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*Number 19 of 2023*

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**Agricultural and Food Supply Chain Act 2023**

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**AGRICULTURAL AND FOOD SUPPLY CHAIN ACT 2023**

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*Number 19 of 2023*

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## **AGRICULTURAL AND FOOD SUPPLY CHAIN ACT 2023**

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An Act to give further effect to Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019<sup>1</sup> on unfair trading practices in business-to-business relationships in the agricultural and food supply chain; to establish a body to be known as *An Rialálaí Agraibhia* and to define its functions (including price and market analysis and reporting, and enforcement); to prohibit unfair trading practices in business-to-business relationships in the agricultural and food supply chain; to confer on the Minister for Agriculture, Food and the Marine the power to make regulations about unfair trading practices in the agricultural and food supply sector and connected matters (including enforcement); and to provide for related matters. [11th July, 2023]

**Be it enacted by the Oireachtas as follows:**

### **PART 1**

#### **PRELIMINARY AND GENERAL**

##### **Short title**

1. This Act may be cited as the Agricultural and Food Supply Chain Act 2023.

##### **Commencement**

2. This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

##### **Definitions**

3. In this Act—  
“Act of 2014” means the Companies Act 2014;  
“agricultural and food products” has the meaning given by *section 6*;  
“agricultural and food sector” means the industrial sector consisting of businesses dealing in or relating to agricultural and food products (including primary producers);

<sup>1</sup> O.J. No. L111, 25.4.2019, p. 59

“agricultural and food supply chain” means the supply chain relating to agricultural and food products;

“agri-food unfair trading law” means provisions of or under this Act, or of European Union legislation, about business-to-business unfair trading practices in the agricultural and food sector;

“authorised officer” means a person appointed under *section 71*;

“business-to-business” means matters arising between businesses;

“buyer” means any natural or legal person (or group of persons) irrespective of their place of establishment, and any public authority in the European Union, who buys agricultural and food products;

“chairperson” has the meaning given by *section 21*;

“chief executive” means the chief executive officer of the regulator appointed under *section 33*;

“compliance notice” has the meaning given by *section 78*;

“Directive” means Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019<sup>2</sup> on unfair trading practices in business-to-business relationships in the agricultural and food supply chain;

“enforcement function” has the meaning given by *section 14(7)*;

“establishment day” means the day appointed under *section 7*;

“Minister” means the Minister for Agriculture, Food and the Marine;

“perishable” has the meaning given by *section 59(2)*;

“premises” includes land, buildings (including dwellings) and any structure (temporary or permanent) on land;

“public authority” means any national, regional or local authority (or association of those authorities) and any body governed by public law (or group of those bodies);

“record” includes all or any part of a written record or anything storing or conveying information (including data and images) by mechanical, electronic or any other means, and includes a copy of a record;

“regulator” means *An Rialálaí Agraibhia* established under *section 8*;

“sell” includes offer, expose or keep for sale, invite an offer to buy, distribute, barter or exchange (and references to sale are to be construed accordingly);

“supplier” means any agricultural producer or any natural or legal person who sells agricultural and food products irrespective of their place of establishment (including groups, organisations and representative associations of those persons);

“supply trade organisations” means organisations of producers or suppliers, and associations of those organisations;

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<sup>2</sup> O.J. No. L111. 25.4.2019, p. 59

“unfair trading practice” has the meaning given by *section 57(2)(b)*.

#### **Regulations and orders**

4. (1) Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.
- (2) Regulations and orders under this Act may—
  - (a) make provision that applies generally or only in specified cases or circumstances, and
  - (b) make different provision for different cases or circumstances.
- (3) Every order and regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House sits after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.
- (4) *Subsection (3)* does not apply to—
  - (a) an order under *section 2*,
  - (b) an order under *section 7*, or
  - (c) regulations under *section 49*.

#### **Expenses**

5. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure, National Development Plan Delivery and Reform, be paid out of money provided by the Oireachtas.

#### **Application of Act**

6. (1) The provisions of this Act apply in relation to agricultural and food products.
- (2) In this Act “agricultural and food products” means—
  - (a) products listed in Annex I to the Treaty on the Functioning of the European Union,
  - (b) other products processed for use as food using products listed in that Annex, and
  - (c) any other product (which may, in particular, include non-food items used in processing, packaging or other operations) specified by the Minister by regulations under *section 80(2)(f)*.
- (3) This section is subject to *section 56* (which limits the application of *Part 3*).

## PART 2

## THE REGULATOR

## CHAPTER 1

*Establishment***Establishment day**

7. The Minister shall by order appoint a day as the establishment day.

**Establishment**

8. There shall stand established on the establishment day a body which shall be known as *An Rialálaí Agraibhia* (in this Act referred to as the “regulator”).

**Status**

9. The regulator shall be independent in the performance of its functions.

**Corporate capacity**

10. (1) The regulator shall—
- (a) be a body corporate with perpetual succession and an official seal,
  - (b) have power to sue, and may be sued, in its corporate name, and
  - (c) have power to acquire, hold and dispose of land or an interest in land, and to acquire, hold and dispose of any other property, but the power under this paragraph may be exercised only with the consent of the Minister and the Minister for Public Expenditure, National Development Plan Delivery and Reform.
- (2) The regulator shall have a seal and may authorise any of the following to authenticate the official seal by signature:
- (a) the chairperson;
  - (b) any other member of the regulator;
  - (c) the chief executive;
  - (d) any other member of staff of the regulator.
- (3) Judicial notice shall be taken of the seal of the regulator and an instrument that purports—
- (a) to be an instrument made by the regulator, and
  - (b) to be sealed and authenticated in accordance with this section,

shall be received in evidence and deemed to be a sealed and authenticated instrument without further proof, unless the contrary is shown.

- (4) Any contract or instrument, which if entered into or executed by a person not being a body corporate would not require to be under seal, may be entered into or executed on behalf of the regulator by a person authorised (generally or specially) in that behalf by the regulator.

## CHAPTER 2

### *Functions*

#### **Fairness and transparency in supply chain**

11. (1) The regulator shall promote fairness and transparency in the agricultural and food supply chain.
- (2) In exercising its function under this section the regulator shall have regard to the circumstances and needs of the agricultural and food sector including, in particular—
- (a) farming businesses,
  - (b) fishing businesses, and
  - (c) small food businesses.

#### **Information and engagement**

12. (1) The regulator shall publish analysis of information about price and market data relating to the agricultural and food supply chain in the State.
- (2) In particular, the regulator shall—
- (a) collect, analyse and regularly publish reports on price and market data relating to the agricultural and food supply chain, and generally in relation to the agricultural and food sector in the State, and
  - (b) publish regular analysis and reports on contingency issues in regard to the agricultural and food supply chain.
- (3) In pursuance of its duties under this section the regulator may, in particular—
- (a) conduct and commission research and surveys,
  - (b) publish findings and reports,
  - (c) consider matters outside the State (including price and market data) in so far as they are or may be relevant to the situation in the State, and
  - (d) seek from businesses within the agricultural and food supply chain any data impacting upon price and margins considered necessary, including—
    - (i) prices paid and received,

- (ii) margin,
  - (iii) financial and accounting data,
  - (iv) throughput of agricultural produce,
  - (v) data in relation to policy and procedure,
  - (vi) employment status, and
  - (vii) salary.
- (4) Data referenced under *paragraph (d) of subsection (3)* may be in paper or electronic form, held by a business involved in the agricultural and food supply chain, or otherwise on their behalf.
- (5) The regulator shall comply with any request by the Minister to study or analyse, and report on, any specified matter relating to the agricultural and food supply chain.
- (6) The regulator may, of its own initiative, conduct or commission a study or analysis of any matter relating to the agricultural and food supply chain, and publish findings and recommendations.
- (7) Where the regulator believes that data relating to a business obtained under *paragraph (d) of subsection (3)* is or is likely to be of a commercially sensitive nature and is not in the public domain, the regulator shall not publish the data without the consent of the business (notwithstanding *section 51*).

#### **Compliance with unfair trading law**

- 13.** (1) The regulator shall be responsible for enhancing understanding of and compliance with agri-food unfair trading law.
- (2) In pursuance of its responsibilities under *subsection (1)* the regulator shall, in particular—
- (a) encourage fairness and transparency in the agricultural and food supply chain,
  - (b) promote fairness in trading practices through engagement and consultation with stakeholders,
  - (c) publish notices and guidelines containing practical guidance on compliance with agri-food unfair trading law and related matters,
  - (d) promote public awareness through public information campaigns about agri-food unfair trading law and related matters, and
  - (e) consult and cooperate with other authorities (whether in the State or elsewhere) with responsibility for the promotion of trading fairness and transparency (whether in relation to the agricultural and food sector or otherwise).

#### **Enforcement of unfair trading law**

- 14.** (1) The regulator shall be responsible for enforcing agri-food unfair trading law.

- (2) In pursuance of its responsibilities under *subsection (1)* the regulator shall, in particular—
- (a) carry out inspections, including unannounced inspections, of buyers and suppliers,
  - (b) investigate suspected breaches of agri-food unfair trading law,
  - (c) promote, where appropriate, the use of alternative dispute resolution procedures as a means of resolving disputes between buyers and suppliers,
  - (d) bring proceedings for offences under this Act, and
  - (e) refer cases to the Director of Public Prosecutions where the regulator believes that an indictable offence under this Act has been committed.
- (3) Without prejudice to the generality of *subsection (1)*, where the regulator finds that a buyer has contravened a provision of Agri-Food Unfair Trading Regulations, it shall use its powers under this Act to require the buyer to bring the prohibited contravention to an end.
- (4) The regulator—
- (a) is hereby designated as the enforcement authority in accordance with Article 4 of the Directive (designated enforcement authorities), and
  - (b) shall take any action the regulator considers necessary for the purpose of fulfilling its functions as the enforcement authority.
- (5) In accordance with *subsection (4)*, the regulator shall cooperate with the European Commission and any other enforcement authorities in accordance with Article 8 of the Directive (cooperation amongst enforcement authorities), and, in particular, the regulator shall—
- (a) provide other enforcement authorities with mutual assistance in cross-border investigations,
  - (b) participate in the annual meetings of enforcement authorities convened in accordance with Article 8(2) of the Directive and take action for the implementation of recommendations adopted in accordance with that Article,
  - (c) assist the Minister with the preparation of reports for the purposes of Article 10(2) of the Directive (reporting), and
  - (d) assist the Minister in complying with requests for additional information in accordance with Article 12(3) of the Directive (evaluation).
- (6) In performing its functions under this section the regulator shall cooperate with other authorities (whether in the State or elsewhere) with responsibility for the enforcement of laws relating to supplier protection and the promotion of fairness and transparency in the agricultural and food supply chain.
- (7) A reference in this Act to an “enforcement function” is a reference to a function under this section.

**Guidelines**

- 15.** (1) The regulator may, for the purpose of protecting supplier interests, publish guidelines for buyers about—
- (a) supplier protection, and
  - (b) trading practices, whether generally or in a particular trade, business or professional sector.
- (2) Before publishing guidelines the regulator may consult on draft guidelines.
- (3) Guidelines under this section are admissible in evidence in any proceedings before a court and may be taken into account in determining any question.
- (4) A failure on the part of a person to observe guidelines under this section shall not, of itself, render that person liable to any proceedings.

**Review of codes**

- 16.** (1) A person representing one or more buyers may submit a code of practice to the regulator for review.
- (2) A code shall be submitted in the form and manner specified by the regulator.
- (3) A person submitting a code of practice for review shall provide the regulator with any information the regulator considers necessary or appropriate.
- (4) The regulator may comment on a code of practice submitted under this section.
- (5) The fact that the regulator does, or does not, comment on a code of practice submitted under this section implies neither approval nor disapproval of the code, and shall not be taken to inhibit the regulator in performing any function (including exercising any power) under this Act.
- (6) A code of practice issued by one or more buyers (whether or not submitted for review under this section) is admissible in evidence in any proceedings before a court and may be taken into account in determining any question in respect of the persons issuing the code.

**Information and advice**

- 17.** (1) The regulator shall be responsible for providing information and advice to the Minister about—
- (a) the agricultural and food sector, and
  - (b) agri-food unfair trading law.
- (2) In particular, the regulator shall comply with any request of the Minister for advice on any matter which, in the opinion of the Minister, is likely to affect—
- (a) fairness and transparency in the agricultural and food supply chain,
  - (b) the agricultural and food sector, or

- (c) any other matter relating to the functions of the regulator.
- (3) A request under *subsection (2)* may require the regulator to—
  - (a) undertake or commission research and analysis, and
  - (b) report and make recommendations in relation to policy matters or proposals for legislative change.
- (4) The regulator shall report to the Minister within 12 months of its establishment date as to its ability to acquire data under section 12(3)(d), and make any appropriate recommendation so as to ensure the regulator is empowered to access or seize such data it requires to meet its obligations.
- (5) The regulator may also advise the Minister, and do anything mentioned in *subsection (3)*, on its own initiative.
- (6) In the performance of its functions under this section the regulator may identify and comment on constraints imposed by any enactment or administrative practice on the efficient operation of the agricultural and food supply chain in the economy of the State.

#### **Consideration of legislation**

- 18.** (1) The Minister may consult the regulator regarding proposals for legislation relating to any aspect of fairness and transparency in the agricultural and food supply chain.
- (2) The regulator shall keep under review, and comply with any request of the Minister to review, the operation of—
- (a) regulations under this Act, and
  - (b) other statutory provisions which relate to or affect fairness and transparency in the agricultural and food supply chain.
- (3) The regulator shall—
- (a) make recommendations to the Minister, or another responsible Minister, for changing those regulations and provisions, and
  - (b) comply with any request of the Minister to assist in the preparation of draft legislation.
- (4) Before making recommendations under this section the regulator shall consult—
- (a) such persons as it considers appropriate, and
  - (b) any persons specified for that purpose by the Minister.

#### **Transfer of functions to regulator**

- 19.** (1) The functions vested in the Minister by the European Union (Unfair Trading Practices in the agricultural and food supply chain) Regulations 2021 (S.I. No. 198 of 2021) are

transferred to the regulator on the establishment day (together with any rights, liabilities, administration and business in connection with those functions).

- (2) In so far as necessary or appropriate in connection with the transfer under *subsection (1)*—
- (a) on and after the establishment day, references to the Minister in any Act or instrument are to be read as being or including references to the regulator,
  - (b) anything commenced before the establishment day by the Minister may be continued on or after that day by the regulator,
  - (c) where legal proceedings, to or in which the Minister is party or prosecutor, are pending immediately before the establishment day, on and after that day the name of the regulator shall be taken to be substituted for that of the Minister (and the proceedings shall not abate by reason of the substitution),
  - (d) any bond, guarantee or other security of a continuing nature made or given by or to the Minister that is in force immediately before the establishment day, and every contract or agreement made between the Minister and any person that is in force immediately before the establishment day, shall continue in force on and after that day and shall be construed and have effect as if the name of the regulator was substituted for the Minister, and
  - (e) any document granted or made by the Minister in the exercise of a function before the establishment day shall continue in force on and after that day as if it had been granted or made by the regulator (and shall be construed and have effect accordingly).
- (3) Rights and liabilities transferred to the regulator by this section may, on or after the establishment day, be sued on, recovered or enforced by or against the regulator in its own name and it shall not be necessary for the regulator to give notice of the transfer to a person whose right or liability is transferred by this section.

### **Ancillary powers**

- 20.** (1) The regulator may do anything it considers necessary or appropriate for the purposes of, or in connection with, its functions.
- (2) In particular, the regulator may—
- (a) enter into contracts,
  - (b) establish committees,
  - (c) procure specialist advice and assistance,
  - (d) consult with suppliers, buyers, consumers and other persons who the regulator considers could assist in the performance of its functions, and
  - (e) issue codes of practice and guidelines.

- (3) The regulator may, for the purposes of providing premises necessary for the performance of its functions, lease, equip and maintain offices and premises, with the consent of the Minister and the Minister for Public Expenditure, National Development Plan Delivery and Reform.

## CHAPTER 3

## Governance

**Membership**

21. (1) The regulator shall consist of—
- (a) a member (in this Act referred to as the “chairperson”) designated by the Minister to chair the regulator, and
  - (b) seven ordinary members,
- of whom at least three shall be persons appearing to the Minister to be primary producers.
- (2) The first members of the regulator shall be appointed by the Minister as soon as practicable after the establishment day.
- (3) The Minister shall make subsequent appointments to the regulator as necessary to supply vacancies.
- (4) The Minister shall appoint persons as members of the regulator who appear to the Minister to have experience of, and to have shown capacity in, matters relevant to the regulator’s functions.
- (5) The Minister shall aim to appoint an equal number of men and women as members of the regulator (subject to *subsection (4)*).

**Remuneration and terms of appointment**

22. (1) The regulator shall pay to its members such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, may determine.
- (2) A member of the regulator shall hold office on such other terms and conditions as the Minister may determine (subject to the other provisions of this Part).

**Term of office**

23. (1) A member of the regulator shall hold office for a period of up to 5 years from the date of appointment, as the Minister shall determine (subject to *subsections (2) and (3) and section 24*).
- (2) A member of the regulator shall not hold office for more than 2 terms (whether or not consecutive).

- (3) A member of the regulator whose term of office expires by the effluxion of time shall be eligible for re-appointment.

**Members of regulator: disqualification, resignation and removal**

- 24.** (1) A person shall not be qualified for office as a member of the regulator, and shall cease to hold office as a member, if the person—
- (a) is adjudicated bankrupt,
  - (b) makes a composition or arrangement with creditors,
  - (c) is convicted of an indictable offence in relation to a company,
  - (d) is convicted of an offence involving fraud or dishonesty,
  - (e) has a conflict of interest (actual or potential) of such significance that, in the opinion of the Minister, the member should cease to hold office,
  - (f) is subject to a declaration under section 819 of the Act of 2014 or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act, or
  - (g) is subject or deemed to be subject to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Act of 2014, whether by virtue of that Chapter or any other provision of that Act.
- (2) A member of the regulator may, by letter addressed to the Minister, resign membership of the regulator and the resignation shall take effect on the date specified in the letter or the date the letter is received by the Minister, whichever is the later.
- (3) The Minister may, by written notice, remove a member of the regulator from office if in the Minister's opinion—
- (a) the member concerned has committed stated misbehaviour,
  - (b) the removal is necessary for the effective performance of the functions of the regulator, or
  - (c) the member concerned is otherwise unable, unfit or unsuitable to exercise the functions.

**Vacancies**

- 25.** (1) The validity of the proceedings or actions of the regulator is not affected by any vacancy or irregularity in its membership.
- (2) Where a member of the regulator—
- (a) dies,
  - (b) resigns,
  - (c) retires,
  - (d) becomes disqualified or otherwise ceases to hold office as a member, or

(e) is removed from office as a member,  
the Minister shall fill the vacancy as soon as is reasonably practicable.

### **Chairperson**

- 26.** (1) The chairperson shall chair the regulator.
- (2) The chairperson shall chair the regulator, including meetings of the regulator, for a period of 5 years from the date of designation, subject to *subsection (5)*.
- (3) A person shall cease to be chairperson on ceasing to be a member of the regulator.
- (4) The chairperson may, by letter addressed to the Minister, resign as chairperson and the resignation shall (unless previously withdrawn in writing) take effect at the commencement of the meeting of the regulator next held after the Minister informs the regulator of the resignation.
- (5) The Minister may revoke a member's designation as chairperson.
- (6) A person who ceases to be the chairperson shall be eligible for reappointment as chairperson if reappointed as a member of the regulator.
- (7) The Minister may provide for an interim or temporary chairperson where a vacancy arises.

## CHAPTER 4

### *Proceedings*

### **Meetings of regulator**

- 27.** (1) The regulator shall determine its own procedures, subject to this section.
- (2) The Minister shall, in consultation with the chairperson, fix the date, time and place for the first meeting of the regulator.
- (3) At a meeting of the regulator—
- (a) the quorum shall be 5,
- (b) where the chairperson of the regulator is not present, or the office of chairperson is vacant, the members present shall choose one of their number to chair the meeting,
- (c) each member of the regulator present shall have a vote,
- (d) a question on which a vote is required shall be determined by a majority of votes of the members of the regulator present and voting on the question, subject to *paragraph (e)*, and
- (e) if there is a tied vote, the chairperson of the meeting shall have a second or casting vote.

**Committees**

- 28.** (1) The regulator may establish committees—
- (a) to assist and advise the regulator, and
  - (b) to perform such functions of the regulator as it may delegate to a committee, other than an enforcement function.
- (2) A committee shall consist of the following members, who shall be appointed by the regulator:
- (a) a chairperson;
  - (b) such number of ordinary members as may be determined by the regulator;
- and may include (but shall not consist entirely of) persons who are not members or staff of the regulator.
- (3) When appointing members of a committee, the regulator shall—
- (a) have regard to the range of qualifications and experience necessary for the discharge of the functions of the committee,
  - (b) as far as practicable, aim to appoint an equal number of men and women,
  - (c) fix each member's period of membership of the committee, and
  - (d) fix the terms of each member's membership of the committee.
- (4) The regulator shall pay to a member of a committee such allowances and expenses as the regulator, with the consent of the Minister and the Minister for Public Expenditure, National Development Plan Delivery and Reform, may determine.
- (5) The regulator may—
- (a) remove a member of a committee from the committee, and
  - (b) dissolve a committee.
- (6) A committee may—
- (a) decide its own procedure and business, subject to any direction of the regulator, and
  - (b) act notwithstanding a vacancy in its membership.

**Delegation of functions**

- 29.** (1) The regulator may delegate the performance of any of its functions, other than an enforcement function, to—
- (a) a member of the regulator,
  - (b) a member of staff of the regulator (including the chief executive), or
  - (c) a committee.

- (2) The regulator shall delegate the performance of its enforcement functions to the chief executive.
- (3) The chief executive may sub-delegate an enforcement function to a member of staff of the regulator.
- (4) The regulator shall make arrangements to ensure that the chief executive or another member of staff to whom an enforcement function of the regulator is delegated under this section is independent in the performance of that function.

### Disclosure of interests

30. (1) This section applies where a person specified in *subsection (2)* has an interest in connection with a regulator matter.
- (2) Those persons are—
    - (a) a member of the regulator,
    - (b) a member of a committee of the regulator,
    - (c) the chief executive,
    - (d) another member of staff of the regulator, and
    - (e) any person engaged by the regulator (whether as authorised officer, consultant, adviser or otherwise).
  - (3) Where this section applies, the person who has the interest in connection with a regulator matter—
    - (a) shall (subject to *subsection (6)*) disclose the nature of the interest to the regulator in advance of any consideration of the matter (and, in the case of a person listed in *subsection (2)(a) to (c)*, disclosure shall be made at a meeting of the regulator and the particulars shall be recorded in the minutes of the meeting),
    - (b) may neither influence nor seek to influence a decision relating to the matter,
    - (c) may not take part in any consideration of the matter (and is not to be counted in the quorum for the meeting in respect of that consideration), and
    - (d) in the case of a person listed in *subsection (2)(a) to (c)*, shall withdraw from any meeting while the matter is being discussed or considered.
  - (4) A person is to be treated as having an interest in connection with a regulator matter if the person, or a person connected to the person—
    - (a) is a member of a company or other body which has an interest in connection with the matter,
    - (b) is in partnership with or in the employment of a person who has an interest in connection with the matter, or
    - (c) is a party to any arrangement or agreement (whether or not enforceable) concerning property to which the matter relates.

- (5) For the purposes of this section—
- (a) one person is “connected” with another if the first person is—
    - (i) a relative of the second person, or
    - (ii) a nominee of the second person or of a relative of the second person,and
  - (b) “relative” means spouse, civil partner, partner, parent, brother, sister, child or spouse, civil partner or partner of a child.
- (6) For the purposes of this section no account is to be taken of an interest in respect of a regulator matter if the interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in respect of the matter.
- (7) Where a question arises as to whether a course of conduct by a person listed in *subsection (2)(a) to (c)* would contravene *subsection (3)*—
- (a) the regulator shall determine the question at a meeting, and
  - (b) particulars of the determination shall be recorded in the minutes of the meeting at which it is made.
- (8) Where the Minister is satisfied that a member of the regulator has contravened *subsection (3)*—
- (a) the Minister may remove the member from office, and
  - (b) the person is from that time disqualified from being a member of the regulator, the chief executive, a member of the regulator staff or engaged by or on behalf of the regulator in any capacity.
- (9) Where a person other than a member of the regulator contravenes *subsection (3)*, the regulator, in consultation with the Minister, shall decide the appropriate action to be taken in relation to the person (which may include terminating a contract).
- (10) In this section—
- “interest” means any financial, property or other beneficial interest;
- “regulator matter” means a matter which is to be considered by the regulator or is relevant to the performance of its functions.

### **Conflict of interest**

- 31.** In performing its functions the regulator shall aim to avoid giving rise to the perception of any conflict of interest (whether in relation to its enforcement responsibilities or otherwise).

### **Indemnity**

- 32.** (1) The regulator may indemnify a person against actions and claims of any kind in respect of the performance of functions as—

- (a) a member of the regulator,
  - (b) a member of a committee of the regulator,
  - (c) chief executive or other member of staff,
  - (d) a person providing services to the regulator, or
  - (e) an authorised officer.
- (2) *Subsection (1)* applies only where the regulator is satisfied that the person has performed the functions in good faith.
- (3) The regulator may from time to time determine the manner, extent, terms and conditions of any indemnity under this section, in consultation with the Minister.

## CHAPTER 5

*Chief executive***Appointment**

33. (1) The regulator shall, with the approval of the Minister, appoint a chief executive officer of the regulator (the “chief executive”) who shall be responsible to the regulator for the performance of the chief executive’s functions and the implementation of the regulator’s policies.
- (2) The regulator may remove the chief executive with the approval of the Minister and shall state its reasons for doing so in writing.
- (3) The chief executive shall upon appointment be a civil servant (within the meaning of the Civil Service Regulation Acts 1956 to 2005) in the Civil Service of the State (subject to *subsections (1)* and *(2)*).
- (4) Where a competition to appoint the first chief executive is held prior to the establishment day, the Minister may appoint the successful candidate as the chief executive designate and that person shall—
- (a) if holding that office immediately before the establishment day, become the chief executive on the establishment day, and
  - (b) continue as chief executive until the regulator appoints another chief executive under *subsection (1)*.
- (5) The chief executive shall—
- (a) hold office—
    - (i) under a written contract of service for a period specified in the contract (which contract may be renewed), and
    - (ii) on terms and conditions (including those relating to term of office, remuneration and superannuation) specified in the contract, as determined from time to time by the regulator with the approval of the Minister given

with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform,

and

- (b) be paid by the regulator.
- (6) The chief executive shall not—
  - (a) hold or occupy any paid position or office or carry on any business without the consent of the regulator and the approval of the Minister, or
  - (b) for 12 months after leaving office, hold or occupy any position, office or consultancy in which information acquired in the performance of the chief executive's functions is likely to be relevant or useful, other than a position or office in the Civil Service or a public authority, or acting as a consultant to the regulator or a Minister of the Government.

### Functions and status

34. (1) The chief executive shall—
- (a) manage the staff and business of the regulator,
  - (b) advise and make proposals to the regulator about its functions,
  - (c) at the request of the regulator, provide it with information, including financial information, about the chief executive's functions, and
  - (d) perform any other functions conferred by the regulator.
- (2) The chief executive may do anything the chief executive considers necessary or appropriate for the purposes of the functions of the chief executive.
- (3) The functions of the chief executive may—
- (a) be delegated to other members of staff of the regulator, and
  - (b) be performed in the chief executive's absence or, where the office is vacant, by a member of staff designated by the regulator for that purpose.
- (4) Where a member of staff of the regulator is designated under *subsection (3)(b)*—
- (a) the member of staff may do anything necessary or appropriate for the purposes of the performance of the chief executive's functions, and
  - (b) a reference in this Act to the chief executive includes a reference to the member of staff.
- (5) The chief executive—
- (a) is subject to the control of the members of the regulator, and
  - (b) shall, in particular, comply with any directions given by the members with respect to the carrying out of the chief executive's functions (subject to *section 29(4)*).

## CHAPTER 6

*Attendance before committees***Attendance before Public Accounts Committee**

- 35.** (1) The chief executive shall comply with any requirement of the Public Accounts Committee to give evidence to it about—
- (a) the regularity of the regulator’s accounts,
  - (b) the economy of the regulator in the use of its resources,
  - (c) systems, procedures and practices used by the regulator to evaluate its effectiveness, or
  - (d) any matter affecting the regulator referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General (insofar as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann.
- (2) In this section and *section 36*, “Public Accounts Committee” means the committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General.

**Attendance before other Oireachtas Committees**

- 36.** (1) Subject to *subsection (2)*, the chief executive or chairperson shall, at the written request of an Oireachtas Committee, attend before it to give an account of the general administration of the regulator.
- (2) The chief executive or chairperson is not required to give an account before an Oireachtas Committee of any matter relating to the general administration of the regulator that is, or is likely to be, the subject of proceedings before a court or tribunal in the State.
- (3) The chief executive or chairperson shall, if of the opinion that *subsection (2)* applies to a matter about which that officer is requested to give an account before an Oireachtas Committee, inform the Committee of that opinion and the reasons for the opinion.
- (4) The information required under *subsection (3)* to be given to the Oireachtas Committee must be given in writing unless it is given when the chief executive or chairperson, as the case may be, is before the Committee.
- (5) If, on being informed of the opinion of the chief executive or chairperson about the matter, the Oireachtas Committee decides not to withdraw its request, the High Court may, on application under *subsection (6)*, determine whether *subsection (2)* applies to the matter.

- (6) An application for a determination under *subsection (5)* may be made in a summary manner to the High Court by—
- (a) the chief executive or chairperson, as the case may be, not later than 21 days after being informed by the Oireachtas Committee of its decision not to withdraw its request, or
  - (b) the chairperson of the Oireachtas Committee acting on its behalf.
- (7) Pending the determination of an application under *subsection (6)*, the chief executive or chairperson, as the case may be, shall not attend before the Oireachtas Committee to give an account of the matter to which the application relates.
- (8) If the High Court determines that *subsection (2)* applies to the matter, the Oireachtas Committee shall withdraw its request relating to the matter, but if the High Court determines that *subsection (2)* does not apply, the chief executive or chairperson, as the case may be, shall attend before the Committee to give an account of the matter.
- (9) In carrying out duties under this section, the chief executive or chairperson shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such policy.
- (10) With the permission of the chairperson of the Oireachtas Committee making the request under *subsection (1)*, either—
- (a) the chairperson, or
  - (b) a member of staff of the regulator nominated by the chief executive,
- may attend before the Committee in place of the chief executive to give an account of the general administration of the regulator, and in that case a reference in *subsections (2) to (9)* to the chief executive is to be read as a reference to the person attending in the chief executive's place.
- (11) In this section, "Oireachtas Committee" means—
- (a) a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Public Accounts Committee, the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann), including the Select Committee on Agriculture, Food and the Marine, or
  - (b) a subcommittee of a committee as defined in *paragraph (a)*.

## CHAPTER 7

*Staff***Appointment of staff**

37. (1) The regulator may appoint staff.

- (2) A member of staff shall upon appointment be a civil servant (within the meaning of the Civil Service Regulation Acts 1956 to 2005) in the Civil Service of the State.
- (3) Appointments shall be made—
  - (a) with the approval of the Minister, and
  - (b) with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, if that Minister requires.
- (4) Subject to *subsection (3)*, the regulator shall, with the consent of the Minister and the Minister for Public Expenditure, National Development Plan Delivery and Reform, determine—
  - (a) how many staff to appoint,
  - (b) the grades of staff and the numbers at each grade, and
  - (c) terms and conditions of service.
- (5) Terms of service as to remuneration and allowances to be paid by the regulator are subject to—
  - (a) the approval of the Minister given with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, and
  - (b) *section 38*.

### **Transfer of staff to regulator**

- 38.** (1) The Minister may comply with a request of the chief executive, made within the period of 24 months beginning with the establishment day, to transfer to the regulator the employment of a person employed in a Department of State or by a public authority.
- (2) A transfer—
    - (a) is to be made by direction in writing, and
    - (b) may be made only with the consent of the person to be transferred.
  - (3) The chief executive may make a request under *subsection (1)* only with the concurrence of the regulator.
  - (4) The conditions of employment of a person whose employment is transferred under this section are to be no less favourable than those applicable to the person immediately before the transfer, except in so far as a collective agreement negotiated with a recognised trade union or staff association of which the person is a member expressly provides otherwise.
  - (5) If any dispute arises between a person whose employment is transferred under this section and the regulator as to the conditions of employment applicable to the person immediately before the transfer, the Minister shall determine the dispute.

- (6) If a person's employment is transferred under this section, the person's previous service with a Department of State or public authority is to be counted as service for the purposes of the following Acts of the Oireachtas:
- (a) the Redundancy Payments Acts 1967 to 2022;
  - (b) the Protection of Employees (Part-Time Work) Act 2001;
  - (c) the Protection of Employees (Fixed-Term Work) Act 2003;
  - (d) the Minimum Notice and Terms of Employment Acts 1973 to 2005;
  - (e) the Unfair Dismissals Acts 1977 to 2015;
  - (f) the Terms of Employment (Information) Acts 1994 to 2014;
  - (g) the Organisation of Working Time Act 1997;
  - (h) the Parental Leave Acts 1998 to 2019;
  - (i) the Carer's Leave Act 2001;
  - (j) the Maternity Protection Acts 1994 and 2004;
  - (k) the Adoptive Leave Acts 1995 and 2005;
  - (l) the Paternity Leave and Benefit Act 2016;
  - (m) the Parent's Leave and Benefit Act 2019.
- (7) In this section, "recognised trade union or staff association" means a trade union or staff association recognised by the regulator for the purposes of negotiations which are concerned with the remuneration or conditions of employment or the working conditions of employees.

## CHAPTER 8

### *Planning and reporting*

#### **Strategy statement**

- 39.** (1) The regulator shall prepare and submit to the Minister a strategy statement for each 3 year period, beginning with the establishment day.
- (2) A strategy statement shall—
- (a) specify the key objectives, outputs and related strategies (including the use of resources) of the regulator,
  - (b) specify the manner in which the regulator proposes to assess its performance in respect of those objectives, taking account of relevant performance indicators (financial and non-financial),
  - (c) include a review of the outcomes and effectiveness of the preceding strategy statement (except for the first statement), and

- (d) include any other matters that the Minister may from time to time direct.
- (3) A strategy statement shall be prepared in the form and manner that the Minister may from time to time direct.
- (4) In preparing a strategy statement the regulator—
  - (a) shall have regard to the need to ensure the most beneficial, effective and efficient use of its resources, and
  - (b) may consult such persons as it considers appropriate.
- (5) The strategy statement in respect of the first 3 year period shall be submitted as soon as practicable after the establishment day.
- (6) The strategy statement for each subsequent 3 year period shall be submitted at least 3 months before the beginning of the period.
- (7) As soon as practicable after receiving a strategy statement the Minister shall cause a copy to be laid before each House of the Oireachtas.
- (8) The regulator shall arrange for the publication of a strategy statement as soon as practicable after submitting it.

#### **Work programme**

- 40.** (1) The regulator shall prepare and submit to the Minister a work programme relating to the discharge of its functions in respect of each financial year.
- (2) A work programme shall include—
    - (a) the objectives of the regulator for that year, having regard to the strategy statement,
    - (b) the strategy of the regulator for achieving the objectives,
    - (c) the priorities of the regulator for the year, having regard to the objectives and its available resources, and
    - (d) any other matters that the Minister may from time to time specify by direction or guidelines under this section.
  - (3) The work programme in respect of the first financial year shall be submitted as soon as practicable after the establishment day.
  - (4) The work programme in respect of each subsequent financial year shall be submitted at least 2 months before the beginning of the year.
  - (5) The Minister may issue directions or guidelines to the regulator about the preparation of the work programme.
  - (6) The regulator shall—
    - (a) comply with any directions issued under *subsection (5)*, and

- (b) prepare work programmes in accordance with any guidelines issued under that subsection.

### Annual report

- 41.** (1) The regulator shall provide a report in writing to the Minister about its activities during each financial year (the “annual report”).
- (2) An annual report shall—
- (a) include—
    - (i) the regulator’s recommendations to the Minister for legislation relating to any aspect of fairness and transparency in the agricultural and food supply chain, including any recommendations made to the Minister regarding its own functions, or proposed or requested powers or functions,
    - (ii) information regarding the remuneration of the chief executive, and
    - (iii) such other information as the Minister may direct,
  - and
  - (b) be made in such form as the Minister may direct.
- (3) An annual report shall be submitted to the Minister—
- (a) as soon as practicable after the end of the financial year to which it relates, and
  - (b) in any event, not later than 6 months after the end of that year.
- (4) As soon as practicable after receiving an annual report the Minister shall cause a copy to be laid before each House of the Oireachtas.
- (5) The regulator shall arrange for the publication of an annual report as soon as practicable after it is laid under *subsection (4)*.

### Complaints and investigations report

- 42.** (1) The regulator shall publish a report in respect of each financial year (the “complaints and investigations report”) specifying—
- (a) the number of complaints received during the year,
  - (b) the number of investigations opened during the year, and
  - (c) the number of investigations closed during the year.
- (2) In respect of each closed investigation the complaints and investigations report shall summarise (subject to the confidentiality provisions of *section 67*)—
- (a) the nature of the complaint,
  - (b) the outcome of the investigation, and
  - (c) any decision taken.

- (3) The complaints and investigations report may be published as part of an annual report or separately.

**Decisions reports**

- 43.** (1) The regulator may publish details of its decisions—
- (a) prohibiting unfair trading practices,
  - (b) requiring a buyer to cease a prohibited trading practice, or
  - (c) imposing, or initiating proceedings for the imposition of—
    - (i) fines,
    - (ii) other penalties, and
    - (iii) interim measures.
- (2) Details published under this section—
- (a) may be referred to as decision reports, and
  - (b) may be published as part of an annual report or a complaints and investigations report, or separately.

**Other reports and information**

- 44.** (1) In addition to annual reports, complaints and investigations reports and decision reports, the regulator—
- (a) may make other reports to the Minister about its functions, and
  - (b) shall comply with any request of the Minister to make other reports.
- (2) In addition to the information provided in reports, the regulator shall comply with any request of the Minister to—
- (a) provide information relating to its functions, or
  - (b) give advice on any matter relating to its functions.

## CHAPTER 9

*Finance***Advances by Minister**

- 45.** The Minister may advance to the regulator out of money provided by the Oireachtas such amounts as the Minister, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, may determine for the purposes of expenditure by the regulator in the performance of its functions.

**Payments into Central Fund, disposal of fines**

46. (1) The Minister may, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, direct the regulator to pay into the Central Fund or the growing produce thereof, a sum specified by the Minister as representing the amount by which the gross income received by the regulator in a financial year exceeds the gross expenditure incurred in its administration in that year.
- (2) Fines paid to, or recovered by, the regulator under *section 66*, *section 80* or *section 83* shall be disposed of by it in such manner as the Minister for Public Expenditure, National Development Plan Delivery and Reform, with the consent of the Minister for Finance, directs.

**Accounts and audits**

47. (1) The regulator shall submit estimates of income and expenditure to the Minister in such form, in respect of such periods and at such times as may be required by the Minister.
- (2) The regulator shall provide the Minister with any information that the Minister requires in relation to the estimates (including proposals and future plans for the performance of the regulator's functions).
- (3) The regulator shall keep all proper and usual books or other records of account ("accounts") of—
- (a) money received or expended by the regulator, and
  - (b) all property, assets and liabilities of the regulator.
- (4) The accounts shall—
- (a) include an income and expenditure account and a balance sheet,
  - (b) include any special accounts the Minister may direct, and
  - (c) be kept in such form as may be approved by the Minister with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform.
- (5) The chief executive and other staff of the regulator shall—
- (a) comply with any request of the Minister to permit a person appointed by the Minister to examine the accounts,
  - (b) facilitate any examination, and
  - (c) pay such fee as may be fixed by the Minister.
- (6) The accounts in respect of each financial year shall be signed by the chief executive and submitted to the Comptroller and Auditor General for audit—
- (a) as soon as practicable, and
  - (b) in any event, not later than 3 months after the end of the financial year.

- (7) A copy of the accounts together with a copy of the report of the Comptroller and Auditor General shall be presented by the regulator to the Minister as soon as reasonably practicable.
- (8) The Minister shall cause copies of the accounts and report to be laid before each House of the Oireachtas—
  - (a) as soon as practicable, and
  - (b) in any event, not later than 3 months after receipt.

#### **Annual estimate**

- 48.** At least one month before the start of each financial year the regulator shall prepare, and submit to the Minister and the Minister for Public Expenditure, National Development Plan Delivery and Reform, a statement of the expenditure expected to be required during the financial year for the purposes of the discharge of the regulator's functions.

#### **Power to impose levies**

- 49.** (1) The regulator may make regulations prescribing levies to be paid by persons who are subject to obligations as buyers under the Agri-Food Unfair Trading Regulations.
- (2) Levies under *subsection (1)* shall be designed to relate only to costs incurred by the regulator in performing functions relating to unfair trading practices.
- (3) Regulations under *subsection (1)* may be made only with the consent of the Minister and the Minister for Public Expenditure, National Development Plan Delivery and Reform.
- (4) Regulations under *subsection (1)* may provide for, in particular—
- (a) activities or other matters in respect of which a specified levy is payable,
  - (b) the persons, or classes of persons, who are required to pay a specified levy, which may include—
    - (i) retail, wholesale, co-operative, food manufacturing, food processing and food service businesses,
    - (ii) businesses relating to horticulture, cereals, oils, fishing, aquaculture, beef, poultry, other meats, dairy, eggs or other sectors of the agricultural and food supply chain, and
    - (iii) classes of person based on overall turnover (and the regulations may specify a level of turnover below which no levy is payable),
  - (c) the amounts of a specified levy,
  - (d) periods for which, or dates by which, a specified levy is to be paid,
  - (e) penalties payable by a person who fails to pay a levy on time,

- (f) the keeping of records, and the making of returns to the regulator, by persons who are liable to pay a specified levy, and
  - (g) the collection and recovery of levies.
- (5) Where the regulator proposes to make regulations under this section—
- (a) a draft of the regulations shall be laid before each House of the Oireachtas, and
  - (b) the regulations may not be made until a resolution approving the draft has been passed by each House.
- (6) Regulations under this section may require or permit the regulator to refund the whole or a part of a levy paid, in specified circumstances.
- (7) The regulator may, by proceedings in a court of competent jurisdiction, recover as a debt an amount of levy payable under regulations under this section.

### Surpluses and deficiencies

- 50.** (1) If the total sum received by the regulator on account of levies prescribed under *section 49* during a financial year is greater than the regulator's expenditure on the performance of its functions in respect of unfair trading practices during that financial year, the regulator—
- (a) shall apply the surplus to the performance of those functions in the following financial year, and
  - (b) shall reduce the levies prescribed in relation to the latter financial year accordingly.
- (2) If the sum received by the regulator on account of levies prescribed under *section 49* during a financial year is less than the regulator's expenditure on the performance of its functions in respect of unfair trading practices during that financial year, the regulator may prescribe levies in relation to the following financial year sufficient to—
- (a) make good the deficiency, and
  - (b) ensure that the sum received by the regulator on account of such levies during the two financial years taken together fully covers the performance of those functions in those financial years.
- (3) In its annual report and annual accounts, the regulator shall include statements of—
- (a) amounts collected by way of levies, and
  - (b) how those amounts were expended.

## CHAPTER 10

*Information***Prohibited disclosures**

51. (1) A person shall not disclose confidential information obtained in the capacity of or in the course of acting as—
- (a) a member of the regulator,
  - (b) the chief executive,
  - (c) another member of staff of the regulator,
  - (d) a member of a committee of the regulator,
  - (e) a person engaged by the regulator (as consultant, adviser or otherwise),
  - (f) a person working for a person who falls within *paragraph (e)*, or
  - (g) an authorised officer.
- (2) *Subsection (1)* does not apply to a disclosure authorised by—
- (a) the regulator, or
  - (b) a member of staff of the regulator authorised for the purposes of this subsection.
- (3) *Subsection (1)* does not apply to a disclosure required by law.
- (4) *Subsection (1)* does not apply to a communication made by a person listed in *subsection (1)* necessarily or reasonably made in connection with the performance of a function under this Act.
- (5) *Subsection (1)* does not apply to a disclosure made to any member of the Garda Síochána—
- (a) by a person listed in *subsection (1)(a) to (d)* or *(g)*, and
  - (b) of information that, in the person’s opinion, may relate to the commission of an offence (under this Act or otherwise).
- (6) *Subsection (1)* does not apply to a disclosure by means of a report or other communication or publication made for the purposes of this Act to or by the regulator or to or by a committee of the regulator.
- (7) A person who contravenes *subsection (1)* commits an offence.
- (8) A person who suffers loss or harm as a result of a contravention of *subsection (1)* may bring proceedings in any court of competent jurisdiction for relief by way of injunction or declaration, damages or both.
- (9) Proceedings under *subsection (8)*—
- (a) are to be treated as an action founded on tort, and

- (b) are to be taken against—
  - (i) the person who made the prohibited disclosure, if not a person listed in *subsection (1)(a) to (d) or (g)* or if the action is for an injunction or a declaration, and
  - (ii) in any other case, the regulator.
- (10) In this section, “confidential information” includes—
  - (a) any information that would appear to a reasonable person to be of a confidential nature, and
  - (b) any information designated as confidential (generally or specially) by the regulator or a committee of the regulator.

## CHAPTER 11

*Membership of other bodies***Members of regulator**

- 52.** (1) A member of the regulator shall cease to be a member if—
- (a) nominated as a member of Seanad Éireann,
  - (b) elected as a member of either House of the Oireachtas,
  - (c) elected to be a member of the European Parliament,
  - (d) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to be a member of the European Parliament, or
  - (e) elected or co-opted as a member of a local authority.
- (2) A person is disqualified from becoming a member of the regulator while—
- (a) nominated as a member of Seanad Éireann,
  - (b) entitled under the Standing Orders of either House of the Oireachtas to sit in the House,
  - (c) a member of the European Parliament, or
  - (d) entitled under the standing orders of a local authority to sit as a member of the authority.
- (3) In this section “local authority” has the meaning given by section 2(1) of the Local Government Act 2001.

**Chief executive**

- 53.** (1) The chief executive shall leave office if—

- (a) nominated as a member of Seanad Éireann,
  - (b) elected as a member of either House of the Oireachtas,
  - (c) elected to be a member of the European Parliament,
  - (d) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to be a member of the European Parliament, or
  - (e) elected or co-opted as a member of a local authority.
- (2) A person is disqualified from being appointed as chief executive while—
- (a) nominated as a member of Seanad Éireann,
  - (b) entitled under the Standing Orders of either House of the Oireachtas to sit in the House,
  - (c) a member of the European Parliament, or
  - (d) entitled under the standing orders of a local authority to sit as a member of the authority.
- (3) In this section “local authority” has the meaning given by section 2(1) of the Local Government Act 2001.

**Staff of regulator**

- 54.** (1) *Subsection (2)* applies where a member of staff of the regulator is—
- (a) nominated as a member of Seanad Éireann,
  - (b) elected as a member of either House of the Oireachtas,
  - (c) elected to be a member of the European Parliament,
  - (d) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to be a member of the European Parliament, or
  - (e) elected or co-opted as a member of a local authority.
- (2) Where this subsection applies, the member of staff—
- (a) is deemed to have been seconded from employment by the regulator, and
  - (b) is not to be paid remuneration or allowances by the regulator.
- (3) A person may not be appointed as a member of staff of the regulator while—
- (a) nominated as a member of Seanad Éireann,
  - (b) entitled under the Standing Orders of either House of the Oireachtas to sit in the House,
  - (c) a member of the European Parliament, or

- (d) entitled under the standing orders of a local authority to sit as a member of the authority.
- (4) In this section “local authority” has the meaning given by section 2(1) of the Local Government Act 2001.

### PART 3

#### UNFAIR TRADING PRACTICES

##### CHAPTER 1

##### *Scope and application*

#### **Scope of Part**

**55.** This Part makes provision—

- (a) for the prohibition of certain unfair trading practices, and
- (b) for the enforcement of those prohibitions (including provision for the exercise by the regulator of its enforcement functions).

#### **Application of Part**

- 56.** (1) This Part applies to anything done in relation to agricultural and food products in the course of a business-to-business relationship in the agricultural and food supply chain.
- (2) The Minister may by regulations specify a matter that is to be, or not to be, treated as—
- (a) a business-to-business relationship, or
  - (b) relating to the agricultural and food supply chain.

##### CHAPTER 2

##### *Agricultural Unfair Trading Regulations*

#### **Power to make regulations**

- 57.** (1) The Minister may make regulations about business-to-business relationships in the agricultural and food supply chain (which may, in particular, include provision prohibiting specified practices).
- (2) In this Act—
- (a) regulations under *subsection (1)* are referred to as “the Agri-Food Unfair Trading Regulations”, and

- (b) a practice prohibited by the Agri-Food Unfair Trading Regulations is referred to as an “unfair trading practice”.
- (3) The Minister may prohibit a practice in the Agri-Food Unfair Trading Regulations only if satisfied that the practice—
  - (a) deviates from good commercial conduct, by reason of being contrary to good faith and fair dealing or by reason of being unilaterally imposed by one trading partner on another,
  - (b) imposes an unjustified and disproportionate transfer of economic risk from one trading partner to another, or
  - (c) imposes a significant imbalance of rights and obligations on one trading partner.
- (4) The Minister may make provision in Agri-Food Unfair Trading Regulations only if satisfied that it is appropriate having regard to—
  - (a) the desirability of the promotion of competitive trade in business-to-business relationships in the agricultural and food supply chain,
  - (b) the interests of users and consumers of agricultural and food products, in particular in relation to quality, value for money and access to choice,
  - (c) the importance of trading partners in the agricultural and food supply chain conducting their trading relationships in good faith and in a fair, open and transparent manner,
  - (d) the importance of maintaining freedom of contract between trading partners in the agricultural and food supply chain,
  - (e) the importance of providing trading partners in the agricultural and food supply chain with reasonable certainty in respect of the risks and costs of trading,
  - (f) the economic importance to the State of the production, manufacture, processing, supply, distribution, wholesale, retail and food service sectors in respect of agricultural and food products,
  - (g) the impact on the development and maintenance of strong, innovative, efficient and competitive production, manufacturing, processing and supply bases in the agricultural and food sector,
  - (h) the impact on the development and maintenance of competitive retail and food service sectors in respect of agricultural and food products,
  - (i) the desirability of addressing the imbalance where the larger or more powerful trading partner seeks to introduce certain practices or contractual arrangements which are to that party’s advantage,
  - (j) the potential for the distortion of competition in trade in the agricultural and food sector including ancillary services, and
  - (k) the importance of limiting the impact on the use of fair and efficiency-creating agreements agreed between parties.

- (5) Agri-Food Unfair Trading Regulations may (without prejudice to the generality of *subsection (1)*) make provision of a kind specified in *sections 58 to 65*.
- (6) In making Agri-Food Unfair Trading Regulations, the Minister shall have regard, in particular, to Article 3 of the Directive (prohibition of unfair trading practices).
- (7) Before making Agri-Food Unfair Trading Regulations the Minister shall consult the Commission of the European Union.

**Agri-Food Unfair Trading Regulations: prohibited payments**

- 58.** (1) Agri-Food Unfair Trading Regulations may prohibit a late payment for agricultural and food products (whether or not perishable).
- (2) Agri-Food Unfair Trading Regulations may prohibit a payment that is not related to the sale of the agricultural and food products.
  - (3) Agri-Food Unfair Trading Regulations may prohibit a payment for deterioration or loss of products occurring on the buyer's premises or after ownership has been transferred to the buyer, unless the deterioration or loss is caused by the negligence or other fault of the supplier.
  - (4) Agri-Food Unfair Trading Regulations may prohibit a charge for stocking, displaying or listing products, or for making products available on the market.
  - (5) Agri-Food Unfair Trading Regulations may prohibit a requirement for the supplier to bear all or part of the cost of any discounts on agricultural and food products that are sold by the buyer as part of a promotion unless the buyer, prior to a promotion that is initiated by the buyer, specifies the period of the promotion and the expected quantity of the agricultural and food products to be ordered at the discounted price.
  - (6) Agri-Food Unfair Trading Regulations may prohibit a charge for advertising or marketing by the buyer.
  - (7) Agri-Food Unfair Trading Regulations may prohibit a charge on the supplier for fitting-out premises used for the sale by the buyer of the supplier's products.
  - (8) Agri-Food Unfair Trading Regulations may prohibit payment of compensation for the cost of examining customer complaints relating to the sale of the supplier's products, in the absence of negligence or fault on the part of the supplier.
  - (9) Agri-Food Unfair Trading Regulations may limit the circumstances in which a buyer may seek payment from a supplier in respect of marketing costs.
  - (10) Agri-Food Unfair Trading Regulations may prohibit a buyer from directly or indirectly compelling a supplier to make a payment—
    - (a) in respect of a promotion of products of a supplier in the premises of the buyer,
    - (b) for the advertising or display of products of the supplier in the premises of the buyer, or

- (c) to retain shelf space, or to secure better positioning on shelves, or an increase in the allocation of shelf space, for the products of that supplier.
- (11) Agri-Food Unfair Trading Regulations may specify the circumstances in which a buyer may, or may not, seek payment from a supplier for the purchase of products for resale by the buyer from the supplier.
- (12) Agri-Food Unfair Trading Regulations may specify the circumstances in which a buyer who is a retailer or wholesaler may, or may not, seek payment from a supplier to—
- (a) retain shelf space for the products of the supplier,
- (b) secure better positioning on shelves for those products, or
- (c) secure an increase in the allocation of shelf space.
- (13) Agri-Food Unfair Trading Regulations may specify that, where a payment is required by a buyer for the situations referred to in *subsection (4), (5), (6) or (7)*, if requested by the supplier, the buyer shall provide the supplier with an estimate in writing of the payments per unit or the overall payments, whichever is appropriate, and, insofar as the situations referred to in *subsection (4), (6) or (7)* are concerned, shall also provide, in writing, an estimate of the cost to the supplier and the basis for that estimate.
- (14) Agri-Food Unfair Trading Regulations may provide that, where a prohibition specified in a provision of this Act that is referred to in *subsection (15)* and is provided for in Agri-Food Unfair Trading Regulations conflicts with a provision in another Act or instrument made under such Act, or an act of an institution of the European Union, which falls within the scope of the prohibition, the prohibition under the Agri-Food Unfair Trading Regulations that relates to a provision referred to in *subsection (15)* shall, in accordance with Article 3(4) of the Directive, prevail over such other provision.
- (15) The provisions referred to are the following:
- (a) *Section 58(1)*;
- (b) *Section 58(2)*;
- (c) *Section 58(3)*;
- (d) *Section 58(4)*;
- (e) *Section 58(5)*;
- (f) *Section 58(6)*;
- (g) *Section 58(7)*;
- (h) *Section 58(8)*;
- (i) *Section 59(1)*;
- (j) *Section 59(3)*;
- (k) *Section 60(1)*;

- (l) *Section 61(2)*;
  - (m) *Section 62(1)*;
  - (n) *Section 62(2)*.
- (16) In this section—
- (a) a reference to prohibiting a payment is a reference to prohibiting the inclusion in an agreement of provision requiring (in whatever terms) a payment of the specified kind to be made, and
  - (b) a reference to a payment includes a reference to granting a credit or allowance or providing value in any other form.

**Agri-Food Unfair Trading Regulations: changes of supply terms**

59. (1) Agri-Food Unfair Trading Regulations may prohibit short notice cancellations of orders of perishable products.
- (2) In this Act “perishable”, in relation to agricultural and food products, means products that, by their nature or at their stage of processing, are liable to become unfit for sale within 30 days after harvest, production or processing.
  - (3) Agri-Food Unfair Trading Regulations may prohibit a unilateral change to the terms of a supply agreement that concern—
    - (a) the frequency, method, place, timing or volume of the supply or delivery of a product,
    - (b) quality standards,
    - (c) price or terms of payment, or
    - (d) the provision of services ancillary to the sale of agricultural and food products.

**Agri-Food Unfair Trading Regulations: contracts**

60. (1) Agri-Food Unfair Trading Regulations may prohibit a refusal to confirm in writing the terms of a supply agreement.
- (2) Agri-Food Unfair Trading Regulations may specify forms of contract to be used in relation to specified transactions, or aspects of transactions, between buyers and sellers in the agricultural and food supply chain.
  - (3) Agri-Food Unfair Trading Regulations may provide for—
    - (a) the manner in which forecasts for the supply of products are to be prepared, and
    - (b) the communication of the basis on which they are prepared.
  - (4) Agri-Food Unfair Trading Regulations may specify the means, including the provision of written notice, by which a contract for the sale or supply of products may be—
    - (a) varied,

- (b) terminated, or
  - (c) renewed.
- (5) Agri-Food Unfair Trading Regulations may specify circumstances in which arrangements relating to the supply or delivery of products, including the frequency and timing of supply or delivery, may be varied.
- (6) Agri-Food Unfair Trading Regulations may require certain terms and conditions to be incorporated expressly into written contracts for the sale or supply of products, or may provide for certain terms and conditions to be incorporated by implication into written or oral contracts for those purposes, including terms and conditions in relation to—
- (a) payment for products supplied to a relevant buyer,
  - (b) the ordering, supply, price, marketing and sale of goods on promotion and the duration of the promotion,
  - (c) the circumstances in which wastage that occurs at the premises of a relevant buyer is to be considered as due to the negligence or fault of the supplier, where a contract provides for payment arising from the negligence or fault of the supplier, and
  - (d) the circumstances and manner in which a buyer may require a supplier to make any payment, either directly or indirectly, towards the resolution of a customer complaint.
- (7) Agri-Food Unfair Trading Regulations may provide that a buyer shall not enter into or renew any contract for the sale or supply of products unless the contract includes terms and conditions specified in Agri-Food Unfair Trading Regulations about the following:
- (a) the conditions under which a buyer may, or may not, directly or indirectly require a supplier to obtain any goods or services from a third party if the relevant buyer receives payment for the arrangement;
  - (b) in relation to delays or failures in performance of a contract for the sale or supply of products resulting from circumstances beyond the reasonable control of a party—
    - (i) the extent of the liability of the party, and
    - (ii) the actions that may or shall be taken by the parties to the contract in such circumstances.
- (8) Agri-Food Unfair Trading Regulations may provide that a trading practice is unfair—
- (a) unless provided for in clear and unambiguous terms in supply or subsequent agreements, or
  - (b) even if provided for in clear and unambiguous terms in supply or subsequent agreements.

**Agri-Food Unfair Trading Regulations: supply conditions**

61. (1) Agri-Food Unfair Trading Regulations may specify the manner and timeframe in which payments for agricultural and food products supplied to relevant trading partners in the agricultural and food supply chain are to be made.
- (2) Agri-Food Unfair Trading Regulations may prohibit the return of unsold agricultural and food products without paying—
- (a) for those unsold products, or
  - (b) for the disposal of those products.
- (3) Agri-Food Unfair Trading Regulations may specify conditions under which a buyer may, or may not, directly or indirectly require a supplier to obtain any goods or services from a third party from whom the buyer receives payment for this arrangement.
- (4) Agri-Food Unfair Trading Regulations may specify arrangements regarding promotions of products and related activities and the circumstances in which such arrangements shall or may be included in the contract for the sale or supply of products.
- (5) Agri-Food Unfair Trading Regulations may provide for limitations on the obligation of suppliers to participate in promotions by buyers or similar activities.
- (6) Agri-Food Unfair Trading Regulations may prohibit a buyer from requiring a supplier to obtain any goods or services from a third party if the buyer receives payment for the arrangement.

**Agri-Food Unfair Trading Regulations: commercial malpractice**

62. (1) Agri-Food Unfair Trading Regulations may prohibit specified classes of misuse of trade secrets.
- (2) Agri-Food Unfair Trading Regulations may prohibit an act of commercial retaliation against the supplier if the supplier exercises its contractual or legal rights, including the right to file a complaint, or cooperate, with an enforcement authority.

**Agri-Food Unfair Trading Regulations: compliance requirements**

63. (1) Agri-Food Unfair Trading Regulations may specify arrangements for—
- (a) the preparation by a buyer or supplier of an annual compliance report in respect of compliance with Agri-Food Unfair Trading Regulations, and
  - (b) the submission of annual compliance reports to the regulator.
- (2) Agri-Food Unfair Trading Regulations may require the maintenance of specified records by trading partners in the agricultural and food supply chain in relation to the sale or supply of products.
- (3) Agri-Food Unfair Trading Regulations may specify—

- (a) the nature or type of information, documents or records that are to be maintained and kept by trading partners in the agricultural and food supply chain, and
  - (b) the length of time for which information, documents or records shall be kept.
- (4) Agri-Food Unfair Trading Regulations may make provision about the designation and training of staff in trading partners in the agricultural and food supply chain to be responsible for—
- (a) coordination of compliance with Agri-Food Unfair Trading Regulations, and
  - (b) the dissemination of information to other staff about the implementation of Agri-Food Unfair Trading Regulations.

**Agri-Food Unfair Trading Regulations: exemptions**

64. (1) Agri-Food Unfair Trading Regulations may provide for exemptions in specified circumstances or for specified classes of buyer or supplier.
- (2) An exemption may, in particular, make provision by references to—
- (a) public interest in, or benefit accruing from, the activities of a buyer,
  - (b) healthcare providers, or
  - (c) educational institutions participating in programmes promoting greater consumption of certain products.

**Agri-Food Unfair Trading Regulations: ancillary provisions**

65. (1) Agri-Food Unfair Trading Regulations may include transitional provisions (including provision relating to the contracts for the sale or supply of products to which Agri-Food Unfair Trading Regulations apply).
- (2) In defining terms (such as specifying what amounts to a period of short notice) Agri-Food Unfair Trading Regulations may make different provision—
- (a) for different sectors or categories of product, or
  - (b) otherwise for different purposes or circumstances.
- (3) Agri-Food Unfair Trading Regulations may specify the turnover disparity between buyers and suppliers at which a trading practice becomes unfair (which may include thresholds).
- (4) Agri-Food Unfair Trading Regulations may specify categories of buyers and suppliers, or of products, in respect of which particular unfair trading practices apply.
- (5) Agri-Food Unfair Trading Regulations may include provision relating to services, ancillary to the sale of products, provided by the buyer to the supplier.

## CHAPTER 3

*Enforcement relating to unfair trading practices***Offence of unfair trading practice and penalties**

66. A person who contravenes or fails to comply with a provision of Agri-Food Unfair Trading Regulations that is specified in the Regulations to be a penal provision—
- (a) to which this paragraph applies, commits an offence and is liable, on summary conviction to a class A fine, or
  - (b) to which this paragraph applies, commits an offence and is liable—
    - (i) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months, or to both, or
    - (ii) on conviction on indictment, to a fine not exceeding the greater of €10,000,000 or 10 per cent of the aggregate turnover of the person in the financial year in which the offence was committed or to a term of imprisonment not exceeding 3 years, or to both.

**Complaints to regulator**

67. (1) In this section, “complaint” means an allegation made to the regulator that a specified buyer has engaged in, or is engaging in, an unfair trading practice.
- (2) A complaint may be submitted by—
    - (a) a supplier,
    - (b) a supply trade organisation, and
    - (c) another not-for-profit organisation on behalf of suppliers whom it represents.
  - (3) A supplier may make a complaint if—
    - (a) the supplier is established in the State, or
    - (b) the buyer is established in the State.
  - (4) The regulator shall take steps to protect—
    - (a) the identity of the complainant, or
    - (b) information identified by the complainant, disclosure of which the complainant believes would be harmful to its interests.
  - (5) Where the regulator receives a complaint—
    - (a) it may make preliminary inquiries for the purpose of deciding whether to investigate,
    - (b) it may request the complainant in writing to provide further written particulars of the complaint for the purpose of preliminary inquiries,

- (c) it shall inform the complainant (within a reasonable period of time) in writing of what it proposes to do in respect of the complaint, and
  - (d) if it considers that there are insufficient grounds for investigating a complaint, it shall inform the complainant in writing of the reasons as soon as reasonably practicable.
- (6) The regulator may decide not to investigate a complaint (or to discontinue it) on the grounds that—
- (a) the complaint is frivolous or vexatious or was not made in good faith,
  - (b) the subject matter of the complaint is trivial,
  - (c) the unfair trading practice occurred too long ago to justify investigation,
  - (d) the complainant had an alternative and satisfactory means of redress, or
  - (e) the complainant has failed to respond to a request for further particulars of the complaint fully or within the time specified by the regulator.
- (7) Where a complaint is made on behalf of a supplier under *subsection (2)(b)* or *(c)*, a reference in this Chapter to the complainant includes a reference to the supplier.

**Complaints: fees**

- 68.** (1) The Minister, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, may make regulations imposing fees to be paid by a person making a complaint under *section 67*.
- (2) In making regulations under *subsection (1)* the Minister shall have regard to the purpose of meeting expenses properly incurred by the regulator in the performance of its functions.
- (3) Regulations under *subsection (1)* may provide for, in particular—
- (a) rates of fees payable,
  - (b) the keeping of records and the making of returns by persons liable to pay fees, and
  - (c) the collection and recovery of fees.
- (4) Fees shall be payable to the regulator at such time and at such rates as may be prescribed in regulations under *subsection (1)*.
- (5) Different rates may be prescribed in respect of—
- (a) different classes of persons liable to pay fees, or
  - (b) different classes of complaint.
- (6) The regulator may recover an amount due under this section as a simple contract debt in any court of competent jurisdiction from the person by whom it is payable.

**Investigations by regulator**

69. (1) In this section, “investigation” means an investigation of an alleged or suspected unfair trading practice.
- (2) The regulator may conduct investigations—
- (a) in response to a complaint, or
  - (b) of its own initiative.
- (3) The regulator may require buyers and suppliers to provide information (including in writing) necessary to conduct investigations.
- (4) Where the regulator decides to investigate a complaint it shall conduct and conclude the investigation within a reasonable period of time.
- (5) At the conclusion of an investigation the regulator shall—
- (a) determine any enforcement or other action which it is appropriate for the regulator to take in relation to the conduct to which the investigation related, and
  - (b) notify all relevant persons (including the person whose conduct was investigated, and the complainant in the case of an investigation responding to a complaint), subject to the provisions of *section 51*.
- (6) The regulator may abstain from making a determination under *subsection (5)(a)* where such a determination would risk revealing the identity of a complainant or would risk disclosing any other information in respect of which the complainant considers that such disclosure would be harmful to its interests, provided that the complainant has identified that information in accordance with *section 67(4)(b)*.

**Alternative dispute resolution**

70. (1) The regulator may promote the use of alternative dispute resolution mechanisms for settling unfair trading disputes.
- (2) In this section “unfair trading dispute” means a dispute between a supplier and a buyer about practices which are alleged to be unfair trading practices.
- (3) The power in *subsection (1)* includes the power—
- (a) to invite suppliers and buyers to consider alternative dispute resolution mechanisms,
  - (b) to provide information about persons who are competent to provide alternative dispute resolution mechanisms, and
  - (c) to nominate a suitably qualified person to provide alternative dispute resolution services.
- (4) Where a matter that is the subject of a complaint or investigation is submitted to alternative dispute resolution—

- (a) the regulator may suspend the investigation, or consideration of the complaint, pending the outcome of the alternative dispute resolution,
- (b) if the alternative dispute resolution reaches a full and final agreed outcome, the regulator may close the investigation or consideration of the complaint, and
- (c) if the alternative dispute resolution concludes without reaching a full and final agreed outcome, the regulator shall resume the investigation or consideration of the complaint.

## PART 4

### ENFORCEMENT

#### CHAPTER 1

#### *Authorised officers*

#### **Appointment**

- 71.** (1) The regulator may in writing appoint as authorised officers for the purposes of this Act—
- (a) the chief executive, and
  - (b) other persons (or classes of person).
- (2) The regulator may delegate to the chief executive the function of making appointments under *subsection (1)(b)*.
- (3) Authorised officers are appointed to perform functions specified in their appointment in connection with—
- (a) the provisions of this Act,
  - (b) Agri-Food Unfair Trading Regulations,
  - (c) regulations under *section 80*, and
  - (d) provisions of European Union legislation which are agri-food unfair trading law.

#### **Tenure**

- 72.** (1) The appointment of an authorised officer ceases—
- (a) if the regulator revokes it in writing,
  - (b) in the case of an appointment for a fixed period, on the expiry of that period,
  - (c) in the case of an appointment for a specified purpose, on the completion of that purpose,
  - (d) on the officer's resignation, or

- (e) if the officer was appointed while a member of staff of the regulator or a member of a class of person, upon the person ceasing to be such a member.
- (2) An appointment of an authorised officer made by the chief executive may be revoked by the chief executive.

### **Warrant**

- 73.** (1) An authorised officer shall be provided with a warrant of appointment.
- (2) An authorised officer performing a function shall, on request, produce for inspection—
- (a) the warrant or a copy, and
  - (b) a form of personal identification.

## CHAPTER 2

### *Powers of authorised officers*

#### **Power to enter premises to inspect records**

- 74.** (1) For the purposes of exercising a function an authorised officer may at any reasonable time enter premises where the officer has reasonable grounds for believing that there are—
- (a) records relating to agricultural and food products, or
  - (b) anything used in connection with agricultural and food products.
- (2) An authorised officer may not enter a dwelling other than—
- (a) with the consent of the occupier,
  - (b) pursuant to a search warrant under this section, or
  - (c) where the officer has reasonable grounds for believing that before a search warrant can be obtained evidence of an offence under this Act is likely to be disposed of or destroyed.
- (3) A judge of the District Court may issue a search warrant allowing an authorised officer to enter a dwelling if satisfied by information on the oath of an authorised officer that there are reasonable grounds for believing that—
- (a) evidence of or relating to the commission or intended commission of an offence under this Act may be found on the premises,
  - (b) a record related to an agricultural and food product or other thing made, used or adapted for use (including manufacture or transport) in connection with an agricultural and food product may be found on the premises, or
  - (c) a record related to a thing to which *paragraph (a) or (b)* refers is or may be on the premises.

- (4) A search warrant under this section shall be expressed and operate to authorise a named authorised officer, accompanied by such other officers or persons as the officer thinks necessary, at any time within one month from the date of issue of the warrant—
- (a) to use reasonable force to enter the premises,
  - (b) to enter the premises named in the warrant, and
  - (c) to exercise functions of an authorised officer.
- (5) An authorised officer entering premises in reliance on a warrant under this section shall produce it on request.
- (6) In this Chapter, “premises” includes a vehicle, vessel and aircraft.

### **Power to enter premises to investigate offence**

75. (1) An authorised officer may enter premises if the officer has reasonable grounds for believing that—
- (a) an offence under this Act has been, is being, or is about to be committed on the premises, or
  - (b) evidence of an offence under this Act is likely to be found on the premises (or in anything on the premises).
- (2) An authorised officer entering a premises under *subsection (1)* may—
- (a) search the premises,
  - (b) require a person occupying or in control of the premises to provide equipment, facilities or other assistance,
  - (c) search anything in which the evidence of an offence may be found,
  - (d) require a person in charge or control of the thing to—
    - (i) refrain from moving it, or move it to a location where it may be searched,
    - (ii) give information regarding its place of departure, journey or destination,
    - (iii) where the thing is part of a computerised information management system, provide assistance (including passwords) to enable access to the thing or a related device or system, or
    - (iv) provide any other kind of assistance,
  - (e) seize and detain a record related to an agricultural and food product or other thing used in connection with an agricultural and food product, mark or otherwise identify it and detain it for such period as is necessary for the purpose of the authorised officer’s functions (including an inspection or search under this Part at any place the authorised officer requires), and

- (f) give a direction to a person who is in possession of, or who has power over or information relating to, a record relating to an agricultural and food product or any thing used in connection with an agricultural and food product.

**Inspection powers**

76. An authorised officer may—

- (a) examine a record or any other thing related to an agricultural and food product,
- (b) require the name and address of the owner or person in possession or control of a record or any other thing related to an agricultural and food product,
- (c) inspect anything used in connection with an agricultural and food product and require the person in charge or control of such thing to refrain from moving it,
- (d) require the owner or person in possession or control of anything used in connection with an agricultural and food product to produce to the authorised officer such records (and in the case of a record stored in non-legible form, produce a copy in a legible form), as the officer may reasonably require,
- (e) inspect and take copies of any record (including a legible reproduction of one stored in a non-legible form), or extracts from the record, that the officer finds or is produced to the officer during an inspection,
- (f) make a record,
- (g) require a person to provide information about the ownership and identity of a record related to an agricultural and food product or anything used in connection with a record related to an agricultural and food product, and
- (h) require a person to provide information about specified premises (including information about the ownership, occupation and use of the premises).

**Supplementary powers**

77. (1) In exercising a function under this Part, an authorised officer may be accompanied and assisted by one or more other persons.
- (2) An authorised officer, or a person accompanying an authorised officer, may bring any equipment or materials required.
  - (3) An authorised officer may seize anything found while exercising functions under this Part if the officer has reasonable grounds for believing it may be evidence of an offence under this Act and may seize and retain it for use in evidence in proceedings for such an offence.
  - (4) An authorised officer may use reasonable force to enter premises under this Part.
  - (5) An authorised officer, or a person accompanying an authorised officer, is not liable in any proceedings for anything done in the purported exercise of functions under this Part if the court is satisfied that—

- (a) the act was done in good faith, and
  - (b) there were reasonable grounds for doing it.
- (6) A member of the Garda Síochána may stop a vehicle or vessel for the purposes of this Act and may require that it be moved for inspection to a specified place (and for this purpose “vehicle” includes a trailer designed for use or used with a vehicle, and a container designed or used for carriage on a vehicle, whether or not attached to a vehicle).
- (7) Nothing in section 17 of the Industrial and Provident Societies Act 1893 prevents an authorised officer from exercising a function conferred by this Act.

**Compliance notice**

- 78.** (1) This section applies where an authorised officer is satisfied that a buyer has, in relation to a supplier, contravened—
- (a) a provision of Agri-Food Unfair Trading Regulations, or
  - (b) a penal provision of regulations made under *section 80*.
- (2) The authorised officer may serve a notice (a “compliance notice”) on the buyer.
- (3) A compliance notice shall be addressed to the person concerned by name and may be served on or given to the person—
- (a) by giving it to the person, or an employee, servant or agent,
  - (b) by leaving it at the address at which the person ordinarily resides, normally carries out business, or, if an address for service has been furnished, at that address,
  - (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, if an address for service has been furnished, to that address,
  - (d) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the compliance notice relates to a premises, by delivering it to the premises or by affixing it in a conspicuous position on or near the premises,
  - (e) by sending it by means of electronic mail to a device or facility for the reception of electronic mail where such an electronic mail address has been furnished by the person, but only if the sender’s facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail confirming successful transmission of the notification, notice or document.
- (4) If a compliance notice is to be served on or given to a person who is the owner or occupier of a premises and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to the person by using the words “the owner” or “the occupier”.

- (5) It is an offence for a person without reasonable excuse to remove, damage or deface a notice affixed under *subsection (3)(d)* during the period of 6 months beginning with the date on which it is affixed.
- (6) For the purposes of this section—
  - (a) a company within the meaning of the Act of 2014 is considered to be ordinarily resident at its registered office, and
  - (b) every other body corporate or unincorporated body is considered to be ordinarily resident at its principal office or place of business.
- (7) A compliance notice shall—
  - (a) state the grounds for the authorised officer's being satisfied that there has been a contravention,
  - (b) specify a date by which the buyer is required to take, or refrain from taking, specified action, for the purpose of ensuring compliance by the buyer with a provision mentioned in *subsection (1)*, and
  - (c) contain information about the right of an appeal against the notice and the manner in which appeals shall be brought.
- (8) The date specified under *subsection (7)(b)* shall not be on or before the last date for an appeal.
- (9) A person who fails to comply with a compliance notice by the specified date shall be guilty of an offence.
- (10) If the authorised officer is satisfied that the buyer has complied with a compliance notice, the authorised officer shall serve a notice in writing to that effect on the buyer (but a notice under this subsection does not prevent the authorised officer from exercising a power under this Act in relation to the buyer at any time).
- (11) An authorised officer may by notice in writing at any time—
  - (a) withdraw a compliance notice, or
  - (b) postpone the date under *subsection (7)(b)*.
- (12) The buyer on whom a compliance notice is served may appeal to a judge of the Circuit Court in the circuit court area in which the notice was served and—
  - (a) an appeal shall be brought not later than 14 days after the date of service of the compliance notice,
  - (b) the bringing of an appeal suspends the compliance notice,
  - (c) at the same time as bringing the appeal the buyer shall notify the regulator of the appeal and the grounds of appeal,
  - (d) the regulator and the buyer are each entitled to be heard, and to adduce evidence, at the hearing of the appeal,
  - (e) the judge shall—

- (i) affirm the compliance notice,
  - (ii) withdraw the compliance notice, or
  - (iii) withdraw the compliance notice and require the buyer to comply with directions given by the Circuit Court,
- and
- (f) affirmation of the compliance notice revives it, with the substitution for the date specified under *subsection (7)(b)* of the day falling immediately after the end of the period of 14 days beginning with the date on which the notice is affirmed.
- (13) This section does not prevent or restrict—
- (a) any entitlement to bring proceedings by or under this Act for the purpose of securing compliance with a provision of this Act or regulations under it, or
  - (b) proceedings for an offence under this Act.

### **Obstruction and false statements**

#### **79. (1) It is an offence—**

- (a) to obstruct, interfere with or impede an authorised officer in the exercise of a function under this Act,
  - (b) to fail or refuse, without reasonable cause, to comply with a requirement or direction of an authorised officer under *section 75* or *76*,
  - (c) to fail, without reasonable cause, to give assistance or requested information to an authorised officer under *section 75* or *76*,
  - (d) for a person purporting to give information to an authorised officer for the exercise of the officer's functions under this Act—
    - (i) to make a statement that the person knows to be false or misleading in a material particular,
    - (ii) recklessly to make a statement which is false or misleading in a material particular, or
    - (iii) intentionally to fail to disclose a material particular,
  - (e) to tamper or otherwise interfere with a sample taken in the exercise of a power under *section 75* or *76*, or
  - (f) to aid or abet a contravention of this Act or regulations under it.
- (2) A statement or admission made by a person pursuant to a requirement under *section 75* or *76* is not admissible in evidence in proceedings brought against the person for an offence under this Act, other than an offence under this section of failing to give information or giving false information.

- (3) In this section a reference to an authorised officer includes a reference to a person accompanying an authorised officer in the exercise of the authorised officer's functions.

## CHAPTER 3

*Enforcement and supplementary regulations***Enforcement and supplementary regulations, offences and penalties**

- 80.** (1) The Minister may by regulations make such provision as is necessary or expedient for the purposes of this Act.
- (2) Without prejudice to the generality of *subsection (1)* and, in the case of *paragraph (h)*, without prejudice also to the generality of section 3 of the Act of 1972, regulations under this section may make provision for—
- (a) the regulator's enforcement functions, including additional functions that may be assigned to it,
  - (b) the procedures for the making of complaints under this Act, including the format, timing, evidence, standing and other requirements for efficient and fair processing of complaints,
  - (c) the regulator's enforcement powers, including a power to hold hearings,
  - (d) the means and methods of publication of decisions, offences, penalties and fines for non-compliance,
  - (e) the efficient use and operation of alternative dispute resolution mechanisms,
  - (f) specifying additional agricultural and food products to which this Act applies (in accordance with *section 6(2)(c)*),
  - (g) the collection of price and market information to address issues of lack of transparency and information asymmetry in the agricultural and food supply chain (which may, in particular, include provision allowing the regulator to compel the provision of information referred to in *section 12(3)(d)*), and
  - (h) giving effect, or further effect, to an act (or a provision of an act) adopted by an institution of the European Union relating to—
    - (i) unfair trading practices in the agricultural and food sector, or
    - (ii) reporting of market prices in the agricultural and food sector.
- (3) Without prejudice to the generality of *paragraph (h)* of *subsection (2)*, regulations under that paragraph may—
- (a) contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations (including provisions repealing, amending or applying, with or without modification, other

law, exclusive of this section, the Act of 1972 and the European Communities Act 2007),

- (b) apply either generally or to such class or classes of agricultural and food products, persons, places, practices or activities as may be specified in the regulations, and
  - (c) prescribe persons to perform the functions of a national authority or competent authority for the purposes of the regulations and the act adopted by an institution of the European Union to which the regulations give effect or further effect, as the case may be.
- (4) Regulations under *subsection (2)(h)* shall specify in the preamble or recital to the regulations the act of the institution of the European Union to which the regulations give effect or further effect, as the case may be.
- (5) A person who contravenes or fails to comply with a provision of regulations made under this section that is specified in the regulations to be a penal provision—
- (a) to which this paragraph applies, commits an offence and is liable, on summary conviction to a class A fine, or
  - (b) to which this paragraph applies, commits an offence and is liable—
    - (i) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months, or to both, or
    - (ii) on conviction on indictment, to a fine not exceeding the greater of €10,000,000 or 10 per cent of the aggregate turnover of the person in the financial year in which the offence was committed or to a term of imprisonment not exceeding 3 years, or to both.
- (6) In this section, “Act of 1972” means the European Communities Act 1972.

#### CHAPTER 4

#### *Criminal proceedings*

##### **Time limit for instituting summary proceedings**

- 81.** Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted at any time within three years from the date on which the offence was alleged to have been committed.

##### **Liability for offences by bodies corporate**

- 82.** (1) If an offence under this Act is committed by a body corporate and is proved to have been committed with the consent, connivance or approval of, or to have been attributable to neglect on the part of, a director, manager, secretary or other officer of the body corporate or a person purporting to act in any of those capacities, that person, as well as the body corporate, commits the offence (whether or not the body corporate is prosecuted for it).

- (2) In a prosecution of a person for an offence by virtue of *subsection (1)*, if it is proved that at the material time the person was or purported to act as a director of the body corporate or an employee whose duties included making decisions that could have significantly affected the management of the body corporate, it shall be presumed unless and until the contrary is shown (the burden of proof being an evidential one only) that the person consented to the acts or defaults that constitute the offence.
- (3) If the affairs of a body corporate are managed by its members, *subsections (1) and (2)* apply in relation to the acts or defaults of a member in connection with the member's functions of management as if the member were a director or manager of the body corporate.
- (4) If a body corporate commits an offence under this Act, an employee, officer, director or agent of the body corporate who authorises, permits or acquiesces in the commission of the offence also commits the offence (whether or not the body corporate is prosecuted for it).
- (5) In a prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee, officer, director or agent of the defendant, whether or not the employee, officer, director or agent is identified or has been prosecuted for the offence.
- (6) *Subsection (5)* does not apply if the defendant establishes that the defendant exercised due diligence to prevent the commission of the offence.

### **Fines and penalties**

- 83.** (1) A person who commits an offence under *section 78(5)* is liable, on summary conviction, to a class A fine.
- (2) A person who commits an offence under any other provision of this Act (other than *section 66* or *section 80(5)*) is liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or to both, or
  - (b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years, or to both.

### **Convicted persons liable for costs**

- 84.** (1) On convicting a person of an offence under this Act, the court shall, unless satisfied that there are special and substantial reasons for not so doing, order the person to pay to the regulator the costs and expenses, measured by the court, incurred by the regulator in relation to the investigation, detection and prosecution of the offence.
- (2) An order for costs and expenses under *subsection (1)* is in addition to any fine or penalty the court may impose.

**Proceedings instituted by regulator**

85. The regulator may prosecute summarily an offence under this Act.

**Fixed payment notice**

86. (1) This section applies where an authorised officer has reasonable grounds for believing that a person is committing or has committed an offence under *section 66*, *section 78(5)* or *section 80*.
- (2) The authorised officer shall report this to an authorised officer designated for the purposes of this subsection.
- (3) An officer who receives a report under *subsection (2)* may serve on the person a notice in writing (a “fixed payment notice”) stating that—
- (a) the person is alleged to have committed the offence,
  - (b) the person may during the period of 28 days beginning on the date of the notice make to the regulator, at the address specified in the notice, a payment of €250,
  - (c) the person is not obliged to make the payment,
  - (d) a prosecution in respect of the alleged offence will not be instituted during the period in *paragraph (b)*, and
  - (e) if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.
- (4) Where a fixed payment notice is served—
- (a) the person to whom the notice applies may make the payment required during the specified period,
  - (b) the regulator may receive the payment, issue a receipt for it and retain the money so paid, and the payment is not recoverable in any circumstances by the person who made it,
  - (c) a prosecution in respect of the alleged offence may not be instituted in the period specified in the notice, and
  - (d) if the payment specified is made during that period, no prosecution in respect of the alleged offence may be instituted.
- (5) In proceedings for an offence referred to in *subsection (1)*, the onus of proving that a payment in accordance with a fixed payment notice has been made lies on the person on whom the fixed payment notice was served.
- (6) In proceedings for an offence referred to in *subsection (1)*, it is a defence for the accused to show that payment has been made pursuant to a fixed payment notice issued in respect of the offence.
- (7) The Minister may by order specify an amount not exceeding €1,000 in place of the amount specified in *subsection (3)(b)* and different amounts may be specified in respect of different offences.