



CORPORATE AND COMMERCIAL

29 July Deadline for Retailers and Wholesalers to comply with the Grocery Regulations

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The Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016 (the “Grocery Regulations”) came into force in Ireland in April 2016.

Grocery goods retailers and wholesalers that are subject to the Regulations have until 29 July 2016 to comply with certain aspects of the Grocery Regulations, or risk sanctions.

The Grocery Regulations apply to retailers or wholesalers of food and drink (including alcohol) in Ireland, that have an annual worldwide turnover in excess of €50 million (each a “Relevant Grocery Goods Undertaking” or “RGGU”). The new laws regulate grocery goods contracts between these entities and their suppliers.

The Competition and Consumer Protection Commission (“CCPC”) is the body designated to enforce compliance with the Grocery Regulations. The CCPC’s powers under the Regulations include issuing contravention notices and bringing criminal prosecutions which carry penalties of fines and/or imprisonment.

Obligations under the Grocery Regulations

The Grocery Regulations apply to grocery goods contracts entered into or renewed after 30 April 2016. The new laws require the retailer or wholesaler to comply with various new obligations. Some of these obligations are set out below, but regulated retailers and wholesalers will need to study the new laws in detail:

- All new or renewed grocery goods contracts between suppliers and the RGGU must be in writing.
- The contract terms and conditions must be in clear, understandable language.
- The supplier and the RGGU must retain a copy of the written contract.
- In most cases the RGGU must pay a supplier within thirty days of the supplier delivering the grocery goods, or receiving supplier's invoice, whichever is the later date.
- The manner in which variation, termination or renewal of a contract is dealt with must comply with the Regulations by being express and having a specified notice period.
- Any notice period in relation to the variation, termination or renewal of a contract must be reasonable. Reasonableness is determined by the factors set out in the Grocery Regulations, including:
 - the duration of the contract;
 - the frequency with which the RGGU places orders;
 - the characteristics of the grocery goods including their durability and seasonality; and
 - the impact on the supplier’s annual turnover when significant variations are sought by the RGGU;
- A RGGU must, where requested by a supplier, prepare a written forecast of the grocery goods that it will require, and provide that to the supplier along with the basis on which the forecast report was prepared.

Prohibited Activities under the Grocery Regulations

Payments from suppliers to RGGUs dealing with promotions, marketing, advertising, retention, increased allocation, better positioning and display are also now expressly regulated and restricted.

The Grocery Regulations prohibit a number of unilateral acts by a regulated retailer or wholesaler when dealing with suppliers. For example, the RGGUs may not:

- seek payment from a supplier as a condition of stocking, displaying or listing the supplier's grocery goods except in specified limited circumstances;
- directly or indirectly compel a supplier to pay the RGGU towards promoting the supplier's grocery goods in its premises except in specified limited circumstances; and
- seek payments from suppliers for wastage and shrinkage costs, except in specified limited circumstances.

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RGGUs in Ireland were given a three month period to become familiar with their obligations under the Grocery Regulations. These businesses must have implemented measures in the following areas by 29 July 2016 to ensure that they are in compliance with the Grocery Regulations:

Designation and training of staff

RGGUs must provide training to their staff in relation to compliance with the Grocery Regulations and designate staff to disseminate information to their colleagues in the organisation about their obligations under the Grocery Regulations. We can provide such training, if assistance is needed.

Each RGGU must appoint a suitably qualified staff member as a "liaison officer" to liaise with the CCPC in relation to its implementation of the Regulations, and the name and contact details of that person should be notified to the CCPC.

Annual compliance report to submit to the CCPC

Each RGGU must, by 31 March each year, prepare an annual compliance report for the CCPC detailing its compliance with the Grocery Regulations. The annual compliance report must be signed by a director or secretary of the RGGU and be submitted in a form to be specified by the CCPC. The first annual compliance report covering the period from 30 April to 31 December 2016 must be submitted prior to 31 March 2017. We can assist with drafting these reports, if assistance is needed.

Maintenance of records

Each RGGU must create and maintain prescribed records for inspection by the CCPC including:

- copies of contracts with suppliers;
- records of payments to and by suppliers;
- records of forecasts and estimates provided to suppliers;
- details of each supplier where a contract is entered into or renewed;
- records of training and dissemination of information within the organisation;
- records of its board of directors; and
- records used in the preparation and submission of annual compliance reports.

Summary

All RGGUs need to ensure that their systems and procedures have been reviewed and, if necessary,

updated to comply with the Grocery Regulations. Attention should be paid to the Guidelines published by the Department of Jobs, Enterprise and Innovation which also deal with the Grocery Regulations. Failure to comply with these laws may be costly. Not only can the CCPC take an action against a RGGU for failure to comply with the new rule, but they also provide an aggrieved supplier with a right of action for relief against that retailer or wholesaler in the Circuit Court.

About the Author