Tribunal, in his absence the Tribunal shall decide the matter on its merits.

Duration of hearing.

30. The Tribunal shall –

(a) hear and determine every complaint as expeditiously as possible; and

(b) decide each complaint no later than –

(i) three months from the date on which proceedings were instituted before the Tribunal, where the complaint does not necessitate analysis or testing of commodities; and

(ii) five months from the date on which proceedings were instituted before the Tribunal, where the complaint necessitates analysis or testing of commodities.

Failure to answer questions.

31. (1) A person who appears as a witness before the Tribunal and who, without reasonable excuse, refuses or fails to answer a question that he is required to answer by the presiding member at the proceeding, commits an offence and is liable, on summary conviction, to a fine not exceeding [] or to imprisonment for a term not exceeding [] or to both such fine and imprisonment.

(2) Any person who, without sufficient cause, obstructs or interrupts the proceedings of the Tribunal commits an offence and is liable, on summary conviction, to a fine not exceeding [] dollars or in default of payment of the fine to imprisonment for a term not exceeding [] years.

False or misleading evidence.

32. A person who appears as a witness before the Tribunal and gives evidence that, to his knowledge, is false or misleading commits an offence and is liable, on summary conviction, to a fine not exceeding [] or to imprisonment for a term not

exceeding [] or to both such fine and imprisonment.

Contempt of Tribunal.

33. A person who does any act that, if the Tribunal were a court of record, would constitute an offence, commits an offence and is liable, on summary conviction, to a fine not exceeding [] or to imprisonment for a term not exceeding [] or to both such fine and imprisonment.

Power to make orders.

34. (1) To resolve a complaint the Tribunal shall make a decision on the basis of evidence brought to its attention, which shall include any reports issued by an appropriate laboratory.

(2) If the Tribunal is satisfied that a provision of this Act has been breached, the Tribunal shall issue an order –

- (a) declaring the transaction or conduct which is the subject of the complaint to be in breach of the provisions of this Act;
- (b) directing the opposite party to do one or more of the following —
 - (i) to remove the defect from the goods in question;
 - (ii) to replace the goods with new goods of a similar description which shall be free from any defect;
 - (iii) to pay to the consumer a refund and interest, where appropriate ;
 - (iv) to remove the deficiencies in the services in question;
 - (v) to desist and discontinue the unfair trade practice or the restrictive trade practice;
 - (vi) to refrain from offering the hazardous goods for sale;
 - (vii) to withdraw the hazardous goods from being offered for sale;

- (viii) to cease the manufacture of hazardous goods or to desist from offering services which are hazardous in nature;
- (ix) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;
- (x) to provide for adequate costs to parties in addition to the fees, if any paid to the laboratory for analysis or testing of goods; or
- (xi) in relation to any other matter or measures as it deems appropriate or necessary in order to further the objects of this Act.

(2) Where the Tribunal finds a complaint to be false, frivolous or vexatious it shall, issue an order –

- (a) dismissing the complaint; and
- (b) stating the reasons for the dismissal of the complaint;

(3) Where the Tribunal issues an order under subsection (2), the Tribunal may instruct the complainant to pay to the opposite party such costs, not exceeding [] dollars, as may be specified in the order.

(4) Every order made by the Tribunal under this part shall be signed by the Chairperson and each of the members who conducted the proceeding provided that where any of the members differ on any point, they shall state the point on which they differ and refer the same to the other members for hearing on that point and the opinion of the majority shall be the order of the Tribunal.

(5) Subject to this Act, the procedure relating to the conduct of the meetings of the Tribunal, its sittings and other matters shall be such as may be prescribed.

**Adjournments
and interim
orders.**

35. (1) No adjournment shall be ordinarily granted by the Tribunal unless sufficient cause is shown and the reasons for a grant of adjournment have been recorded in writing by the Tribunal.

(2) The Tribunal shall make such orders as to the costs occasioned by the adjournment as may be prescribed.

(3) Where during the pendency of any proceeding before the Tribunal, an interim order appears to the Tribunal to be necessary, just and proper, given the facts and circumstances of the case, the Tribunal may pass the interim order.

**Failure to comply
with order of the
Tribunal.**

36. (1) Any person who fails to comply with an order of the Tribunal commits an offence and is liable, on summary conviction, to a fine not exceeding [] or to imprisonment for a term not exceeding [] or to both such fine and imprisonment, and in the case of a continuing offence, to a further fine of [] for each day or part thereof during which the offence continues.

(2) Where it is proved that a supplier has failed to obey an order of the Tribunal, every director and officer of the supplier shall be liable, on summary conviction, to a fine of [] or to imprisonment for [] or to both, unless the director or officer proves that all necessary and proper means in his power were taken to obey and carry out the order and that he was not at fault for the failure to obey the order.

(3) Where an amount is due from any person under an order made by the Tribunal, the person entitled to the amount may make an application to the Tribunal and the Tribunal may issue a certificate for the amount to the police officer or

administrative head (by whatever name called) and he shall proceed to recover the amount in the same manner as arrears due to the State.

Appeal.

37. (1) An appeal shall lie on a question of law to a Judge of the [High] [Supreme] Court from a decision or order of the Tribunal.

(2) The appellant shall give notice of the appeal to the Tribunal and to the adverse party interested no later than [] business days of the decision or order and the parties shall be entitled to be represented by counsel at the hearing of the appeal.

Stay of proceedings pending appeal.

38. No appeal shall, of itself, stay or suspend the operation of any decision or order of the Tribunal but a Judge may stay or suspend, in whole or in part, the operation of the decision or order of the Tribunal pending the appeal, upon such terms as the Judge may think fit.

Costs of appeal.

39. All costs incidental to the hearing of an appeal shall be –

- (a) defrayed by the parties to the appeal in such manner and in such proportions as the Judge determines;
- (b) in accordance with the scale of fees in force in respect of civil proceedings in the [High] [Supreme] Court; or
- (c) taxed and recovered in the same manner in which costs are taxed and recovered in the [High] [Supreme] Court.

Determination of question of law.

40. On the hearing of the appeal and the determination of the question of law involved in the appeal, the Judge shall give his decision to the Tribunal and the Tribunal shall make an order in accordance with that decision.

Complaints Alleging Defects in Goods

**Alleged defects
requiring proper
analysis and
laboratory report.**

41. (1) Where the complainant alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the Tribunal shall, in the prescribed manner –

- (a) obtain a sample of the goods from the complainant;
- (b) seal the sample and authenticate it; and
- (c) subject to subsection (2), refer the sealed sample to the appropriate laboratory along with a direction to the laboratory to –
 - (i) make an analysis or test of the goods, whichever may be necessary;
 - (ii) determine whether the goods suffer from any defect alleged in the complaint, from any other defect or pose any health risk; and
 - (iii) report its findings to the Tribunal within a period of [forty-five days] of the receipt of the reference or within such extended period as may be granted by the Tribunal.

(2) Before any sample of the goods is referred to an appropriate laboratory, the Tribunal may require the complainant to deposit to the credit of the Commission such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question.

(3) The Tribunal shall remit the amount deposited to its credit under subsection (2) to the appropriate laboratory to enable the laboratory to carry out the necessary analysis or tests.

(4) Upon completion of the requisite analysis or tests, the appropriate laboratory shall submit its report to the tribunal.

Receipt and distribution of laboratory report.

42. (1) Upon receipt of the report from the appropriate laboratory, the Tribunal shall forward to both parties a copy of the report along with such remarks as the Tribunal considers appropriate.

(2) If any party disputes the accuracy of the findings of the appropriate laboratory or the accuracy of the methods of analysis or test adopted by the appropriate laboratory, the Tribunal shall require the opposite party or the complainant to submit in writing the grounds and nature of his dispute with regard to the report made by the appropriate laboratory.

(3) Upon receipt of a written submission referred to in subsection (2), the Tribunal shall give reasonable opportunity to the complainant and the opposite party to be heard as to the accuracy or otherwise of the report made by the appropriate laboratory.

Procedure subsequent to receipt of laboratory reports and responses.

43. (1) Upon receipt of the responses of the parties, the Tribunal shall, in its deliberations, examine the laboratory report, the parties' responses and all other evidence.

(2) The Tribunal, after considering all the evidence shall, by order, perform its functions set out in section 25 (1).

PART V. Consumer Rights

Ambiguities to benefit consumer.

44. In any complaint brought before the Tribunal or a court, the Tribunal or the court, as the case may be, shall -

- (a) if a provision of this Act, read in context, may be reasonably construed to have more than one meaning, prefer the meaning that best promotes the spirit and purposes of this Act, and shall best improve the

realisation and enjoyment of consumer rights generally and in particular by persons referred to in section 6 (3); and

- (b) strictly interpret information that is required to be disclosed under this Act and any document prepared or published by or on behalf of a supplier or required to be produced by a supplier, to the benefit of the consumer, in such a manner that –
- (i) any ambiguity that allows for more than one reasonable interpretation of a part of such information or document is resolved to the benefit of the consumer; and
 - (ii) any restriction, limitation, exclusion or deprivation of a consumer's legal rights set out in such a document or notice is limited to the extent that a reasonable person would ordinarily contemplate or expect, having regard to the content of the document, the manner and form in which it was prepared and presented, and the circumstances of the transaction or agreement.

Unsolicited goods or services: relief from legal obligations.

45. (1) Subject to subsection (2), a consumer is not required to pay a supplier for unsolicited goods or services supplied to the consumer under a consumer agreement.

(2) This section shall not apply where, under a consumer agreement –

- (a) the consumer has expressly requested the supplier to supply the particular goods or services before they are supplied to the consumer;
- (b) the consumer has implicitly requested the supplier to supply the goods or services by –
 - (i) tendering payment for them; or

- (ii) conduct that could reasonably lead the supplier to believe that the consumer has requested the supplier to supply those goods or services; or
- (c) the supplier has undertaken to supply those goods or services from time to time to the consumer without further approval or specific request.

(3) Subject to subsection (5), a supplier is not entitled to demand payment or make any representation that suggests that a consumer is required to make payment in respect of any unsolicited goods or services, despite their subsequent use, receipt, misuse, loss, damage or theft.

(4) The supplier is liable to pay to the recipient of unsolicited goods, such reasonable costs as are incurred in respect of the storage of the goods.

(5) Subsections (3), (4) and 11(b) shall not apply where –

- (a) the recipient has unreasonably refused to permit the supplier or the owner of the goods to take possession of the goods; or
- (b) the goods were received in circumstances in which the recipient knew or ought reasonably to have known that the goods were not intended for him.

(6) A request for goods or services shall not be inferred solely on the basis of payment, inaction or the passing of time.

(7) Where a consumer is a party to an agreement referred to in subsection (2) (c) and, during the course of that agreement there is a material change in the goods or services, the goods or services shall be treated as unsolicited from the time of the material change unless the supplier is able to establish that the consumer consented to the material change.

(8) Where a consumer consents to a material change,

whether orally, in writing or by other affirmative conduct, a supplier may rely on the consent but has the onus of proving such consent.

(9) Where a supplier has received payment from or on behalf of a consumer in respect of unsolicited goods or services, the consumer may demand a refund of the payment within [12 months] after having made the payment.

(10) A supplier who receives a demand for a refund under subsection (9) shall refund the payment within the prescribed period of time.

(11) Where a consumer receives any unsolicited goods from a supplier, the consumer -

(a) may –

- (i) subject to paragraph (b)(ii), retain the goods without payment; or
- (ii) return the goods to the supplier at the supplier's risk and expense; and

(b) subject to subsection (5), is not liable for any -

- (i) loss or damage to those goods while they are in transit, or at any time after they are received by the consumer, whether or not they remain in the consumer's possession; or
- (ii) use or depletion of, or damage to those goods at any time after [10 business days] after receipt by the consumer, unless during that time, the supplier has notified the consumer that the goods were delivered in error and has arranged to recover them, at the supplier's risk and expense.

(12) Subject to subsection (13), “unsolicited goods or services” means goods or services that are supplied to a consumer who did not request the goods or services.

(13) Goods or services shall not be regarded as unsolicited if –

- (i) the goods or services were intended for another person and the recipient knew or ought to have known that the goods or services were intended for another person;
- (ii) there is a non-material change to periodically supplied goods or services; or
- (iii) the goods or services are supplied under a written future performance agreement that provides for the periodic supply of goods or services to the recipient without further solicitation.

Consumer’s right to select suppliers and products.

46. (1) A supplier shall not require, as a condition of offering to supply or supplying any goods or services or entering into a consumer agreement, that the consumer –

- (a) purchase any other goods or services from that supplier, whether of the same or a different type;
- (b) enter into an additional agreement or transaction with the same or another supplier;
- (c) agree to purchase any goods or services from a designated third party; or
- (d) purchase additional goods or services,

unless the supplier can show financial or other efficiency benefits to the consumer.

(2) Without limiting the generality of subsection (1), a supplier requires a consumer to purchase additional goods or

services if the supplier –

- (a) supplies the primary goods and any additional goods in a common package, and offers them for supply at a single price;
- (b) attaches to or inserts within goods, or in the packaging of any primary goods a promotional coupon, credit slip, voucher or similar device to be used as full consideration for the purchase of any additional goods or services; or
- (c) installs within or encodes upon the primary goods, or any component of them, any additional goods but does not alternatively offer them for supply separately and at individual prices.

Consumer's right to authorise services.

47. (1) This section applies to any transaction or consumer agreement under which a supplier supplies a repair or maintenance service to, or supplies or installs any replacement parts or components in, any property belonging to or in the control of the consumer, if –

- (a) the supplier has or takes possession of that property for the purpose contemplated in this subsection; or
- (b) in any other case, the consumer requests an estimate before any services are supplied.

(2) A supplier to whom this section applies is not entitled to charge a consumer for the supply of any goods or services contemplated in subsection (1) unless -

- (a) the supplier has given the consumer an estimate that satisfies the prescribed requirements, and the consumer has subsequently authorised the work;
- or

- (b) the consumer has, in writing –
 - (i) declined the offer of an estimate, and authorised the work; or
 - (ii) pre-authorised any charges up to a specified maximum, and the amount charged does not exceed that maximum.

(3) A supplier is not entitled to charge a consumer for -

- (a) an estimate required under subsection (2) (a), unless the supplier has disclosed the price for preparing that estimate, and the consumer has approved it; or
- (b) any diagnostic work, disassembly or re-assembly required in order to prepare an estimate, or for any damage to or loss of material or parts in the course of preparing an estimate, in addition to any estimate charge imposed under paragraph (a).

(4) The Minister may, by regulation, exempt from this section any transaction or consumer agreement referred to in subsection (1) that is below a prescribed threshold.

Consumer's right to choose and examine goods.

48. (1) Where any goods are displayed in, or sold from, open stock, the consumer has the right to select or reject any particular item from that stock.

(2) Where the consumer has agreed to purchase goods on the basis of a description or sample of the goods, it is an implied condition of the agreement that the goods delivered to the consumer -

- (a) correspond with the description or sample; and
- (b) are free from any defect that would not be apparent from the description or on

reasonable examination of the sample.

(3) Where the consumer has agreed to purchase or lease goods on the basis of a sample, as well as by description, it is not sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.

(4) Where the supplier delivers goods to a consumer under a consumer agreement, the supplier shall, on request, allow the consumer a reasonable opportunity to examine the goods for the purpose of ascertaining whether they are in conformity with the consumer agreement.

(5) Where goods which were not previously examined by the consumer are delivered to the consumer, the consumer is deemed not to have accepted them until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the consumer agreement.

**Consumer's
rights with
respect to
delivery of goods
or supply of
services.**

49. (1) Unless otherwise expressly provided or anticipated by reason of a course of dealing or trade practice in a consumer agreement, it is an implied condition of every transaction for the supply of goods that –

(a) the supplier is responsible to deliver the goods to the consumer –

(i) within a reasonable time;

(ii) subject to subsection (2) (a), at the supplier's place of business, if the supplier has one, and if not, the supplier's residence; and

(iii) at the cost and risk of the supplier; and

(b) the goods remain at the supplier's risk until the consumer has accepted delivery.

(2) The consumer has the right to require -

(a) delivery of any goods at the –

(i) date and time agreed; and

(ii) place of the consumer's choice, but the supplier may require the consumer to pay the costs of delivery at any location other than a location referred to in subsection (1); and

(b) performance of any service at the time agreed with the supplier.

(3) Where a consumer agreement does not provide a specific time for delivery of any goods or supply of any service, the supplier shall not require that the consumer accept delivery or performance of the services at an unreasonable time.

(4) In determining whether delivery or performance was conducted at an unreasonable time, the Tribunal or court shall bear in mind the nature of the goods or services and the common practices and standards associated with the delivery of the goods or performance of the services.

**Consumer's
acceptance of
goods or services.**

50. (1) A consumer is deemed to have accepted the supply goods or the provision of services where –

(a) the consumer expressly or implicitly communicates to the supplier that the consumer has accepted the goods or the services;

(b) the goods or services have been delivered to the consumer, and the consumer does any act in relation to them that is inconsistent with the supplier's ownership of the goods; or

(c) after the lapse of a reasonable time required for examining the goods to ascertain its conformity

with the transaction, the consumer retains the goods without intimating to the supplier that the consumer has rejected them.

(2) Where a supplier delivers to a consumer a larger quantity of goods than the consumer agreed to buy, the consumer may accept the goods, and -

- (a) pay for the agreed quantity at the agreed rate; and
- (b) treat the excess quantity as unsolicited goods in accordance with section 45.

(3) Where a supplier delivers to a consumer some of the goods that the supplier agreed to sell together with goods of a different description not contemplated in the consumer agreement, the consumer may -

- (a) accept the goods that are in accordance with the agreement and reject the remainder; or
- (b) reject the whole.

Consumer's right to cancel reservation.

51. (1) Subject to subsections (2) and (3), a consumer has the right to cancel any advance booking or reservation for a good or service to be supplied.

(2) A supplier who makes a commitment or accepts a reservation to supply goods or services on a date later in time than the date originally agreed upon between the consumer and the supplier may -

- (a) require payment of a deposit in advance, not exceeding the prescribed amount or prescribed percentage of the cost of the goods or services that have been reserved; and
- (b) impose a reasonable charge for cancellation of the order or reservation.

(3) For the purposes of this section, a cancellation charge is

unreasonable if it exceeds a fair amount in the circumstances, having regard to -

- (a) the nature of good or the service that was reserved or booked;
- (b) the length of notice of cancellation provided by the consumer; and
- (c) the reasonable potential for the supplier, acting diligently, to find an alternative consumer between the time of receiving the notice, and the time of the cancelled reservation.

(4) If a consumer is unable to carry out a reservation or advance booking by reason of the death of the consumer, the supplier -

- (a) shall not impose any cancellation fee in respect of the reservation or booking; and
- (b) shall refund to the administrator of the consumer's estate any deposit paid by the consumer in respect of the reservation or booking.

(5) Section 50 (2), read with the changes required by the context, applies in respect of a cancellation in terms of this section.

Consumer's right to rescind or cancel agreement. 52. (1) The provisions of this section are in addition to, and not in substitution for, any right to return goods and receive a refund that may otherwise exist in law between a supplier and consumer.

(2) Subject to subsection (3), a consumer may rescind a consumer agreement -

- (a) within ten business days after delivery of goods to be supplied in terms of the agreement, if the agreement arises as a result of-

(i) direct, distance or electronic marketing by the supplier and contemplates the delivery of goods to the consumer; or

(ii) any other marketing in circumstances in which the consumer is unable to choose or examine goods delivered pursuant to a contract of a type referred to in section 123;

(b) within five business days after entering into the agreement, if the agreement arises as a result of direct, distance or electronic marketing by the supplier but does not contemplate the delivery of goods to the consumer.

(3) A consumer may rescind a consumer agreement referred to in subsection (2) within six months after the agreement is made, if the supplier –

(a) was required to be licensed or registered in terms of any public regulation, and was not so licensed or registered; or

(b) contravened any provision of this Act in respect of the transaction.

(4) Subject to subsection (5), a consumer may cancel a consumer agreement at any time, without a penalty, by giving no less than one month's notice to the supplier.

(5) Subsection (4) applies to consumer agreements –

(a) for the supply of a continuous service;

(b) to purchase goods or services on a periodic and recurring basis by subscription; or

(c) to make a donation on a periodic and recurring basis.

(6) The expense and risk of return shall be borne by –

- (a) the supplier, if the goods are unacceptable; or
- (b) the consumer, in circumstances other than those specified in paragraph (a).

(7) Where a consumer exercises his right to cancel or rescind an agreement, the supplier -

- (a) is obliged to return any payment received from a consumer within ten business days after receiving notice of the rescission or cancellation of the consumer agreement; and
- (b) is not entitled to collect any payment in terms of a rescinded or cancelled agreement.

(8) This section does not apply with respect to a consumer agreement in terms of which goods have been delivered to the consumer, if –

- (a) any public regulation prohibits the return of those goods to the supplier once they have been supplied to, or at the direction of, a consumer; or
- (b) after having been supplied to, or at the direction of, the consumer, the goods have been -
 - (i) partially or entirely eaten, consumed, depleted or destroyed, unless the consumer was reasonably unable to determine that the goods were unfit for the intended purpose without partially eating, consuming, depleting or destroying them; or
 - (ii) partially or entirely disassembled, physically altered, or affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or property.

Right to

53. A consumer has a right to receive any document required

information in official language. under this Act in [the official language of the Member State] in which the good or service shall be utilized.

Right to information in plain and understandable language. 54. (1) A document that is required to be delivered to a consumer under this Act, shall be provided in –

- (a) the prescribed form or;
- (b) plain language, if no form has been prescribed for the document.

(2) For the purposes of this Act, a document is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the document is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance, and import of the document without undue effort, having regard to –

- (a) the context, comprehensiveness and consistency of the document;
- (b) the organisation, form and style of the document;
- (c) the vocabulary, usage and sentence structure of the text; and
- (d) the use of any illustrations, examples, headings, or other aids to reading and understanding.

(3) The Commission may publish guidelines for methods of assessing whether a document satisfies the requirements of subsection (1)(b).

Right of consumer's estate to choose whether to uphold agreement. 55. (1) Where a consumer enters into a consumer agreement for the supply of any goods or services, but dies before the supply of those goods or services –

- (a) the personal representative of the consumer's estate may give notice to the supplier –
 - (i) requiring delivery of the goods or supply of the

services, in accordance with the agreement; or

(ii) terminating the agreement as from the date of the death of the consumer; and

(b) any deposit paid by the consumer remains in trust for the benefit of the consumer's estate.

(2) Where, in relation to the supply of any special-order goods and pursuant to subsection (1) (a) (ii), a supplier receives a notice of termination of a consumer agreement, the supplier –

(a) shall not order, procure or make anything not ordered, procured or made prior to his receipt of the notice;

(b) shall ensure the diligent completion of anything that had been ordered, procured or begun to be made prior to his receipt of the notice;

(c) is entitled to reimbursement for any costs for such procurement or work, on the terms contemplated in the agreement; and

(d) upon acquisition or completion of the special-order goods, shall hold them in trust for the benefit of the consumer's estate, subject to further direction by the administrator of the estate.

(3) This section does not apply in respect of a consumer agreement for the supply of funeral or burial services.

PART VI. *Duties of Suppliers*

Duty to inform consumer.

56. (1) At any time before payment is made for any goods, whether sold as used or unused, a supplier shall, in addition to the requirements of any other enactment relating to packaging,

labelling or description of goods, provide to the consumer in [the official language], the information mentioned in subsection (2), concerning the goods being sold.

(2) The information referred to in subsection (1) is -

- (a) where applicable, the origin, care, terms, components, hazards, proper use, weight, size and instructions for assembly and installation of the goods; and
- (b) where chargeable, the professional fees of the supplier in respect of the goods.

(3) Where a supplier fails to comply with subsection (1) he shall, notwithstanding anything to the contrary in the warranty document, be responsible for any damage done to the goods by the consumer that may be directly attributed to the supplier's failure to comply with subsection (1).

(4) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [] dollars and in default of payment of the fine, to imprisonment for a term not exceeding [two years].

Duty to display price of goods or services.

57. (1) A supplier shall not display goods for sale, or offer to supply any prescribed services without displaying a price in relation to those goods or services, unless the display is –

- (a) designed and intended predominantly as a form of advertisement of the supplier, goods or services; and
- (b) in the case of goods, in an area within the supplier's premises to which the public does not ordinarily have access.

(2) For the purposes of this section -

- (a) a price is displayed in relation to particular goods

if it is –

- (i) appended, annexed or affixed to, written, printed, stamped or located upon, or otherwise applied to the goods or to any band, ticket, covering, label, package, reel, shelf, or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale;
 - (ii) published in relation to the goods in a catalogue available to the public if a time is specified in the catalogue as the time after which the goods may not be sold at that price, and that time has not yet passed or in any other case, the catalogue may reasonably be regarded as not out of date; or
 - (iii) in any way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the particular good or service; and
- (b) a price shall not be regarded as being displayed in relation to goods if -
- (i) the price was appended to the goods outside [name of Member State] in relation to the supply of the goods outside [name of Member State]; or
 - (ii) the display of that price is fully covered and obscured by a second displayed price.

(3) Subject to subsection (4), where a supplier displays goods for sale or offers to supply any services in relation to which more than one price is concurrently displayed, section 58 applies.

(4) Subsection (3) does not apply in respect of the price of goods or services if the price of those goods or services is determined by an enactment.

(5) Where a supplier has provided an estimate for any service, or goods and services, in accordance with section 47, the price for that service, or goods and service, shall not exceed the estimate unless -

(a) the supplier has informed the consumer of the additional estimate charges; and

(b) the consumer has authorised the work to continue.

(6) A supplier who contravenes subsection (1) or (5) commits an offence and is liable on summary conviction to a fine not exceeding [] dollars and in default of payment of the fine, to imprisonment for a term not exceeding [two years].

Dual pricing.

58. (1) Where, contrary to section 60, more than one price is displayed on goods –

(a) the customer is entitled to pay the lowest of the prices that are displayed on the goods; and

(b) a supplier shall not in the course of trade supply the goods at a price that is higher than the lowest price displayed on the goods.

(2) A supplier who contravenes subsection (1)(b) commits an offence and is liable on summary conviction to a fine not exceeding [] dollars or imprisonment for a term not exceeding [] or to both such fine and imprisonment.

(3) It is a defence to a charge brought under subsection (2) to prove that –

(a) the contravention in respect of which the charge was brought instituted was due to –

(i) the act or default of another person (other than a

director, employee or agent of the defendant);

or

(ii) an accident or to some other cause beyond the defendant's control; and

(b) the defendant had taken all reasonable precautions and exercised due diligence to avoid the contravention.

**Duty to provide
supplier
identification.**

59. (1) A person shall not carry on a business, advertise, promote, offer to supply or supply any goods or services, or enter into a transaction or consumer agreement with a consumer under any name except –

(a) the person's name, as –

(i) recorded in an official identity document or any other recognised identification document, in the case of an individual; or

(ii) registered pursuant to any enactment, in the case of a juristic person; or

(b) a name registered to, and for the use of, that person pursuant to any enactment.

(2) A person referred to in subsection (1) shall include the following particulars on any trade catalogue, trade circular, business letter, order for goods, sales record or statement of account issued -

(a) the name, title or description under which the business is carried on;

(b) a statement of the place at which, or from which, the business is carried on; and

(c) if the activity is carried on under a name referred to in subsection (1) (b), the name of the person to whom that name is registered.

(3) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [] dollars and in default of payment of the fine, to imprisonment for a term not exceeding [two years].

Duty to provide product labelling and trade descriptions.

60. (1) A supplier of goods shall not display, offer to supply or supply any goods, other than goods that are exempted by subsection (3), unless a trade description of those goods is -

- (a) applied to the goods, or to any covering, label or reel in or on which the goods are packaged, or attached to the goods;
- (b) displayed together with, or in proximity to, the goods in a manner that is likely to lead to the belief that the goods are designated or described by that description; or
- (c) contained in any sign, advertisement, invoice, wine list, business letter, business paper, or other commercial communication on the basis of which a consumer may request or order the goods.

(2) A supplier of goods shall –

- (a) not offer to supply, display, or supply any goods if the supplier knows, reasonably could determine, or has reason to suspect, that –
 - (i) a trade description applied to those goods is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
 - (ii) a trade description or trade mark applied to the goods has been altered in contravention of subsection (4); and
- (b) with respect to any goods within the supplier's

control, take reasonable steps to prevent any other person from doing anything referred to in paragraph (a).

(3) The Minister may, by regulation, –

(a) exempt particular goods or categories of goods from the application of subsection (1) if–

(i) the goods, or the category of goods, are subject to regulation under any other enactment, and the Minister is satisfied that the regulatory scheme provides for adequate disclosure of information to the consumer to achieve the purposes of this section; or

(ii) the information required under this section is self-evident given the nature of the goods, and the manner and circumstances in which they are customarily made available for supply to the public; or

(b) prescribe circumstances for displaying or selling particular goods or categories of goods, which if satisfied, would exempt those goods from the application of this section.

(4) A supplier who -

(a) knowingly applies to any goods a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description;

(b) alters, defaces, covers, removes or obscures a trade description or trade mark applied –

(i) to any goods; or

(ii) with respect to any goods within that supplier's

control, in a manner calculated to mislead consumers; or

- (c) fails to take reasonable steps to prevent any other person from doing anything referred to in paragraph (a) or (b),

commits an offence.

(5) A supplier who commits an offence against this section is liable, on summary conviction, to a fine not exceeding [] dollars and in default of payment of the fine, to imprisonment for a term not exceeding [two years].

(6) For the purposes of this section, “trade description” means –

- (a) any description, standard, statement or other direct or indirect indication, except a trade mark, as to –
 - (i) the size, number, quantity, measure, weight or gauge of any goods;
 - (ii) the name of the producer or producers of any goods;
 - (iii) the ingredients in any goods, or material of which any goods are made;
 - (iv) the place or country of origin of any goods;
 - (v) the mode of manufacturing or producing any goods; or
 - (vi) any goods being the subject of any patent, privilege or copyright; or
- (b) any figure, work or mark, other than a trade mark that, according to the custom of the trade, is commonly understood to be an indication of any matter contemplated in paragraph (a).

Duty to disclose environmental facts affecting goods.

61. (1) In addition to the requirements set out section 60, a person who packages or imports any prescribed goods for supply to consumers shall display on or in association with that packaging or those goods, a notice in the prescribed manner and form that discloses –

- (a) the presence, nature and extent of any –
 - (i) genetically modified ingredients or components of those goods; or
 - (ii) ingredients or components that have been determined to present a chemical or biological hazard to humans, relative to their concentration in those goods;
- (b) the estimated energy requirements per hour of use, if the operation of the goods requires the utilisation of energy other than muscle power;
- (c) the nature and intensity of any potentially harmful energy radiation, if the goods, or any component of the goods, emit any such radiation; and
- (d) the need for special handling, or waste disposal, of the goods, any component of them or any material in which the goods were packaged, if such special handling or waste disposal is -
 - (i) required under any enactment; or
 - (ii) advisable in the interests of personal or public health or safety.

(2) A person who, in connection with the supply of any services to a consumer, supplies to the consumer goods that are prescribed pursuant to subsection (1), shall -

- (a) inform the consumer of any relevant information before supplying those goods; and

(b) after complying with paragraph (a) but before supplying those goods, obtain the consumer's express consent to install goods that are the subject of a notice required by subsection (1).

(3) Subsection (1) does not apply to goods or services in respect of which a substantially similar label or notice has been applied or provided in compliance with any other public regulation.

(4) A supplier of goods shall –

(a) not offer to supply, display, or supply any goods if the supplier knows, could reasonably have known, or reasonably had reason to suspect, that a notice applied to those goods –

(i) is likely to mislead the consumer as to any matter implied or expressed in that notice; or

(ii) has been altered as contemplated in subsection (5); and

(b) with respect to any goods within the supplier's control, take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a).

(5) A supplier who –

(a) knowingly applies to any goods a notice that is likely to mislead the consumer as to any matter implied or expressed in that notice;

(b) alters, defaces, covers, removes or obscures a notice applied to any goods in a manner calculated to mislead consumers; or with respect to any goods within the supplier's control; or

(c) fail to take reasonable steps to prevent any other

person from doing anything contemplated in paragraph (a) or (b),

commits an offence.

(6) A supplier who commits an offence against this section is liable, on summary conviction, to a fine not exceeding [] dollars and in default of payment of the fine, to imprisonment for a term not exceeding [two years].

Duty to disclose re-conditioned goods.

62. (1) A person who offers or agrees to supply, or supplies, any goods that -

(a) have been re-conditioned, re-built or re-made; and

(b) bear the trade mark of the original manufacturer or supplier,

shall apply a conspicuous notice to those goods stating clearly that they have been reconditioned, re-built or re-made.

(2) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine not exceeding [] dollars or to imprisonment for a term not exceeding [] or to both such fine and imprisonment.

Duty to supply sales records.

63. (1) A supplier of goods or services shall provide a written durable record of each transaction to the consumer to whom the goods or services are supplied, including in that record, the following information -

(a) the supplier's name, or registered business name, [and VAT registration number, if any];

(b) the address of the premises at which or from which the goods or services were supplied;

(c) the date on which the transaction occurred;

(d) a name or description of the goods or services supplied or to be supplied;

- (e) the unit price for each of the goods or services supplied or to be supplied;
- (f) the quantity of each of the goods or services supplied or to be supplied;
- (g) the total price of the transaction, before any applicable taxes;
- (h) the amount of any applicable taxes;
- (i) the total price of the transaction, including any applicable taxes; and
- (j) such other information as may be prescribed under this or any other enactment.

(2) The Minister may, by notice, exempt categories of goods or services, or circumstances of trade, from the application of subsection (1).

(3) A supplier who contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine not exceeding [] dollars or to imprisonment for a term not exceeding [] or to both such fine and imprisonment.

Utility of sales record.

64. The sales record provided by the supplier –

- (a) shall be adequate proof of the purchase of the goods or services; and
- (b) may be used for the purposes of a refund in any of the circumstances specified in this Act.

Measurement of goods.

65. (1) A consumer is entitled to check the weight, volume or other measurement of the goods that he intends to purchase where the weight, volume or other measurement of the goods materially affects or determines the price of the goods.

(2) For the purposes of subsection (1), a supplier of any good that is sold by reference to its weight, volume or other

measurement shall, at the time of purchase, provide the consumer with appropriate measurement standards in accordance with [any applicable law in force for the time being] [the Weights and Measures Act].

(3) Subject to subsection (4), a supplier who, in selling or purporting to sell any goods by weight or other measurement or by number, delivers or causes to be delivered to the consumer, a lesser quantity than that –

(a) purported to be supplied; or

(b) corresponding with the price charged,

commits an offence and is liable on summary conviction to a fine not exceeding [] dollars.

(4) An offence is not committed under subsection (3) where the lesser quantity provided to the consumer by the supplier may reasonably be regarded as a minimal amount.

**Duty to issue
explicit
warranties.**

66. (1) A supplier shall issue explicit warranties in relation to his goods or services, as the case may be, whether –

(a) the goods are new or used; or

(b) the service offered is for the repair of any appliance, furniture, equipment or other good.

(2) Where a warranty given by a manufacturer is attached to goods sold, or provided in the course of a service, the supplier shall –

(a) be deemed to have issued to the customer, the manufacturer's warranty as an explicit warranty by the supplier; and

(b) notwithstanding any geographical limitations in the warranty, be liable to the consumer under the warranty as if the supplier were the manufacturer.

(3) Where the service provided is for the repair or

replacement of defective goods –

- (a) there is implied, a warranty that the repair or replacement shall be carried out within a reasonable time; and
- (b) implied warranties applicable to a contract for sale of goods shall apply to the repaired or replaced goods.

(4) Where a supplier is liable only for the free replacement of parts under a warranty agreement, the supplier shall not require the consumer to use the services of the supplier in effecting the repairs to the equipment as a condition for the free replacement.

(5) In the absence of explicit warranties, implied warranties shall apply to the supply and repair of all goods.

(6) In the absence of an explicit warranty and subject to the standard conditions of warranties, an implied warranty of six months on parts and labour shall attach to a transaction.

(7) A supplier who fails to comply with the terms of a warranty, whether explicit or implied, commits an offence and is liable, on summary conviction, to a fine not exceeding [] dollars.

Warranty on quality of services or goods.

67. (1) Where goods or services are supplied under a consumer agreement, there is an implied warranty by the supplier that the goods or services are of a reasonably acceptable quality.

(2) The implied conditions and warranties that apply to the sale of goods by virtue of the [Sale of Goods Act] are deemed to apply, with necessary modifications, to goods that are leased or traded or otherwise supplied under a consumer agreement.

Supplier's duty if damage results from use of

68. (1) Where a consumer presents, to a supplier, an order issued by the Tribunal declaring its finding that a complaint is valid and well founded, the supplier shall –

services or goods.

- (a) immediately undertake to pay the consumer all reasonable costs incurred or to be incurred in correcting the damage so caused; and
 - (b) complete payment of compensation in accordance with the period set out in the order.
- (2) Subsection (1) applies in any case where a supplier—
- (a) undertakes to provide a consumer with goods or a service upon payment of a fee;
 - (b) provides the declared benefit attached to the service or use of the goods; and
 - (c) inadvertently causes bodily injury or pecuniary loss to be sustained by the consumer, independent of all other causes or contributory negligence.
- (3) A supplier shall not be relieved of liability if –
- (a) the consumer fails to avail himself of some other goods or service that may be recommended by the supplier as supplementary or complementary; or
 - (b) he has provided complementary goods or services which fail to function well or cause damage or other loss.

Supply of damaged goods to consumer.

69. (1) Where –
- (a) within the warranty period, goods supplied to a consumer fail to provide the benefit and uninterrupted enjoyment for which they were intended; and
 - (b) the failure is not due to the negligence of or abuse by the consumer,

the supplier shall be responsible for the replacement or repair and return of functional goods to the consumer, at no cost to

the consumer.

(2) If the supplier repairs the goods referred to in subsection (1), he shall return the goods to the consumer within such period as the Tribunal, after consultation with the supplier, specifies.

(3) If the supplier does not return the goods to the consumer within the period specified by the Tribunal, the supplier shall provide the consumer with a temporary substitute of comparative value for the consumer's uninterrupted use and enjoyment until the replacement or repair and return of the goods.

**Return of
defective goods.**

70. (1) Where –

- (a) a consumer is encouraged to acquire goods by the supplier's declaration and description of the goods; and
- (b) the consumer subsequently discovers, within a reasonable time, that the goods are defective in a material particular from those declared or described,

the consumer may return the goods to the supplier.

(2) Subject to subsection (3), where goods are returned pursuant to subsection (1) the supplier shall, in exchange for the returned goods -

- (a) replace the goods within [five] business days of the return of the goods to the supplier; or
- (b) at the election of the consumer, immediately refund the value of the goods or such other amount as may be agreed between the consumer and supplier.

(3) A supplier is obliged to replace or make refunds on

goods returned pursuant to subsection (1) only where the goods are returned -

- (a) in the condition in which they were purchased; or
- (b) with minimal damage resulting from reasonable exposure in the normal course of use of the goods prior to discovery of the material difference between the goods received and the goods declared and described.

(4) A supplier of goods to which subsection (3) applies who fails –

- (a) to replace the goods within [five] days of the return of the goods; or
- (b) where applicable, to immediately refund the value of the goods or such other amount as may be agreed between himself and the consumer,

commits an offence and is liable, on summary conviction, to a fine not exceeding [] dollars.]

**Return of
materially
different goods.**

71. (1) Where a consumer is encouraged to acquire goods by the supplier's declaration and description of the goods, and the consumer subsequently discovers that the goods acquired are different in a material particular from that intended to be acquired, subject to subsections (2) and (3) –

- (a) the consumer may return the goods acquired to the supplier;
- (b) the supplier shall be afforded a reasonable opportunity to inspect the goods;
- (c) the supplier shall give to the consumer, in exchange for the returned goods, monetary compensation to the value of the goods or another amount agreed between the consumer and the

supplier if the defect is not fixed after a reasonable time;

(d) the supplier shall not charge the consumer a restocking fee for goods returned.

(2) Subsection (1) shall not apply unless the goods are returned to the supplier –

(a) in the condition in which they were purchased; or

(b) with minimal damage resulting from reasonable exposure in the normal course of the consumer's use of the goods before discovery of the material difference between the goods received and the goods that the consumer requested.

(3) A consumer who acquires goods that, in every way, are similar to or identical to the goods requested or described and declared by the supplier shall not be entitled to a refund if, having left the place from which the supplier sold the goods, the consumer for any reason decides that he no longer wants the goods.

Approved and non-approved services.

72. (1) A supplier shall –

(a) only provide such services as are approved by the consumer; and

(b) not require a consumer to commit to pay for services which, in addition to those contracted, may, in the opinion of the supplier, be necessary or appropriate.

(2) A consumer shall not be liable to pay for any service not approved by him.

Duties of supplier offering repair services.

73. (1) A supplier who offers repair services to a consumer shall keep a record stating –

(a) the name, address and telephone number of the

consumer;

- (b) a reasonably accurate description of the goods to be repaired, including any identification number or mark;
- (c) an estimate of the replacement value of the goods in its present state as agreed upon by the consumer and the supplier;
- (d) an estimate of the labour and other costs to be paid by the consumer in respect of the repairs to be effected; and
- (e) the date on which the goods –
 - (i) are received for repair; and
 - (ii) shall be ready for delivery.

(2) A copy of the record shall be given to the consumer before the commencement of repairs.

(3) A supplier who offers a repair service shall –

- (a) disclose to the consumer any additional related repairs that he deems necessary for the consumer to enjoy reasonably long and uninterrupted use of the repaired goods; and
- (b) obtain a written indemnity from the consumer if the consumer chooses not to require the supplier to effect the recommended repairs.

(4) A supplier who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding [] dollars.

**Advertised
delivery date.**

74. (1) Where –

- (a) a supplier has advertised a date or period for delivery of any goods, whether new, used or

repaired; and

- (b) a consumer has entered into a consumer agreement with, and given a deposit to, the supplier to deliver the goods,

the advertised date or period shall form part of the contract between the supplier and the consumer.

(2) If the goods are not delivered to the consumer by the advertised date or within the advertised period, the supplier shall, at the election of the consumer, either -

- (a) refund the deposit, plus interest for the period beginning on the date of deposit and ending on the date of its refund, at an annual rate of ten percentage points above the [Treasury Bill] rate applicable at the former date; or

- (b) deliver the goods by another date or within another period on terms to be agreed with the consumer.

(3) A supplier who has –

- (a) advertised a completion or delivery date; and

- (b) obtained from the consumer a deposit against the provision of the goods or services,

may elect to terminate the contract within seven business days after the receipt of the deposit and shall refund the full value of the deposit received.

Conditions of demanding and accepting payment.

75. (1) A person shall not demand or accept payment or other consideration for the supply of goods or services, if at the time of the demand or acceptance, that person –

- (a) does not intend to supply the goods or services;

- (b) intends to supply goods or services which are materially different from the goods or services in

respect of which the payment or other consideration is demanded or accepted; or

- (c) does not have reasonable grounds to believe that the goods or services shall be supplied within the period specified, or if no period is specified, within a reasonable time.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [] dollars or imprisonment for a term not exceeding [] years or to both such fine and imprisonment.

**General
standards for the
promotion of
goods or services.**

76. (1) A supplier shall not promote goods or services -

- (a) in a manner that is misleading, fraudulent or deceptive in any way, including in respect of—
- (i) the nature, properties, advantages or uses of the goods or services;
 - (ii) the manner in which or conditions on which those goods or services may be purchased, leased or otherwise acquired;
 - (iii) the price at which the goods may be acquired, or the existence of, or relationship of the price to, any previous price, or competitor's price for comparable or similar goods or services;
 - (iv) the sponsoring of any event; or
 - (v) any other material aspect of the goods or services;
- (b) in a manner that is reasonably likely to imply a false, misleading or deceptive representation concerning those goods or services, as contemplated in section 77;
- (c) if the supply, purchase, sale or possession of them

- is unlawful;
- (d) where the supply of the goods or services would be in a manner that is inconsistent with any law;
or
 - (e) in a manner that is degrading to the dignity of any person;
 - (f) in a manner that depicts, simulates, suggests, represents or reasonably appears to promote a use or application of those goods or services that is inconsistent with any law; or
 - (g) in a manner that implies or expresses a preference for any particular group of prospective consumers distinguishable from the general population on the basis of a prohibited ground of unfair discrimination set out in the Constitution, except to the extent that particular goods or services are reasonably intended or designed to satisfy specific needs or interests that are common to or uniquely characteristic of the particular group of prospective consumers.

(2) Subject to subsection (3), a supplier who contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine not exceeding [] dollars and in default of payment of the fine, to imprisonment for a term not exceeding [two] years.

(3) In relation to subsection (1) (c), subsection (2) shall apply only where there is no other penalty in law provided for the supply, purchase, sale or possession of the good or service in issue.

PART VII. Prohibition of Unfair Trade Practices

*and Transactions***False, misleading or deceptive representations.**

77. (1) With respect to any goods or services that are the subject of a consumer agreement or in the marketing of any such goods or services, the supplier shall not, by words or conduct –

- (a) directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a consumer;
- (b) use exaggeration, innuendo or ambiguity as to a material fact, or fail to disclose a material fact where that failure amounts to a deception;
- (c) knowingly permit a consumer to believe a false, misleading or deceptive state of facts to be true; or
- (d) fail to correct an apparent misapprehension on the part of a consumer amounting to a false, misleading or deceptive representation or permit or require any other person to do so on behalf of the supplier.

(2) Without limiting the generality of subsection (1), it is a false, misleading or deceptive representation to falsely state or imply, or allow a consumer to incorrectly believe, that –

- (a) the supplier has status, affiliation, connection, sponsorship or approval that he does not have;
- (b) goods or services –
 - (i) have ingredients, performance characteristics, accessories, uses, benefits, qualities, sponsorship or approval that they do not have;
 - (ii) are of a particular standard, quality, grade, style or model;

- (iii) are new or unused, if they are not or if they are reconditioned or reclaimed, subject to subsection (3);
- (iv) have been used for a period, to an extent, or in a manner that is materially different from the facts;
- (v) have been supplied in accordance with a previous representation;
- (vi) are available, or can be delivered or performed within a specified time;
- (c) necessary service, maintenance or repair facilities or parts are readily available for or within a reasonable period;
- (d) a service, part, replacement, maintenance or repair is needed or advisable;
- (e) a specific price advantage exists;
- (f) a charge or proposed charge is for a specific purpose;
- (g) an employee, salesperson, representative or agent has authority to negotiate the terms of, or conclude, a consumer agreement;
- (h) the transaction affects, or does not affect, any rights, remedies or obligations;
- (i) a particular solicitation of or communication with the consumer or prospective consumer is for a particular purpose; or
- (j) the consumer or prospective consumer shall derive a particular benefit if he assists the supplier in obtaining a new or potential customer.

(3) A representation contemplated in subsection (2)(b)(iii) to the effect that goods are new is not false, misleading or deceptive if those goods have been used -

(a) by or on behalf of the manufacturer, importer, distributor or supplier; and

(b) for the purposes of reasonable testing, service, preparation or delivery.

(4) At the option of the consumer, a consumer agreement concluded on the basis of a false, misleading or deceptive representation is unenforceable.

Restrictive trade practices.

78. (1) No supplier shall adopt or indulge in a restrictive trade practice –

(a) which tends to bring about the manipulation of price or conditions of delivery or affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions;

(b) in which delay beyond the period agreed to by a supplier in supply of goods or in providing the services has led or is likely to lead to rise in the price;

(c) which requires a consumer to buy, hire or avail himself of any goods or, as the case may be, services as a condition precedent to buying, hiring or availing himself of other goods or services.

(2) A supplier who adopts or indulges in a trade practice referred to in subsection (1) commits an offence and is liable, on summary conviction, to a fine not exceeding [] dollars or to imprisonment for a term not exceeding [] years.

Unfair trade

79. (1) No supplier shall adopt or indulge in any unfair trade

practice.

practice.

(2) For the purposes of this section, any trade practice which, for the purpose of promoting the sale, use or supply of goods or for the provision of any service, adopts an unfair method or an unfair or deceptive practice shall be construed as an unfair trade practice.

(3) Without limiting the generality of subsection (2), it is an unfair trade practice to make a statement, whether orally or in writing or by visible representation which —

- (a) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
- (b) falsely represents that the services are of a particular standard, quality or grade;
- (c) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
- (d) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
- (e) represents that the supplier has a sponsorship or approval or affiliation which such supplier does not have;
- (f) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
- (g) subject to subsection (4), gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

(h) makes to the public a representation in a form that purports to be—

(i) a warranty or guarantee of a product or of any goods or services; or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise shall be carried out;

(i) subject to subsection (7), materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided; or

(j) gives false or misleading facts disparaging the goods, services or trade of another supplier.

(4) Where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(5) Without limiting the generality of subsection (2) and in addition to subsection (3), it is an unfair trade practice-

(a) to permit the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are –

(i) not intended to be offered for sale or supply at the bargain price; or

(ii) for a period that is and in quantities that are

reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement;

- (b) to permit the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;
- (c) to permit the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;
- (d) subject to subsection (9), withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme;
- (e) to permit the sale or supply of goods that are intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;
- (f) to permit the hoarding or destruction of goods, or to refuse to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the price of those or

similar goods or services; or

(g) to manufacture spurious goods or offer such goods for sale or adopt deceptive practices in the provision of services.

(6) For the purposes of subsection (3), a statement that is

—

(a) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(7) For the purposes of subsection (3) (i), a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold or provided by suppliers, generally, in the relevant market, unless it is clearly specified to be the price at which the particular product has been sold or services have been provided by the person by whom or on whose behalf the representation is made.

(8) For the purpose of subsection (5) (a), “bargain price” means -

(a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or

(b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

(9) For the purposes of subsection (5) (d), the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are, within a reasonable time, published prominently in the same newspapers in which the scheme was originally advertised.

(10) A supplier who adopts or indulges in an unfair trade practice commits an offence and is liable on summary conviction to a fine not exceeding [] dollars and with imprisonment for a term not exceeding [] years.

Transactions involving unsuitable goods or services.

80. (1) A supplier shall not supply or agree to supply any particular goods or services to a consumer if the supplier knows, or reasonably ought to have known or recognised from the interaction between the supplier and the consumer that the

-

(a) goods or services are materially unsuitable for the purpose to which the consumer intends to apply them, irrespective of whether the goods or services are of good quality or are reasonably fit for their customary intended purpose; and

(b) consumer is unlikely to be able to make such a determination, having regard to the nature of the goods or services, and the consumer's apparent age, education, experience and familiarity with such goods or services.

(2) A transaction involving unsuitable goods or services is unenforceable against a consumer.

Unfair or unjust transactions.

81. (1) A supplier shall not -

- (a) offer to supply, supply, or enter into an agreement to supply, any goods or services at a price or on terms that are unfair or unjust; or
- (b) market any goods or services, or negotiate, enter into or administer an agreement for the supply of any goods or services, in a manner that is unfair or unjust, having regard to –
 - (i) the fair value of the goods or services;
 - (ii) the circumstances of the agreement;
 - (iii) the nature of the parties to that agreement;
 - (iv) the relationship of the parties to each other and the relative capacity, education, experience and bargaining position of the parties.

(2) Without limiting the generality of subsection (1), a transaction is unfair or unjust if -

- (a) the transaction is excessively one-sided in favour of any person other than the consumer or other person to whom goods or services are to be supplied;
- (b) the terms of the transaction are so adverse to the consumer as to be inequitable; or
- (c) the consumer relied upon a false, misleading or deceptive representation, or statement of opinion, provided by or on behalf of the supplier, to the detriment of the consumer.

(3) A transaction involving an unfair or unjust trade practice is unenforceable against a consumer.

Unconscionable

82. (1) It is an unfair practice to engage in unconscionable

conduct.

conduct.

(2) For the purposes of this part, “unconscionable conduct” means the use of physical force, coercion, undue influence, pressure or harassment, unfair tactics or any other similar conduct, in connection with the -

- (a) marketing of any goods or services;
- (b) supply of goods or services to a consumer;
- (c) negotiation, conclusion, execution or enforcement of an agreement to supply any goods or services to a consumer;
- (d) demand for, or collection of, payment for goods or services by a consumer; or
- (e) recovery of goods from a consumer.

(3) In addition to any conduct referred to in subsection (2), it is unconscionable for a supplier to take advantage of the fact that a potential consumer was substantially unable to protect his own interests because of disability, illiteracy, ignorance, inability to understand the language of an agreement, or any other similar factor.

(4) Without limiting the generality of what may be taken into account in determining whether conduct on the part of or a representation by a person is unconscionable, it may be taken into account that the person or the person’s employer or principal knows or ought to have known that -

- (a) the consumer is not reasonably able to protect his interests due to disability, ignorance, illiteracy, inability to understand the language of an agreement or similar factors;
- (b) the price grossly exceeds the price at which similar goods or services are readily available to

like consumers;

- (c) the consumer is unable to receive a substantial benefit from the subject matter of the representation;
- (d) there is no reasonable probability of payment of the obligation in full by the consumer;
- (e) the terms of the consumer transaction are so adverse to the consumer as to be inequitable;
- (f) a statement of opinion is misleading and the consumer is likely to rely on it to his detriment; or
- (g) consumer is being subjected to undue pressure to enter into a consumer transaction.

(5) A consumer agreement concluded on the basis of unconscionable conduct is unenforceable, at the option of the consumer.

Renegotiation of terms.

83. (1) It is an unfair practice for a person to use his custody or control of a consumer's goods to pressure the consumer into renegotiating the terms of a consumer agreement.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [] dollars or imprisonment for a term not exceeding [] or to both such fine and imprisonment.

Bait advertising.

84. (1) A person shall not, in the course of trade or commerce, advertise for supply, at a specified price, goods or services which that person –

- (a) does not intend to offer for supply or provide in reasonable quantities; or
- (b) has no reasonable grounds for believing he can supply, immediately, or within a reasonable time,

at the specified price for a period that is, or in quantities that

are unreasonable, having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [] dollars or imprisonment for a term not exceeding [] or to both such fine and imprisonment.

**To print etc. in
good faith.**

85. It is not an unfair practice for a person, on behalf of another, to print, publish, distribute, broadcast or telecast a representation which that person accepted in good faith for printing, publishing, distributing, broadcasting or telecasting in the ordinary course of business, although the content of such activity constitutes an unfair practice.

Referral selling.

86. (1) A supplier shall not induce a consumer to acquire goods or services under a consumer agreement by representing that the consumer shall, after the agreement is made, receive a rebate, commission or other benefit in return for giving the first-mentioned person the names of prospective consumers or otherwise assisting that person to supply goods or services to other consumers, if receipt of the rebate, commission or other benefit is contingent on an event occurring after the agreement is made.

(2) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine not exceeding [] dollars or imprisonment for a term not exceeding [] or to both such fine and imprisonment.

**Pyramid
selling.**

87. (1) A person shall not promote, operate or participate in a pyramid selling scheme.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [] dollars or imprisonment for a term not

exceeding [] or to both such fine and imprisonment.

(3) This section is subject to existing financial services legislation dealing with the pyramid selling of services which shall take precedence.

(4) The Commission shall cooperate and share information with the [Financial Services Commission] in the identification and investigation of pyramid selling activity.

Rescission.

88. (1) Where a consumer has entered into a consumer agreement in the course of which transaction the supplier has engaged in an unfair practice the consumer –

- (a) may rescind the consumer agreement; and
- (b) is entitled to any remedy that is available in law.

(2) Where it is not possible rescind the agreement under subsection (1) -

- (a) due to the return or restitution of the goods or services is no longer possible; or
- (b) because a rescission would deprive a third party of a right in the subject-matter of the agreement which the third party acquired in good faith and for value,

the consumer is entitled to recover the amount by which the consumer's payment under the agreement exceeds the reasonable value of the goods or services or to recover damages, or both.

Defences to charges under this Part.

89. (1) Subject to subsection (2), it is a defence to a charge under this Part, if the defendant proves –

- (a) that the contravention in respect of which the proceedings were instituted was due to–
 - (i) a mistake of fact;

- (ii) reliance on information supplied by another person;
 - (iii) the act or default of another person;
 - (iv) an accident; or
 - (v) some other cause beyond his control; and
- (b) that he took reasonable precautions and exercised due diligence to avoid the contravention.

(2) If a defence provided by subsection (1) involves an allegation that a contravention was due to –

- (a) a reliance on information supplied by another person; or
- (b) the act or default of another person,

the defendant is not, without leave of the court or the Tribunal, entitled to rely on that defence unless he has, not later than seven business days before the day on which the hearing of the proceedings commenced, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in his possession.

(3) In relation to a contravention of a provision of this part by the publication of an advertisement, it is a defence to a charge if the defendant proves that he –

- (a) is a person whose business it is to publish or arrange for the publication of advertisements, and that he received the advertisement for publication of advertisements;
- (b) received the advertisement for publication in the ordinary course of business; and
- (c) did not know and had no reason to suspect that its

publication would amount to a contravention of a provision of this part.

Court may order payment of damages or costs.

90. Upon the conviction of a supplier of an offence under this part, the court or Tribunal may order the supplier to –

- (a) make to the consumer, restitution of any deposit made by the consumer;
- (b) pay to the consumer, by way of damages, a sum representing the costs reasonably incurred by that consumer as a result of the offence; and
- (c) pay to the court or Tribunal such sum as represents the reasonable costs incurred in relation to the prosecution of the offence.

PART VIII. *Unfair Terms*

Unfair terms.

91. (1) A term in a consumer agreement is unfair if, to the detriment of the consumer, it causes an imbalance in the rights of the supplier and the consumer.

(2) In determining whether a term is unfair, the Tribunal or court shall have regard to all the circumstances of the case and in particular to the following -

- (a) the bargaining strengths of the parties to the agreement relative to each other, taking into account -
 - (i) the availability of equivalent goods or services; and
 - (ii) suitable alternative sources of supply;

- (b) whether the consumer received an inducement to agree to the term, or, in agreeing to the term, had an opportunity of acquiring the goods or services or equivalent goods or services, from any source of supply under a contract that did not include that term;
- (c) whether the consumer knew or ought reasonably to have known of the existence and extent of the term, having regard to any custom of trade and any previous dealings between the parties;
- (d) in the case of supply of goods, whether the goods were manufactured, processed or adapted to the special order of the consumer;
- (e) the nature of the goods or services for which the agreement was concluded;
- (f) the interests of the supplier;
- (g) the other terms of the agreement or of another agreement on which it is dependent;
- (h) the interests of the particular class of consumers who are likely to adhere to the agreement; and
- (i) the circumstances attending the conclusion of the agreement at the time of its conclusion.

(3) An unfair term in a consumer agreement is unenforceable against the consumer.

(4) Where it is asserted that a term in a consumer agreement is unfair, it is for the supplier to show that the term is not unfair.

(5) If the Tribunal or court, after having considered all the circumstances contemplated in subsection (2), is of the opinion that a term is unfair, it may –

(a) rescind or amend the agreement or a term of the agreement; or

(b) make any other order as may be necessary to prevent the effect of the agreement being unfair or unreasonable to any of the parties,

notwithstanding the principle that effect shall be given to the contractual terms agreed upon by the parties.

Written terms to be plain and intelligible.

92. (1) A supplier shall ensure that a written term in a consumer agreement is expressed in plain and intelligible language.

(2) If there is doubt about the meaning of a written term, the interpretation that is most favourable to the consumer shall prevail.

(3) In so far as a term is plain and intelligible, the assessment of its fairness shall not relate to -

(a) the definition of the main subject-matter of the agreement; or

(b) the adequacy of the price or remuneration as against the goods or services supplied in exchange.

Non-exclusion of this Part.

93. (1) A term of a consumer agreement, including a term that is incorporated in the agreement by reference to another term of the agreement, is void if it purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying -

(a) the application of any provision of this part to the agreement; or

(b) the exercise of a right conferred by this part.

(2) A term of a consumer agreement is not to be taken as purporting to exclude, restrict or modify the application of a

provision of this part unless the term does so expressly or is inconsistent with this part.

**Indemnity
subject to
reasonableness.**

94. A consumer shall not, by reference to any term of a consumer agreement, be made to indemnify another person, whether a party to the agreement or not, in respect of liability that may be incurred by the other person for negligence or breach of contract, except in so far as the term of the agreement satisfies the requirement of reasonableness.

**Loss or
damage from
defective goods or
negligence of
manufacturer.**

95. (1) In the case of goods of a type ordinarily supplied for private use or consumption, where loss or damage –

(a) arises from the goods proving defective while in consumer use; or

(b) results from the negligence of a person concerned in the manufacture or distribution of the goods,

liability for the loss or damage shall not be excluded or restricted by reference to any term or notice contained in or operating by reference to, a guarantee of the goods.

(2) For the purposes of this section –

(a) goods are to be regarded as being in consumer use when a person is using them, or is in possession of them for use, otherwise than exclusively for the purposes of a business; and

(b) anything in writing is a guarantee if it contains or purports to contain a promise or assurance (however worded or presented) that defects shall be made good by complete or partial replacement, repair, monetary compensation or otherwise.

**Effect of
obligation.**

96. Liability for breach of the obligations arising from any provision in an enactment relating to any implied condition or implied warranty in relation to goods shall not be excluded or restricted by reference to any term in a consumer agreement.

**Satisfying
reasonableness
requirement
where agreement
terminated.**

97. (1) Where, for the purpose of reliance upon it, a term of a consumer agreement has to satisfy the requirement of reasonableness, it may be found to do so and be given effect accordingly notwithstanding that the agreement has been terminated either by breach or by a party electing to treat it as repudiated.

(2) Where, on a breach, the agreement is nevertheless affirmed by a party entitled to treat it as repudiated, such affirmation does not of itself exclude the requirement of reasonableness in relation to any term of a consumer agreement.

Reasonableness.

98. (1) For the purposes of this part, a term of a consumer agreement satisfies the reasonableness requirement only if the term is a fair and reasonable one to be included in the agreement, having regard to the circumstances which were, or ought reasonably to have been known to or in the contemplation of, the parties when the contract was made.

(2) Where a person seeks to restrict liability to a specified sum of money by reference to a notice of a term of the agreement, and the question arises (under this or any other Act) as to whether the term or notice satisfies the requirement of reasonableness, then, without limiting the generality of subsection (1), regard shall be had in particular to –

(a) the resources which the person could expect to be available to him for the purpose of meeting the liability if it arises; and

(b) the extent to which it was open to that person to cover himself by insurance.

(3) The onus of proving that a contract term or notice satisfies the requirement of reasonableness lies on the person who claims that the term or notice satisfies the requirement.

PART IX. *Product Liability*

**Interpretation of
this part.**

99. (1) In this Part -

“agricultural produce” means any produce, whether of the soil or otherwise, of stock-farming or of fisheries;

“damage” means death or personal injury to any person or any loss of or damage to any property, including land;

“manufacture”, in relation to animals or agricultural produce, includes to rear or grow;

“producer” means in relation to –

(a) a product, the person who manufactured the product;

(b) a substance which has been won or abstracted, the person who won or abstracted the substance;

(c) a product which has not been won or abstracted but the initial characteristics of which are attributable to an industrial or other process having been carried out (for example, in relation to agricultural produce), the person who carried out that process; and

“product” means any goods, including animals or agricultural produce reared or grown for supply, and, subject to subsection (2), includes a product which is comprised in another product, whether by virtue of being a component part, raw material or otherwise.

(2) For the purposes of this part, a person who supplies a product in which other products are comprised, whether by virtue of being component parts, raw materials or otherwise,

shall not be treated by reason only of his supply of that product as supplying any of the other products so comprised.

Liability for defects.

100. (1) Subject to this part, where damage is caused wholly or partly by a defect in a product -

(a) the following persons are liable for the damage –

(i) the producer of the product;

(ii) a person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product; and

(iii) a person who has imported the product into [name of country] in the course of business, to supply it to another person.

(b) the person who supplied the product, whether to the person who suffered the damage, to the producer of a product in which the product in question is comprised or to any other person, is liable for the damage if -

(i) the person who suffered the damage requests the supplier to identify one or more of the persons, whether still in existence or not, to whom paragraph (a) applies in relation to the product;

(ii) the request referred to in subparagraph (i) is made within a reasonable time after the damage occurs; and

(iii) the supplier fails, within a reasonable time after receiving the request, either to comply with the request or to identify the person who supplied the product to him.

(2) Where two or more persons are liable by virtue of this part for the same damage, their liability is joint and several.

(3) This section is without prejudice to any liability arising otherwise than by virtue of this part.

**Defect
inferred.**

101. (1) For the purposes of this part, a product is deemed to be defective if the safety of the product is not such as persons are generally entitled to expect.

(2) For the purposes of subsection (1), “safety” in relation to a product, includes safety -

- (a) with respect to products comprised in that product; and
- (b) in the context of the risk of damage to property; and
- (c) in the context of the risk of death or personal injury.

(3) In determining, for the purposes of subsection (1), what persons generally are entitled to expect in relation to a product all circumstances shall be taken into account, including -

- (a) the manner in which and the purposes for which the product has been marketed, its assembly, the use of any mark in relation to the product and any instructions, for, or warnings with respect to, doing or refraining from doing anything with or in relation to the product;
- (b) what might reasonably be expected to be done with or in relation to the product; and
- (c) the time at which the product was supplied by its producer to another.

(4) Notwithstanding subsections (1) to (3), a defect shall

not be inferred solely from the fact that the safety of a product which is supplied after the product in question is greater than the safety of the product in question.

**Damage giving
rise to
liability.**

102. (1) A person is not liable under section 100 for any damage to any property which, at the time of the damage, is not -

- (a) of a description of property ordinarily intended for private use, occupation or consumption; and
- (b) intended by the person suffering the damage mainly for his own private use, occupation or consumption.

(2) For the purposes of this part, in determining –

- (a) who has suffered damage to property; and
- (b) when the damage occurred,

the damage shall be regarded as having occurred at the earliest time at which a person with an interest in the property had knowledge of the material facts about the damage.

(3) For the purposes of subsection (2) –

- (a) the material facts about any damage to property are such facts about the damage as would lead a reasonable person with an interest in the property to consider the damage sufficiently serious to justify instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment;
- (b) a person's knowledge includes knowledge which he might reasonably have been expected to acquire -
 - (i) from facts observable or ascertainable by him; or
 - (ii) from facts ascertainable by him with the help of

appropriate expert advice which it is reasonable for him to seek.

(4) A person shall not be taken, by virtue of subsection (3), to have knowledge of a fact ascertainable by him only with the help of expert advice, unless he has failed to take all reasonable steps to obtain and, where appropriate, to act on that advice.

Prohibition on exclusions from liability.

103. The liability of a person under this part for damage caused wholly or partly by a defect in a product shall not be limited or excluded by any contract term, notice or other provision.

Defences in civil proceedings.

104. In any proceedings instituted under this part in respect of a defect in a product, it is a defence to a charge under this part to prove that -

- (a) the defect is attributable to compliance with a requirement imposed by or under any enactment;
- (b) the product was not at any time supplied by the defendant;
- (c) the following conditions are satisfied -
 - (i) that the only supply of the product to another by the supplier was otherwise than in the course of a business of the supplier;
 - (ii) that section 100 (1) (a) does not apply to the supplier, or applies to him by virtue only of things done otherwise than with a view to profit;
- (d) the defect did not exist in the product at the relevant time;
- (e) the state of scientific and technical knowledge at the relevant time was not such that a producer of

products of the same description as the product in question might be reasonably be expected to have discovered the defect if it has existed in his products while they were under his control; or

(f) the defect -

(i) constituted a defect in a product, in this paragraph referred to as “the subsequent product”, in which the product in question has been comprised; and

(ii) was wholly attributable to the design of the subsequent product or to compliance by the producer of the product in question with instructions given by the producer of the subsequent product.

**Application to
[Crown] [State].**

105. The [Crown] [State] shall not, as regards the [Crown’s] [State’s] liability by virtue of this Part, be bound by this Part further than the [Crown] [State] is made liable in tort or in reparation under the [Crown Proceedings Act or State Liability Act.]

PART X. *Consumer Safety*

**General safety
requirements.**

106. (1) A person shall not -

- (a) supply any goods which fail to meet general safety requirements;
- (b) offer or agree to supply goods which fail to meet general safety requirements; or
- (c) expose or possess goods which fail to meet general safety requirements for supply.

(2) For the purposes of this section, goods fail to meet

general safety requirements if they are not safe, having regard to all the circumstances, including -

- (a) the manner in which, and purposes for which, the goods are being or would be marketed;
- (b) the packaging and presentation of the goods;
- (c) the use of any mark in relation to the goods;
- (d) any instructions or warnings which are given or would be given with respect to the keeping, use or consumption of the goods;
- (e) any applicable safety standards; and
- (f) the existence of any means by which it would have been reasonable for the goods to have been made safer.

(3) For the purposes of this section, goods shall not be regarded as failing to meet general safety requirements in respect of -

- (a) anything which is shown to be attributable to compliance with any requirement imposed by or under any enactment; or
- (b) any failure to do more, in relation to any matter, than is required by –
 - (i) any safety regulations imposing requirements with respect to that matter;
 - (ii) any standards of safety prescribed for the purposes of this section and imposing requirements with respect to that matter; or
 - (iii) any provision of any enactment imposing safety requirements with respect to that matter as are designated for the purposes of this subsection by any such enactment.

(4) It is a defence to a charge brought under this section in respect of any goods, for a defendant to prove that -

- (a) he reasonably believed that the goods would not be used or consumed in [name of Member State];
- (b) he supplied the goods, offered or agreed to supply them or, as the case may be, exposed or possessed them for supply in the course of carrying on a retail business neither knowing nor having reasonable grounds for knowing that the goods failed to comply with general safety requirements; or
- (c) the terms on which he supplied the goods or agreed or offered to supply them or, in the case of goods which he exposed or possessed for supply, the terms on which he intended to supply them provided for or contemplated the acquisition of an interest in the goods by the persons supplied or to be supplied.

(5) For the purposes of subsection (4) (b), goods are supplied in the course of carrying on a retail business if -

- (a) whether or not they are themselves acquired for a person's private use or consumption, they are supplied in the course of carrying on a business of making a supply of consumer goods available to persons who generally acquire them for private use or consumption; and
- (b) the descriptions of goods the supply of which is made available in the course of that business do not, to a significant extent, include manufactured or imported goods which have not previously been supplied in [name of Member State].

(6) A person who contravenes this section commits an offence and is liable, on summary conviction, to a fine not exceeding [] dollars and in default of the payment of the fine, to imprisonment for a term not exceeding [].

**Information
regarding goods
with inherent
risks.**

107. (1) The supplier shall provide consumers with the relevant information -

(a) to assess the risks in goods where such risks are inherent or not immediately obvious without adequate warning; and

(b) to take precautions against the categories of risks referred to in paragraph (a).

(2) The supplier shall adopt measures –

(a) to enable the consumer to be informed of the risks which the goods may pose; and

(b) to warn consumers about the risks so that customers may take appropriate action to avoid inherent risks.

(3) Subject to subsection (4), the measures referred to in subsection (2) include an indication, by means of the product or its packaging, of-

(a) the name and address of the producer; and

(b) the product reference or, where applicable, the batch of products to which the goods belong.

(4) The measures specified in subsection (3) shall not apply where it is not reasonable for such measures to apply.

(5) The supplier shall, within the limits of his activities, monitor the safety of such goods.

**Agreement to
exchange**

108. (1) Where [name of Member State] enters into an agreement to exchange information by way of a rapid alert

information.

system regarding dangerous non-food goods in the CARICOM region, the Minister may by order published in the *Gazette* give legal effect to the agreement.

(2) An order made under this section may contain such supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving legal effect to an agreement referred to in this section.

(3) If an agreement referred to subsection (1) is amended, the Minister may amend an order published under subsection (1) accordingly.

(4) Every order made under this section shall be subject to affirmative resolution.

Safety regulations.

109. (1) The Minister may, after consulting the [Bureau of Standards or any other regulatory agency], make safety regulations for the purposes of ensuring that -

- (a) goods to which this section applies are safe;
- (b) goods to which this section applies which are unsafe, or would be unsafe in the hands of persons of a particular description, are not made available to persons generally or, as the case may be, to persons of that particular description; and
- (c) appropriate information is, and inappropriate information is not, provided in relation to goods to which this section applies.

(2) Without prejudice to the generality of subsection (1), safety regulations may contain provisions -

- (a) with respect to the performance, composition or contents, design, construction, finish or packaging of goods to which this section applies, and with respect to other matters relating to such goods;

- (b) with respect to the giving, refusal, alteration or cancellation of approvals of such goods, of descriptions of such goods or of standards for such goods;
- (c) with respect to the conditions that may be attached to any approval given under the regulations;
- (d) prescribing the fees to be paid on the giving or alteration of any approval under the regulations and on the making of an application for such an approval or alteration;
- (e) with respect to appeals against refusals, alterations and cancellations of approval given under the regulations and against the conditions contained in such approvals;
- (f) for requiring goods to which this section applies to be approved under the regulations or to conform to the requirements of the regulations or to descriptions or standards specified in or approved by or under the regulations;
- (g) with respect to the testing or inspection of goods to which this section applies, including provision for determining the standards to be applied in carrying out any test or inspection;
- (h) with respect to the ways of dealing with goods of which some or all do not satisfy a test required by or under the regulations or a standard connected with a procedure so required;
- (i) requiring a mark, warning or instruction or any other information relating to goods to be put on or to accompany the goods or to be used or provided in some other manner in relation to the goods, and

for ensuring that inappropriate information is not given in relation to goods either by means of misleading marks or otherwise;

- (j) prohibiting persons from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply, goods to which this section applies and component parts and raw materials for such goods;
- (k) requiring information to be given to any such person as may be determined by or under the regulations for the purpose of enabling that person to exercise any function conferred on him by the regulations.

(3) In addition to the provisions set out in subsection (2) and without prejudice to the generality of subsection (1), safety regulations may –

- (a) contain different provisions for different cases;
- (b) provide for exemptions from any provisions of the regulations; or
- (c) contain such supplemental, consequential and transitional provisions as the Minister considers appropriate.

(4) This section applies to all goods other than aircraft.

Contravention of safety regulations.

110. (1) Where safety regulations prohibit a person from supplying or offering or agreeing to supply any goods or from exposing or possessing any goods for supply, that person commits an offence if he contravenes the prohibition.

(2) Where safety regulations require a person who makes or processes any goods in the course of carrying on a business

-

- (a) to carry out a particular test or use a particular

procedure in connection with the making or processing of the goods with a view to ascertaining whether the goods satisfy any requirements of such regulations; or

- (b) to deal or not to deal in a particular way with a quantity of the goods of which the whole or part does not satisfy such a test or does not satisfy standards connected with such a procedure,

that person commits an offence if he does not comply with the requirement.

(3) A person who contravenes a provision of the safety regulations which prohibit or require the giving, by means of a mark or otherwise, of information of a particular kind in relation to goods, commits an offence.

(4) Where safety regulations require any person to give information to another for the purpose of enabling that other to exercise any function, that person commits an offence if -

- (a) he fails without reasonable cause to comply with the requirement; or
- (b) in giving the information which is required of him he makes a statement, whether recklessly or otherwise, which he knows is false in a material particular.

(5) A person who commits an offence under this section is liable, on summary conviction, to a fine not exceeding [] dollars and in default of the payment of the fine, to imprisonment for [].

PART XI. *Recall of Goods*

**Compulsory
recall of goods.**

111. (1) Subject to sections 114 and 115, where goods are supplied on or after the commencement date of this Act and it appears to the Minister that the goods are of a kind which may cause injury, loss or damage to any person and that the supplier has not taken satisfactory action to prevent the goods causing injury, loss or damage to any person, the Minister may, by notice in writing published in the *Gazette* and at least [two] newspapers in general circulation in [name of Member State], require the supplier to do one or more of the following

—

- (a) take action within the period specified in the notice to recall the goods;
- (b) disclose to the public, or to a class of persons specified in the notice, in the manner and within the period specified in the notice, one or more of the following -
 - (i) the nature of a defect in or a dangerous characteristic of the goods specified in the notice;
 - (ii) the circumstances, being circumstances specified in the notice, in which the use of the goods is dangerous;
 - (iii) the availability of a refund to a person to whom the goods were supplied, whether by the supplier or by another person, of the price of the goods, within the period specified in the notice.

(2) The Minister may, by notice in writing published in the *Gazette* and in at least two newspapers of general circulation in

[name of Member States], give directions as to the manner in which the supplier is to conduct a recall of goods referred to in subsection (1).

(3) Where the supplier under subsection (1) undertakes to—

(a) repair the goods, the supplier shall cause the goods to be repaired so that any defect in the goods specified in the notice under subsection (1) is remedied;

(b) replace the goods, the supplier shall replace the goods with like goods which, if a defect in or a dangerous characteristic of the first-mentioned goods was specified in the notice under subsection (1), do not have that defect or characteristic; or

(c) repair or replace the goods, the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the supplier.

(4) Where goods are recalled pursuant to a requirement made by the Minister under subsection (1), a supplier or a person who has supplied any of the recalled goods shall, as soon as practicable after the supply of those goods, give notice in writing to the person to whom the goods were supplied –

(a) stating that the goods are subject to recall; and

(b) specifying the nature of any defect or dangerous characteristic that the goods contain.

(5) Where a person is required, under subsection (4), to give notice in writing to another person, the first-mentioned person shall, within 10 days after giving the notice, provide the Minister with a copy of the notice.

(6) A person who contravenes subsection (5) commits an offence and is liable on summary conviction to a fine not exceeding [] dollars or imprisonment for a term not exceeding

[].

Compliance with goods recall notice.

112. (1) Where a notice under section 111 (1) is in force in relation to a supplier, the supplier -

(a) shall comply with the requirements of the notice; and

(b) shall not -

(i) in trade or commerce, where the notice specifies a defect in or a dangerous characteristics of the goods, supply goods of the kind to which the notice relates which have that defect or characteristic; or

(ii) in any other case, supply goods of the kind to which the notice relates.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [] dollars or imprisonment for a term not exceeding [].

Loss or damage caused by contravention of goods recall notice.

113. Where a person (A) fails to comply with a notice under section 111 and another person (B) suffers injury, loss or damage by reason of a defect in or a dangerous characteristic of the goods or by reason of not having particular information as to a characteristic of the goods, person (B) shall be deemed, for the purposes of this Act, to have suffered the injury, loss or damage by the failure of person (A) to comply with the notice.

Conference to be held in certain cases.

114. (1) Subject to section 115 and subsection (2), where the Minister proposes to publish a notice under section 99 (1) the Minister shall, by notice in writing published in the *Gazette* and at least [two] newspapers in general circulation in [name of Member State], invite any person, who supplied or proposes to supply goods of the kind referred to in the draft notice to notify the Minister whether that person wishes the Minister to

hold a conference in relation to the proposed notice.

(2) A notice published under subsection (1) shall set out a draft of the notice the Minister proposes to publish under section 111 (1) and a summary of the reasons for the proposed notice.

(3) Where the Minister is not requested in accordance with subsection (1) to hold a conference, the Minister shall proceed to take such action under section 111 as he thinks fit.

(4) Where the Minister is required pursuant to subsection (1) to hold a conference, the Minister shall hold the conference within 14 days of receipt of the notification under subsection (1), and shall give, to each person concerned, notice of the day, time and place for the conference.

(5) At a conference held pursuant to subsection (1) –

- (a) the Minister, or a person nominated in writing by the Minister, is entitled to be present;
- (b) each supplier who is notified by the Minister in accordance with subsection (4) is entitled to be present or to be represented;
- (c) any other person whose presence at the conference is considered by the Minister to be appropriate is entitled to be present or to be represented; and
- (d) the Minister shall determine the procedure to be followed.

(6) The Minister shall cause a record of proceedings of a conference held under this section to be kept.

(7) The Minister shall, as far as is practicable, ensure that each person who, in accordance with subsection (5), is entitled to be present (or his representative) is given a reasonable opportunity at the conference -

- (a) to present his case; and
- (b) subject to subsection (8), to inspect any documents which the Minister proposes to consider for the purpose of making a decision after the conclusion of the conference.

(8) Notwithstanding subsection (7)(b), there is no obligation to afford an opportunity to inspect any document that contains particulars of a secret formula or process, or to make submissions in relation to those documents.

Exception in case of danger to public.

115. (1) Where it appears to the Minister that goods of a particular kind create an imminent risk of death, serious illness or serious injury, the Minister (without regard to any action of a supplier of the goods) shall, without delay, publish in the *Gazette* and in at least [two] newspapers in general circulation in [name of Member State], a notice under section 111 (1) in relation to the goods.

(2) Where the Minister publishes a notice pursuant to subsection (1) –

- (a) in a case where the notice is published before the Minister takes any action under section 114 (1) in relation to goods of a particular kind, section 114 shall not apply in relation to the action that the Minister may take under section 111 in relation to goods of that kind; or
- (b) in any other case, any action taken by the Minister under section 114 (1) in relation to goods of a particular kind ceases to have effect and if a conference had, under section 114, had been arranged or had commenced, the Minister may publish the notice under section 111 (1) without regard to the action taken under section 114.

Power to obtain information, documents and evidence.

116. (1) Where the Minister or an officer authorised by the Minister for the purposes of this section (in this section referred to as an “authorised officer”) has reason to believe that a person who, in trade or commerce, supplies consumer goods of a particular kind which may cause injury to any person is capable of furnishing information, producing documents or giving evidence relating to goods of that kind, the Minister or the authorised officer may, by notice in writing served on that person, require him -

- (a) to furnish to the Minister or to an authorised officer, within such reasonable time as is specified in the notice, any such information;
- (b) to produce to the Minister or to the authorised officer, in accordance with such reasonable requirements as are specified in the notice, any such documents; or
- (c) in person or by his representative to appear before the Minister or an authorised officer at such reasonable time and place as specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

(2) Subject to subsection (3), where an authorised officer has reason to believe that goods may cause injury to a consumer, he may, for the purposes of ascertaining whether goods of that kind may cause injury to any consumer, enter any premises in or from which he has reason to believe that a person supplies goods of that kind in trade or commerce and -

- (a) inspect goods of that kind;
- (b) take samples of goods of that kind;
- (c) inspect any documents relating to goods of that kind and make copies of, or take extracts from,

those documents; or

- (d) inspect equipment used in the manufacturing, processing or storage of goods of that kind.

(3) The powers of an authorised officer under subsection (2) shall not be exercised except -

- (a) pursuant to a warrant issued under section 117; or
- (b) in circumstances where the exercise of those powers is required without delay in order to protect life or public safety.

(4) An authorised officer may apply to a magistrate for the issue of a warrant to exercise the powers of an authorised officer under subsection (2).

**Power of
magistrate to
issue warrant.**

117. (1) Where an application is made to a magistrate under section 116 (4), the magistrate may issue a warrant authorising the authorised officer named in the warrant, with such assistance as the officer thinks necessary, and if necessary by force, to –

- (a) enter the premises specified in the warrant; and
- (b) exercise the powers of an authorised officer under subsection 116 (1) in relation to those premises.

(2) A magistrate shall not issue a warrant under subsection (1) unless -

- (a) an affidavit has been furnished to the magistrate setting out the grounds on which the issue of the warrant is being sought;
- (b) the applicant or some other person has given to the magistrate such further information as the magistrate may require concerning the grounds on which the issue of the warrant is being sought; and
- (c) the magistrate is satisfied that there are reasonable

grounds for issuing the warrant.

(3) A warrant issued under subsection (1) shall -

- (a) specify the purpose for which the warrant is issued;
- (b) state whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
- (c) include a description of the kind of goods authorised to be inspected or sampled; and
- (d) specify a day, not being later than [seven] business days after the day on which the warrant is issued, at the end of which the warrant ceases to have effect.

(4) An authorised officer or a person assisting such officer shall, before entering the premises under a warrant under subsection (1) -

- (a) announce that he is authorised to enter the premises; and
- (b) afford a reasonable opportunity to be allowed entry to the premises.

(5) An authorised officer or a person assisting such officer is not required to comply with subsection (4) if he believes, on reasonable grounds, that immediate entry to the premises is required to ensure -

- (a) the safety of any person, including the authorised officer or the person assisting the authorised officer; or
- (b) that the effective execution of the warrant is not frustrated.

(6) Where an authorised officer takes samples under

section 116 (2) (b), he shall pay a reasonable price for the goods sampled.

(7) A person who -

(a) refuses or fails to comply with a warrant under this section to the extent that he is capable of complying with it; or

(b) in purported compliance with such a warrant furnishes information or gives evidence that, to his knowledge, is false or misleading in a material particular,

commits an offence and is liable, on summary conviction, to a fine not exceeding [] dollars.

(8) A person who refuses or fails to provide an authorised officer acting in accordance with subsection (2) with all reasonable facilities and assistance for the effective exercise of the authorised officer's powers and duties under subsection (2) commits an offence and is liable, on summary conviction, to a fine not exceeding [] dollars.

(9) Any information furnished or evidence given by a person under this section, any document produced by a person under this section, or any information, evidence or document obtained under this section, is not admissible in evidence against that person -

(a) in any proceedings instituted by him; or

(b) in any other proceedings, other than proceedings against him for a contravention of a provision of this section.

Voluntary recall. 118. (1) Where a supplier voluntarily takes action to recall goods because the goods may cause injury, loss or damage to any person, he shall, within two days after taking that action, give notice in writing to the Minister -

- (a) stating that the goods are subject to recall; and
- (b) setting out the nature of the defect in or dangerous characteristic of the goods.

(2) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine not exceeding [] dollars.

Suppliers to be given notice in certain cases.

119. Where the Minister publishes a notice pursuant to section 114 (1) or section 115 (1), he shall, within two days after the publication of that notice, or, if it is not practicable to do so within that period, as soon as practicable after the end of that period, cause a copy of the notice to be given to each person who, to the knowledge of the Minister, supplies goods of the kind to which the notice relates.

Certain actions not to affect insurance contracts.

120. The liability of an insurer under a contract of insurance with a supplier, being a contract relating to -

- (a) the recall of goods supplied or proposed to be supplied by that supplier; or
- (b) that supplier's liability with respect to possible defects in goods supplied or proposed to be supplied by that supplier,

shall not be affected by reason only that the supplier gives to the [Commission], the Minister or to a public officer, information relating to any goods supplied or proposed to be supplied by that supplier.

PART XII. *Distance Selling*

Interpretation.

121. (1) In this part "distance contract" means any contract concerning goods or services concluded between a supplier and a consumer under an organized distance sales or service

scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded.

(2) A contract involving distance communication includes electronic mail and electronic commerce by way of letters, catalogues, by facsimile machine, telephone and television.

**Agreement
regarding
distance selling
contracts.**

122. (1) Where [Name of Member State] enters into an agreement to provide assistance regarding distance selling contracts by way of information, redress, sanctions or otherwise, the Minister may by order published in the *Gazette* give legal effect to the agreement.

(2) An order made under this section may contain such supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving legal effect to an agreement referred to in subsection (1).

(3) If [name of Member State] amends an agreement referred to in subsection (1), the Minister may amend an order published under subsection (1) accordingly.

(4) Every order made under this section shall be subject to affirmative resolution.

**Application of
part.**

123. This part does not apply to a contract –

- (a) relating to a financial service;
- (b) concluded by means of automatic vending machines or automated commercial premises;
- (c) concluded with a telecommunication operator through the use of payphones; or
- (d) concluded at auction.

**Prior information
requirements.**

124. (1) Subject to subsection (2), prior to the conclusion of any distance contract, the supplier shall provide the consumer

with the following information -

- (a) the identity of the supplier and, in the case of a consumer agreement requiring payment in advance, his address;
- (b) a description of the main characteristics of the good or service;
- (c) the price of the good or service including all applicable taxes;
- (d) delivery costs, where appropriate;
- (e) the arrangements for payment, delivery or performance;
- (f) the existence of a right of cancellation, except in certain cases where this right does not exist;
- (g) the cost of using the means of distance communication, where it is calculated other than at the basic rate such as premium phone lines;
- (h) the period for which the offer or the price remains valid; and
- (i) where appropriate, the minimum duration of the consumer agreement in the case of a consumer agreement for the supply of a good or service to be performed permanently or recurrently.

(2) The information in subsection (1) is to be provided in a clear and comprehensible manner and in good time before the conclusion of any distance contract.

(3) In a distance contract for the sale of a good, the consumer is to receive confirmation of the information in subsection (1) in a durable medium available to and accessible by him.

Authority to

125. A supplier shall provide the consumer with an express

accept or decline internet consumer agreement. authority to accept or decline an internet consumer agreement and to correct errors immediately before entering into the agreement.

Payment by card. 126. (1) A consumer may request cancellation of a payment where fraudulent use is made of his payment card.

(2) Where fraudulent use has been made of a consumer's payment card, the consumer shall be re-credited with the sums paid.

Deadline for execution of consumer's order. 127. (1) Unless the parties have agreed otherwise, the supplier shall execute a consumer's order within [thirty days] from the day following the day on which the consumer forwarded his order to the supplier.

(2) Where a supplier is unable to perform a contract because the good or service is not available, the supplier shall inform the consumer within [thirty days] and refund any sums received.

Burden of proof. 128. In the case of a dispute, the burden of proof concerning information, confirmation and time limits is on the supplier.

PART XIII. *Miscellaneous*

Void provisions of consumer agreements. 129. (1) A provision of a consumer agreement, or a condition to which an agreement is subject, is void if -

- (a) its general purpose or effect is to -
 - (i) defeat the purpose or policy of this Act;
 - (ii) mislead or deceive the consumer; or
 - (iii) subject the consumer to fraudulent conduct;
- (b) it directly or indirectly purports to -
 - (i) waive or deprive a consumer of a right set out in

- this Act;
 - (ii) avoid a supplier's obligation or duty provided for in this Act;
 - (iii) set aside or override the effect of any provision of this Act; or
 - (iv) authorise the supplier to do anything that is prohibited by this Act or to fail to do anything that is required under this Act;
- (c) it expresses an acknowledgement by the consumer that -
- (i) before the agreement was made, no representations or warranties were made in connection with the agreement by the supplier or a person on behalf of the supplier; or
 - (ii) the consumer has received any goods, or services, or document that is required by this Act to be delivered to the consumer that has not in fact been delivered or rendered to the consumer;
- (d) it expresses an agreement by the consumer to forfeit any money to the supplier if the consumer—
- (i) exercises the right of rescission under section 88;
 - (ii) fails to comply with a provision of the agreement before the consumer receives any goods or services pursuant to the agreement;
- (e) it expresses, on behalf of the consumer –
- (i) an authorisation for any person acting on behalf of the supplier to enter any premises for the purposes of taking possession of goods to

which the agreement relates;

- (ii) an undertaking to sign in advance any documentation relating to enforcement of the agreement, irrespective of whether such documentation is complete or incomplete at the time it is signed; or
 - (iii) consent to a predetermined value of costs relating to enforcement of the agreement, except to the extent that is consistent with this Act; or
- (f) it expresses an agreement by the consumer to -
- (i) deposit with the supplier, or with any other person at the direction of the supplier, an identity document, credit or debit card, bank account or automatic teller machine access card, or any similar document or device; or
 - (ii) provide a personal identification code or number to be used to access an account.

(2) A court or the Tribunal shall, in any matter before it regarding a consumer agreement that contains a provision referred to in subsection (1) –

- (a) sever the void provision from the agreement, or alter it to the extent required in order to render it lawful, if it is reasonable to do so having regard to the agreement as a whole; or
- (b) declare the entire agreement void as from the date that the agreement, or amended agreement, took effect,

and may make any further order that is just and reasonable in the circumstances with respect to the void provision or the entire agreement, as the case may be.

(3) A supplier shall not –

(a) directly or indirectly require or induce a consumer to enter into a supplementary agreement, or sign any document, that contains a provision that would be void if it were included in a primary agreement;

(b) request or demand a consumer to -

(i) give the supplier possession of an instrument referred to in subsection (1)(f)(i) other than for the purpose of identification, or to make a copy of the instrument;

(ii) reveal any personal identification code or number referred to in subsection 1(f)(ii); or

(c) direct, or knowingly permit, any other person to do anything referred to in this section on behalf or for the benefit of the supplier.

(4) A supplier who contravenes any provision of subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding [] dollars or to imprisonment for a term of [].

**Goods or services
acquired by
instalment.**

130. (1) This section applies to any case where a supplier contracts to –

(a) provide a consumer with goods or services over an extended period of time; and

(b) to receive periodic payments from the consumer for the goods or services.

(2) A supplier to whom this section applies shall –

(a) present a claim for the exact amount of, or the exact percentage of, the total value of the goods or services actually received to date by the consumer;

and

(b) upon presentation of a claim under paragraph (a), be entitled to terminate the consumer agreement if payment in full is not made -

(i) within a reasonable time after the presentation of the claim; or

(ii) by a predetermined payment date which forms part of the consumer agreement.

(3) In the event that the supplier is unable to present a claim in the manner set out in subsection (2), the supplier may

-

(a) present the consumer with an estimated claim; and

(b) if the estimated claim is reasonably accurate, request that the consumer pay the estimated amount, subject to the conditions specified in subsection (4).

(4) The conditions referred to in subsection (3) are that –

(a) the amount paid shall be credited to the amount owing on the next occasion that an accurate claim is presented; and

(b) the supplier shall, under no circumstances, be able to terminate the agreement or impose any penalty therein contained in the event of breach by the consumer, solely on the ground that the consumer has not paid the estimated amount, either in full or in part.

(5) A supplier who presents an estimated claim for goods or services shall present an accurate claim no later than [ninety calendar] days after presentation of the estimate.

(6) Subsection (5) shall apply irrespective of whether the

consumer of the goods or service does not pay the estimated amount claimed or pays it in full or in part.

Apportionment of payments where service not received.

131. (1) Where a service is provided to a consumer –

- (a) the supplier is deemed to be providing the consumer with a benefit under the relevant agreement; and
- (b) subsection (2) shall apply where a fee is collected by the supplier from the consumer for that service.

(2) A supplier shall –

- (a) be liable to make a full refund to the consumer, if for reasons not attributable to the consumer, the benefit is not received by the consumer; or
- (b) where the benefit is received only in part –
 - (i) refund a proportionate part of the fees collected; or
 - (ii) subject to subsection (3), be entitled to receive a similar proportionate part of any unpaid fees.

(3) Subsection (2) (b) (ii) shall not apply in a case where the consumer agrees to pay the supplier the prescribed fee regardless of whether the consumer receives the benefit.

(4) A supplier who offers a service to the consumer shall –

- (a) stipulate the extent of the benefit that shall be deemed to be attached to the service; and
- (b) provide the consumer with an appropriate warranty that –
 - (i) the benefit shall be enjoyed for a reasonable time, subject to the fulfilment of such conditions attached by the supplier as may be reasonable to the consumer's enjoyment of that

benefit; and

- (ii) if the benefit is not so enjoyed, the supplier shall again provide the service free of cost to the consumer.

**Supplier
purporting to
act on Bill of Sale.**

132. (1) A supplier shall not –

- (a) act on the powers contained in a Bill of Sale of moveable or personal property pledged by a consumer; and
- (b) employ any person other than an authorized person under the Bill of Sale to recover any or all of the property pledged in the Bill of Sale in the event of default in repayment of a loan.

(2) A supplier who contravenes subsection (1) commits an offence and is liable on, on summary conviction, to a fine not exceeding [] dollars and in default of payment to imprisonment for a term not exceeding [].

(3) A supplier shall not, in taking action to recover any or all of the property pledged by the consumer in the Bill of Sale in the event of default in repayment of a loan, carry out an act of seizure although the consumer's indebtedness to the supplier

-

- (a) has already been discharged; or
- (b) is currently being serviced in accordance with existing contractual provisions.

(4) A supplier who contravenes subsection (3) commits an offence and is liable, on summary conviction, to a fine not exceeding [] dollars and in default of payment to imprisonment for a term not exceeding [].

(5) The court may order a supplier convicted of an offence under subsection (3) to pay to the consumer an amount equal

to ten times the market value of the property seized plus an amount of [] dollars per day for every day that the consumer has been deprived of the use and enjoyment of the property.

(6) A person, who wrongfully seizes the property of a consumer, notwithstanding any other charge that may be brought against him, commits an offence under this Act and is liable, on summary conviction, to a fine not exceeding [] dollars and in default of payment to imprisonment for a term not exceeding [].

(7) The court may order a person convicted of an offence under subsection (6) to pay to the consumer an amount equal to ten times the market value of the property seized plus an amount of [] dollars per day for every day that the consumer has been deprived of the use and enjoyment of the property.

(8) Any person who –

(a) threatens to seize a consumer's property under the powers contained in a Bill of Sale although the consumer's indebtedness to the vendor has already been discharged; or

(b) recklessly damages the consumer's property while exercising distraint,

commits an offence and is liable, upon summary conviction, to a fine not exceeding [] dollars and in default of payment to imprisonment for a term not exceeding [].

(9) The court or Tribunal may order a supplier convicted of an offence under this section to compensate the consumer for all expenses reasonably incurred as a result of the breach and the legal action.

**Trade coupons
and similar
promotions.**

133. (1) A person shall not offer any prize with the intention of not providing the prize, or providing the prize other than as offered.

(2) A person who contravenes subsection (1) commits an offence and is liable, upon summary conviction, to a fine not exceeding [] dollars and in default of payment to imprisonment for a term not exceeding [].

(3) A document setting out an offer contemplated in subsection (1) shall fully and clearly state -

- (a) the nature of the prize being offered;
- (b) the goods or services to which the offer relates;
- (c) the steps required by a prospective consumer to accept the offer or to receive the benefit of the offer; and
- (d) any person from whom, any place where, and any date on which and time at which the prospective consumer may receive the benefit.

Promotional competitions.

134. (1) In this section –

“participant” means a person who expressly or implicitly enters into a promotional competition;

“promoter” means a person who directly or indirectly promotes, sponsors, organises or conducts a promotional competition, or for whose benefit such a competition is promoted, sponsored, organised or conducted.

(2) A person shall not directly or indirectly inform a consumer that the consumer -

- (a) has won a competition, if -
 - (i) no competition has in fact been conducted;
 - (ii) the consumer has not expressly or implicitly entered into such a competition, or has not in fact won the competition;

- (iii) the prize for that competition is subject to a previously undisclosed condition; or
 - (iv) the consumer is required to offer further consideration for the prize, after the results of the competition have been announced; or
- (b) has a right to a prize or benefit -
 - (i) that the consumer has not solicited or to which the consumer does not in fact have a right;
 - (ii) if the prize or benefit was generally available or offered to all similar prospective consumers or class of prospective consumers;
 - (iii) if, before becoming eligible to receive the prize or benefit, the consumer is required to offer further consideration for the prize or to purchase any particular goods or services.
- (3) The promoter of a promotional competition shall -
 - (a) not require any consideration to be paid by or on behalf of any participant in the promotional competition;
 - (b) file a copy of the competition rules in the prescribed manner and form with the Commission no later than the date on which consumers are first able to participate in the competition;
 - (c) make the competition rules available on request and without cost to any participant;
 - (d) not award a prize in a competition –
 - (i) subject to subsection (4), to a winner of the competition if it is absolutely unlawful to supply those goods or services to the prize winner; or

(ii) any person who is a director, member, partner, employee or agent of, or consultant to the promoter, or any other person who directly or indirectly controls, or is controlled by, the promoter, or to a supplier of goods or services in connection with that competition.

(4) Subsection (3) (d) does not preclude a person from receiving a prize merely because that person's right to possess or use the prize is or may be restricted or regulated by, or otherwise subject to, any public regulation.

(5) For greater certainty in applying subsection (3) (a), a promoter shall be regarded as having required or received consideration in respect of a promotional competition if -

(a) the participant is required to pay any consideration, directly or indirectly for the opportunity to participate in the promotional competition, for access to the competition, or for any device by which a person may participate in the competition;

(b) participation in the promotional competition requires the purchase of any goods or services, and the price charged for those goods or services is more than the price, excluding discounts, ordinarily charged for those or similar goods or services without the opportunity of taking part in a promotional competition.

(6) A person who contravenes subsection (2) or (3) commits an offence and is liable, on summary conviction, to a fine not exceeding [] and in default of payment, to imprisonment for a term not exceeding [].

(7) An offer to participate in a promotional competition

shall be in writing, and shall fully and clearly state -

- (a) the benefit or competition to which the offer relates;
- (b) the steps required by a person to accept the offer or to participate in the competition;
- (c) the basis on which the results of the competition shall be determined;
- (d) the maximum number of potential participants in the competition, and the odds of winning any particular prize in that competition;
- (e) the medium through or by which the results of the competition shall be made known; and
- (f) any person from whom, any place at which, and any date on which and time at which the successful participant may receive a prize.

(8) The requirements of subsection (7) may be satisfied either-

- (a) directly, on any medium through which a person participates in a promotional competition;
- (b) on a document accompanying any medium contemplated in paragraph (a); or
- (c) in any advertisement that -
 - (i) is published or broadcasted during the time and throughout the area in which the promotional competition is conducted; and
 - (ii) draws attention to and is clearly associated with the promotional competition.

(9) The right to participate in a promotional competition is fully vested in a person immediately upon -

- (a) complying with any conditions that are required to earn the right; and
- (b) acquiring possession or control of any medium through which a person may participate in that promotional competition.

(10) The right to any benefit or a right conferred on a person as a result of that person's successful participation in a promotional competition is fully vested immediately upon the determination of the results of the competition.

(11) A right contemplated in subsection (9) or (10) shall not be -

- (a) made subject to any further condition; or
- (b) contingent upon a person –
 - (i) paying any consideration to the promoter for the prize; or
 - (ii) satisfying any further requirements than those stipulated in terms of subsection (5).

(12) The Minister may prescribe -

- (a) a monetary threshold for the purpose of excluding competitions with low value prizes from the definition of "promotional competition";
- (b) minimum odds for prizes or categories of prizes offered in terms of any promotional competition;
- (c) minimum standards and forms for keeping records associated with promotional competitions; and
- (d) auditing and reporting requirements in respect of promotional competitions.

Over-selling and over-booking.

135. (1) A supplier shall not accept payment for any goods or services if the supplier -

- (a) has no reasonable basis to assert an intention to supply those goods or provide those services; or
- (b) intends to supply goods or services that are materially different from the goods or services in respect of which the payment or consideration was accepted.

(2) If a supplier makes a commitment or accepts a reservation to supply goods or services on a specified date or at a specified time, and on the date and at the time contemplated in the commitment or reservation, fails because of insufficient stock or capacity to supply those goods or services, or similar or comparable goods or services of the same or better quality, class or nature, the supplier shall -

- (a) refund to the consumer any amount paid in respect of that commitment or reservation, together with interest at the prescribed rate from the date on which the amount was paid until the date of reimbursement; and
- (b) compensate the consumer –
 - (i) for breach of contract in an amount equal to the full contemplated price of the goods or services that were committed or reserved; and
 - (ii) in consequential damages in an amount equal to the total of any economic loss, and loss of anticipated use or enjoyment, sustained by the consumer as a consequence of the supplier's breach of the contract.

Lay-away.

136. (1) If a supplier agrees to sell particular goods to a consumer, to accept payment for those goods in periodic instalments, and to hold those goods until the consumer has paid the full price for the goods -

(a) each amount paid by the consumer is held by the supplier in trust for the benefit of the consumer; and

(b) the particular goods remain at the risk of the supplier until the consumer takes possession of them.

(2) If a supplier is unable to deliver possession of any of the goods contemplated in subsection (1), when the consumer has paid the full price for the goods, the supplier shall, at the option of the consumer -

(a) supply the consumer with an equivalent quantity of goods that are comparable or superior in description, design and quality; or

(b) refund to the consumer –

(i) the money paid by the consumer, with interest at a legal rate, if the inability to supply the goods is due to circumstances beyond the supplier's control; or

(ii) double the amount paid by the consumer, as compensation for breach of contract.

(3) If a consumer contemplated in subsection (1) -

(a) terminates or rescinds the agreement before fully paying for the goods, the supplier may charge a cancellation penalty before refunding the amount paid by the consumer towards the full price; or

(b) fails to complete the payment for the goods within sixty business days after the anticipated date of completion, the supplier may –

(i) regard the consumer as having rescinded the agreement; and

(ii) subject to subsection (4), charge a cancellation penalty in respect of the goods before refunding the amount paid by the consumer towards the full price.

(4) A cancellation penalty under this section may not be charged unless the supplier informed the consumer of the fact and extent of the penalty before the consumer entered into the lay-away agreement.

(5) The Minister may prescribe a maximum amount for a cancellation penalty contemplated in subsection (3).

**Protection of
consumer rights.**

137. (1) Where –

(a) a consumer has exercised, asserted or sought to uphold any right set out in this Act or in an agreement with a supplier; and

(b) a supplier -

(i) discriminates directly or indirectly against that consumer, compared to the supplier's treatment of any other consumer who has not exercised, asserted or sought to uphold such a right;

(ii) penalises the consumer;

(iii) alters, or propose to alter, the terms or conditions of a transaction or agreement with the consumer, to the detriment of the consumer;
or

(iv) takes any action to accelerate, enforce, suspend or terminate an agreement with the consumer,

the supplier commits an offence and is liable, on summary conviction, to a fine not exceeding [].

(2) If a consumer agreement, or any provision of such an agreement is, in terms of this Act, declared to be unlawful, or is severed from the agreement, the supplier who is a party to that agreement shall not in response to that decision -

- (a) alter the terms or conditions of any other transaction or consumer agreement with another party to the impugned agreement, except to the extent necessary to correct a similarly unlawful provision; or
- (b) take any action to accelerate, enforce, suspend or terminate another agreement with another party to the impugned agreement.

Written consumer agreements.

138. (1) This section applies only to a continuous service agreement which is not regulated by any other enactment.

(2) A supplier shall –

- (a) deliver, without charge to the consumer, a copy of a document that records an agreement; and
- (b) transmit the agreement to the consumer in a paper form or in a printable electronic medium.

(3) The Minister may prescribe -

- (a) categories of additional agreements to which this section applies; and
- (b) any specific wording to be included in such an agreement to give full effect to the purposes of this Act.

(4) Irrespective of whether or not a particular written agreement is required in terms of this section -

- (a) a written agreement between a supplier and consumer shall comply with the right of the consumer to receive documents in [official

language of Member State] as set out in section 53 and shall satisfy the requirements set out in section 54;

- (b) a change to a document recording a written agreement, or an amended agreement, after it is signed by the consumer, if applicable, or delivered to the consumer, is void unless –
 - (i) the change reduces the consumer’s obligations or liabilities under the agreement; or
 - (ii) after the change is made, the consumer signs or initials in the margin opposite the change; and
- (c) if the parties to a written agreement agree to change its terms, the supplier shall deliver to the consumer a document that reflects their amended agreement within twenty business days after the date of the agreement to amend.

Rights reserved. 139. Nothing in this Act shall be interpreted so as to limit any right or remedy that a consumer may have in law.

No waiver of substantive and procedural rights. 140. (1) Notwithstanding any agreement or waiver to the contrary, the substantive and procedural rights granted under this Act shall apply.

(2) Without limiting the generality of subsection (1), any term or acknowledgement in a consumer agreement that requires or has the effect of requiring that disputes arising out of the consumer agreement be submitted to arbitration is invalid insofar as it purports to prevent a consumer from exercising a right given under this Act or to commence an action in court or before the Tribunal.

(3) Where a dispute over which a consumer may commence an action in the Court arises, the consumer, the supplier and any other person involved in the dispute may

agree to resolve the dispute using any procedure that is available in law.

(4) A settlement or decision that results from the procedure agreed to under subsection (3) is as binding on the parties as such a settlement or decision would be if it were reached in Court.

General penal provision.

141. Unless, otherwise provided in this Act, a person who contravenes any provision of this Act or omits or fails to comply with any Regulations made under this Act commits an offence and is liable on, summary conviction, to a fine not exceeding [] dollars or imprisonment for a term not exceeding [two years].

Regulations.

142. (1) The Minister may make regulations for the purposes of giving effect to the provisions of this Act.

(2) In particular, the Minister may make regulations to –

- (a) to regulate the distribution, purchase or sale of goods or any class or description of goods;
- (b) to provide for the recall of certain goods and services which are dangerous or hazardous to safety and the refund or remission by the vendor of the purchase price paid;
- (c) to require persons carrying on or employed in connection with any trade or business to furnish information concerning all or any of the elements of the cost or sale price of goods or any class or description of goods bought or sold in such trade or business, whether by wholesale or retail;
- (d) to require the provision and maintenance of devices which provide a prospective purchaser of goods, which are offered for sale by retail, the means to ascertain the weight or measurement of

such goods; and

- (e) prescribing the fees to be paid in respect of any matter within the jurisdiction of the Commission.

(3) Nothing in subsection (2) shall be deemed to authorize the Minister to make Regulations in relation to any goods if the exportation, distribution, purchase, sale or price thereof is or may be, regulated under or by virtue of the provisions of any other enactment.

FIRST SCHEDULE

(Section 5)

CONSTITUTION OF CONSUMER AFFAIRS COMMISSION

- Constitution.** 1. The Commission shall consist of such number of members, not being less than [seven] nor more than [fifteen] as the Minister may, from time to time, determine.
- Appointment of members.** 2. (1) Each member of the Commission shall be appointed by the Minister by instrument in writing and, subject to the provisions of this Schedule, shall hold office for a period not exceeding three years, and shall be eligible for reappointment.
- (2) The Minister shall appoint one of the members of the Commission to be the Chairperson and another to be Deputy Chairperson.
- (3) The Minister shall not appoint a person as Chairperson of the Commission, unless the Minister is satisfied that the person has knowledge of or experience in, industry, commerce, law, public administration or consumer protection.
- Acting members.** 3. (1) If a member of the Commission is absent or is unable to perform his duties, the Minister may appoint another person who possesses the expertise specified in paragraph 2 (3) to act

temporarily in the place of the member.

(2) The Minister shall affix the remuneration of the person so appointed.

(3) Any person so appointed may complete any unfinished business of the Commission in which he has participated, even if the Commissioner in whose place he is acting is now able to perform his duties.

Resignations.

4. (1) A member of the Commission, other than the Chairperson, may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the Chairperson, and from the date of the receipt by the Minister of such instrument, such member shall cease to be a member of the Commission.

(2) The Chairperson may, at any time, resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt by the Minister of such instrument.

Revocation.

5. The Minister may, at any time, revoke the appointment of any member of the Commission if the member –

(a) becomes unable to perform his functions by reason of mental or physical incapacity;

(b) becomes bankrupt;

(c) is convicted and sentenced to a term of imprisonment or to death;

(d) is convicted of any offence involving dishonesty;
or

(e) fails to carry out any of the functions conferred or imposed on him under this Act.

Publication of names of

6. The names of the members of the Commission as first constituted, and every change in the membership thereof, shall

members. be published in the *Gazette*.

Procedure for meetings. 7. (1) The Commission shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such days as the Commission may determine.

(2) The Chairperson, or in his absence the Deputy Chairperson, shall preside at meetings of the Commission, and in the absence of both the Chairperson and the Deputy Chairperson from any meeting, the members present at that meeting shall elect one of their number to preside.

(3) The quorum of the Commission shall be five, including the Chairperson or other member presiding at the meeting.

(4) The decisions of the Commission shall be by a majority of votes and, in any case in which the voting is equal, the Chairperson or other member presiding at the meeting shall have a casting vote in addition to an original vote.

(5) Minutes, in proper form, of each meeting shall be kept by the Secretary and shall be confirmed by the Chairperson or other member presiding as soon as practicable thereafter at a subsequent meeting.

(6) The acts of the Commission shall be authenticated by the signature of the Chairperson or the Secretary of the Commission.

(7) Subject to the provisions of this paragraph, the Commission shall have power to regulate its own proceedings.

(8) The validity of any proceedings of the Commission shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

Officers and employees. 8. (1) The Commission may appoint and employ at such remuneration and on such terms and conditions as it thinks fit such officers, employees and agents as it thinks necessary for

the proper performance of its functions.

(2) The [Minister] [Public Service Commission] may, subject to such conditions as [he] [they] may impose, approve of the appointment of any public officer in the service of the Government to any office with the Commission and any public officer so appointed shall, in relation to pension, gratuity or other allowance, and to other rights as a public officer, be treated as continuing in the service of the Government.

**Seal of the
Commission.**

9. (1) The seal of the Commission shall be kept in the custody of the Chairman or the Secretary and shall be affixed to instruments pursuant to a resolution of the Commission in the presence of the Chairperson, or any other member of the Commission, and the Secretary.

(2) The seal of the Commission shall be authenticated by the signatures of the Chairperson, or any other member authorized to act in that behalf, and the Secretary.

(3) All documents other than those required by law to be under seal, made by, and all decisions of the Commission may be signified under the hand of the Chairperson, or any other member authorized to act in that behalf, or the Secretary.

**Protection of
members.**

10. (1) A member of the Commission shall not be personally liable for anything done or omitted to be done by that member in good faith in the course of the operations of the Commission.

(2) Where a member of the Commission is exempt from liability by reason only of the provisions of sub-paragraph, (1) the Commission shall be liable to the extent that it would be if such member were a servant or agent of the Commission.

**Disclosure of
interest.**

11. (1) A Commissioner who has an interest in –
 (a) a supplier; or
 (b) a competitor of a supplier,

under investigation or deliberation by the Commission shall disclose to the Commission the particulars of the interest and the details of the disclosure shall be recorded in the minutes taken at the meeting at which the disclosure is made.

(2) No Commissioner shall be deemed to have an interest in a supplier by reason only of the fact that the Commissioner is a subscriber to a supplier.

(3) For the purposes of this section, “interest” includes –

- (a) personal, pecuniary or proprietary interest in a matter being considered or under investigation by the Commission;
- (b) proprietary interest in a share, stock, debenture or other security of a supplier;
- (c) beneficial interest in a contract or an agreement for the construction of works or the provision of service for a supplier; and
- (d) beneficial interest in any device, appliance, machine, article, patent or patented process, or any part thereof that is required or used by any supplier for the purpose of its equipment or service.

(4) A Commissioner who fails to comply with this paragraph commits an offence and is liable on summary conviction to a fine not exceeding [].

(5) It is a defence to a charge brought under this section to prove that the Commissioner did not know that the supplier in which he has an interest was the subject of consideration at the meeting.

Procedure after disclosure.

12. Where a Commissioner discloses an interest in a supplier in accordance with paragraph 11, the Chairman and other Commissioners shall –

- (a) determine whether the interest is significant, and whether the Commissioner is to be precluded from the investigation or deliberation;

- (b) disclose the Commissioner's interest to the public, whether or not the interest is significant;
- (c) preclude the Commissioner from participating in the investigation or deliberation where the Chairman and other Commissioners determine that the interest is significant; or
- (d) permit the Commissioner to participate in the investigation or deliberation where the Chairman and the other Commissioners determine that the interest is not significant.

Remuneration of members.

13. There shall be paid to the members of the Commission, such remuneration, if any, whether by way of honorarium, salary or fees, and such allowances as the Minister may determine.

Funds and resources of Commission.

14. The funds and resources of the Commission shall consist of –

- (a) such moneys as may from time to time be placed at its disposal by Parliament for the purposes of this Act;
- (b) all other moneys and other property which may in any manner become payable to, or vested in the Commission in respect of any matter incidental to its functions.

Expenses of Commission.

15. The expenses of the Commission, including the remuneration of the members and staff thereof, shall be defrayed out of the funds of the Commission.

Keeping of accounts and records.

16. (1) The Commission shall keep proper accounts and other records in relation to its business and shall prepare annually a statement of accounts in a form satisfactory to the Minister, being a form which shall conform with established accounting principles.

(2) The accounts of the Commission shall be audited

annually by an auditor or auditors appointed annually by the Commission and approved by the Minister.

(3) The Auditor-General shall be entitled at all reasonable times to examine the accounts and other records in relation to the business of the Commission.

**Annual reports
and estimates.**

17. (1) The Commission shall –

(a) at least [] months before the end of each financial year, submit to the Minister a report of its activities during the preceding year, including a statement of its accounts audited in accordance with the provisions of paragraph 16; and

(b) at least [] months before the end of each financial year, submit to the Minister for approval its estimates of revenue and expenditure for the following financial year.

(2) The Minister shall cause copies of reports submitted pursuant to subparagraph (1)(a) together with the annual statement of accounts and auditor's report thereon to be tabled in Parliament and to be published in the *Gazette*.

**Exemption from
income
tax.**

18. The income of the Commission shall be exempt from income tax.

SECOND SCHEDULE

(Section 20)

SUMMONS TO WITNESS

To: (name of person summoned, his calling and address, if known)

You are hereby summoned to appear before the Complaints and Investigations Division, Consumer Affairs Commission at (place) upon the day of at o'clock and to give evidence respecting (state the matter). (If the person summoned is to produce any documents, add):

You are required to bring with you (specify the papers, books, records and documents required).

Therefore, fail not at your peril.

Given under the hand of (Chief Executive Officer, Complaints and Investigations Division) this day of , 20 .

.....

Signature of Chief Executive Officer / Delegate

THIRD SCHEDULE

(Section 24)

CONSTITUTION OF CONSUMER PROTECTION TRIBUNAL

- Appointment of members.** 1. (1) The Consumer Protection Tribunal shall consist of not less than three and not more than seven members appointed by the Minister in accordance with subparagraph (2).
- (2) The Minister shall select members of the Tribunal from among persons who are suitably qualified, knowledgeable and experienced in the matters of –
- (a) consumer affairs;
 - (b) law;
 - (c) economics;
 - (d) business;
 - (e) accounting; or
 - (f) information technology.
- Chairman and deputy chairman.** 2. The Minister shall appoint a chairperson and a deputy chairperson from among the members of the Tribunal and who shall possess the qualifications to hold office as a Resident Magistrate.
- Publication of membership.** 3. The names of the members of the Tribunal as first constituted and every change in membership thereof shall be published in the *Gazette*.
- Tenure of office.** 4. (1) Each member of the Tribunal shall be –
- (a) appointed for a period not exceeding three years; and
 - (b) eligible for reappointment.
- (2) The Minister may, at any time, revoke the appointment

of the chairperson or any other member of the Tribunal.

**Temporary
appointment.**

5. (1) Where a member of the Tribunal, other than the Chairperson, is unable to conduct proceedings to completion, the Minister may appoint another member of the Commission to act temporarily for the member.

(2) Where the Chairperson is unable to conduct proceedings to completion, the Deputy Chairperson shall continue the proceedings from the stage at which it was last heard by the Chairperson.

Resignation.

6. (1) Any member of the Tribunal other than the chairperson may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the chairperson, and from the date of the receipt by the Minister of the instrument such member shall cease to be a member of the Tribunal.

(2) The chairperson may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.

Filing of vacancy.

7. If any vacancy occurs in the membership of the Tribunal such vacancy shall be filled by the appointment of another member in the manner in which the previous member was appointed and the member so appointed shall, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed.

**Constitution of
Tribunal to
perform functions.**

8. (1) Subject to subparagraphs (2) and (3), the chairperson shall preside over every sitting of the Tribunal.

(2) Where the chairperson is absent or unable to preside, the deputy chairperson shall preside.

(3) Where the chairperson and the deputy chairperson are

absent or unable to preside, the other members of the Tribunal may elect another member to act temporarily as chairperson of the sitting of the Tribunal.

(4) The decisions of the Tribunal shall be by a majority votes of the members and, in addition to an original vote, the chairperson or other person presiding shall have a casting vote in any case in which the voting is equal.

(5) For the hearing of a matter under this Act, the Tribunal may consist of one member sitting alone if the parties to the hearing agree.

Authentication of documents.

9. All documents made by, and all decisions of, the Tribunal may be signified under the hand of the chairperson or any other member of the Tribunal authorized to act in that behalf.

Procedure.

10. (1) The Tribunal shall have the power to regulate its own proceedings and shall sit at such times as may be necessary or expedient for the transaction of business and for the consideration of matters under inquiry and such sittings shall be held at such places and times and on such days as the Tribunal may determine.

(2) Proper records of all proceedings of the Tribunal shall be kept.

Remuneration of members.

11. There shall be paid to the members of the Tribunal such remuneration, whether by way of honorarium, salary or fees and such allowances as the Minister may determine.

Protection of members.

12. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Tribunal in respect of an act done *bona fide* in pursuance or execution or intended execution of the provisions of this Act.

Validity of proceedings.

13. The validity of any proceedings of the Tribunal shall not be affected by any vacancy among the members or any defect

in the appointment of a member.

**Disclosure of
interest.**

14. Any member of the Tribunal who has an interest, directly or indirectly in any matter brought before the Tribunal –

- (a) shall disclose the nature of the interest to the Tribunal; and
- (b) shall not take part in any of deliberations or decisions of the Tribunal with respect to that matter.

FOURTH SCHEDULE

(Section 25)

SUMMONS TO WITNESS

To: (name of person summoned, his calling and address, if known)

You are hereby summoned to appear before the Consumer Protection Tribunal at (place) upon the day of _____ at o'clock and to give evidence respecting (state the matter). (If the person summoned is to produce any documents, add):

You are required to bring with you (specify the papers, books, records and documents required).

Therefore, fail not at your peril.

Given under the hand of (Chairperson or delegated member of the Tribunal) this day of _____, 20 .

.....
Signature of Chairperson