



**An Bille um Chaingne Ionadaíocha chun Comhleasanna Tomhaltóirí a
Chosaint, 2023**

**Representative Actions for the Protection of the Collective Interests of
Consumers Bill 2023**

Mar a tionscnaíodh

As initiated



**AN BILLE UM CHAINGNE IONADAÍOCHA CHUN COMHLEASANNA
TOMHALTÓIRÍ A CHOSAINT, 2023
REPRESENTATIVE ACTIONS FOR THE PROTECTION OF THE COLLECTIVE
INTERESTS OF CONSUMERS BILL 2023**

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**AN BILLE UM CHAINGNE IONADAÍOCHA CHUN COMHLEASANNA
TOMHALTÓIRÍ A CHOSAINT, 2023
REPRESENTATIVE ACTIONS FOR THE PROTECTION OF THE COLLECTIVE
INTERESTS OF CONSUMERS BILL 2023**

Bill

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entitled

An Act to give effect to Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020¹ on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC; and to provide for related matters.

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Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement

1. (1) This Act may be cited as the Representative Actions for the Protection of the Collective Interests of Consumers Act 2023. 15
- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions. 20

Interpretation

2. (1) In this Act—
 - “Act of 1972” means the European Communities Act 1972;
 - “applicant” has the meaning assigned to it by *section 8*;
 - “Commission” means the European Commission; 25
 - “consumer” means an individual who acts for purposes that are outside that individual’s trade, business, craft or profession;
 - “Court” means the High Court;

¹ OJ No. L 409, 4.12.2020, p. 1.

“cross-border representative action” means a representative action brought by a qualified entity in a Member State other than the Member State in which the qualified entity was designated;

“designation criteria” means the matters specified in *subsection (1) of section 8* for designation as a qualified entity; 5

“directions notice” has the meaning assigned to it by *section 10*;

“Directive” means Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020² on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC;

“domestic representative action” means a representative action brought by a qualified entity in the Member State in which the qualified entity was designated; 10

“enactment” has the same meaning as it has in the Interpretation Act 2005;

“European act” means—

- (a) a provision of the treaties governing the European Union, or
- (b) an act or provision of an act adopted by an institution of the European Union, an institution of the European Communities or any other body competent under those treaties; 15

“European Communities” has the same meaning as it has in the Act of 1972;

“European Union” has the same meaning as it has in the Act of 1972;

“infringement” means an infringement of a relevant enactment; 20

“Minister” means the Minister for Enterprise, Trade and Employment;

“prescribed” means prescribed by regulations made by the Minister;

“qualified entity” means a legal person or public body representing consumers’ interests which has been designated by—

- (a) the Minister under *section 8(4)(a)*, or 25
- (b) a Member State (other than the State),

as qualified to bring representative actions in accordance with the Directive;

“redress measure” shall be construed in accordance with *section 26*;

“register” has the meaning assigned to it by *section 16*;

“relevant enactment” means— 30

- (a) a European act or a provision of a European act specified in Annex I to the Directive,
- (b) an Act of the Oireachtas specified in *Part 1* of the *Schedule* or an instrument under such an Act of the Oireachtas,
- (c) a provision of an Act of the Oireachtas specified in *Part 2* of the *Schedule*, 35
- (d) a statutory instrument specified in *Part 3* of the *Schedule*, or

² OJ No. L 409, 4.12.2020, p. 1.

(e) a provision of a statutory instrument specified in *Part 4* of the *Schedule*;

“representative action” means an action for the protection of the collective interests of consumers that is brought by a qualified entity as a plaintiff on behalf of consumers to seek—

(a) an injunction in accordance with *section 23*, or 5

(b) a redress measure in accordance with *section 26*,

or both;

“trader” means any natural person, or any legal person irrespective of whether privately or publicly owned, that acts, including through another person acting in that person’s name or on that person’s behalf, for purposes relating to that person’s trade, business, craft or profession; 10

“treaties governing the European Union” has the same meaning as it has in the Act of 1972.

(2) A word or expression that is used in the Directive and in this Act has, unless the context otherwise requires, the same meaning in this Act as it has in the Directive. 15

Regulations

3. (1) The Minister may make regulations for the purposes of this Act, including regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed.

(2) Without prejudice to any provision of this Act, 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. 20

(3) Every 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 regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 25

Service of documents

4. (1) A notice or other document that is required to be served on or given to a person under this Act shall be addressed to the person concerned by name, and may be so served on or given to the person in one of the following ways: 30

(a) by delivering it to the person;

(b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address; 35

(c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address;

(d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or notices or documents of a class to which the notice or document belongs) being served on, or given to, him or her in that manner.

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(2) For the purpose of this section, a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

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Application

5. (1) Subject to *subsection (2)*, this Act applies to representative actions brought on or after 25 June 2023 in respect of infringements by traders occurring on or after that date that harm or may harm the collective interests of consumers.

(2) This Act applies to domestic and cross-border infringements, including where those infringements ceased before a representative action is brought or where those infringements ceased before a representative action is concluded.

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(3) This Act is without prejudice to the provisions of a relevant enactment.

(4) This Act shall not affect rules in the relevant enactments in so far as they establish contractual and non-contractual remedies available to consumers for the infringements referred to in *subsections (1) and (2)*.

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Revocation

6. (1) Subject to *subsection (2)*, the Regulations of 2010 are revoked.

(2) *Subsection (1)* shall not apply to representative actions that are brought before 25 June 2023 and accordingly the Regulations of 2010 shall continue to apply to those representative actions as if *subsection (1)* had not been enacted.

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(3) In this section, “Regulations of 2010” means the European Communities (Court Orders for the Protection of Consumer Interests) Regulations 2010 (S.I. No. 555 of 2010).

Expenses

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7. 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 moneys provided by the Oireachtas.

PART 2

QUALIFIED ENTITIES

Designation of qualified entities

8. (1) An organisation (in this section referred to as an “applicant”) may apply to the Minister to be designated as a qualified entity for the purposes of taking domestic representative actions or taking cross-border representative actions, or both, if— 5
- (a) it is a legal person and can demonstrate in the application 12 months of actual public activity in the protection of consumer interests prior to the application,
 - (b) its main purpose is one that demonstrates that it has a legitimate interest in protecting consumer interests provided for in a relevant enactment, 10
 - (c) it has a non-profit-making character,
 - (d) it is not the subject of insolvency proceedings and has not been declared insolvent,
 - (e) it is independent and is not influenced by persons other than consumers, in particular by traders, who have an economic interest in the bringing of any representative action, including in the event of funding by third parties, and, to that end, it has established procedures to prevent such influence as well as to prevent conflicts of interest between itself, its funding providers and the interests of consumers, and 15
 - (f) it makes publicly available in plain and intelligible language by any appropriate means, in particular on its website, information that demonstrates that it complies with the matters referred to in *paragraphs (a) to (e)* and information about the sources of its funding in general, its organisational, management and membership structure, its statutory purpose (if any) and its activities. 20
- (2) An application for designation under *subsection (1)* shall be made in the prescribed form. 25
- (3) At any time after receiving an application and before determining the application, the Minister may by notice in writing require the applicant to provide additional information to him or her and where the Minister does so, the applicant shall comply with that requirement. 30
- (4) The Minister may—
- (a) designate an organisation as a qualified entity, the subject of an application under *subsection (1)*, where he or she is satisfied of the matters specified in that subsection, or
 - (b) subject to *section 9*, refuse to designate an organisation as a qualified entity, the subject of an application under *subsection (1)*, where he or she is not so satisfied. 35
- (5) Where the Minister designates an organisation as a qualified entity under *subsection (4)(a)*, he or she shall notify the qualified entity in writing of the designation.
- (6) A designation issued under *subsection (4)(a)* shall come into effect on the date of the making of such designation. 40

- (7) In this section, “legal person” means—
- (a) a legal person established in the State, or
 - (b) a legal person established in accordance with the national law of a Member State (other than the State).

Refusal of designation

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9. (1) Where the Minister proposes to refuse a designation under *section 8(4)(b)*, he or she shall notify the applicant in writing of the proposed refusal.
- (2) A notification under *subsection (1)* shall include particulars of the following:
- (a) the proposal to refuse a designation under *section 8(4)(b)* and the reason for it;
 - (b) that the applicant is entitled to make representations in accordance with *section 12*; 10
 - (c) that the applicant is entitled to a review of the decision to refuse the designation in accordance with *section 14*.

Directions notice

10. (1) Where the Minister is satisfied that a qualified entity has failed to comply with an information obligation or any designation criteria, the Minister may, by notice in writing (in this Act referred to as a “directions notice”) to the qualified entity— 15
- (a) inform the qualified entity of such failure and the reasons for issuing the directions notice,
 - (b) direct the qualified entity within such period as may be specified in the notice to comply with the specified information obligation or designation criteria, as the case may be, 20
 - (c) inform the qualified entity that a failure to comply with the directions specified in the notice within the time specified in the notice may result in the Minister seeking to revoke the designation of the qualified entity in accordance with *section 11*, and 25
 - (d) inform the qualified entity that it may make representations in accordance with *subsection (2)*.
- (2) A qualified entity that has been issued a directions notice under *subsection (1)* may make representations to the Minister about the failure to comply with an information obligation or any designation criteria and the Minister shall have regard to any representations made to him or her in deciding whether to proceed with seeking to revoke the designation of the qualified entity in accordance with *section 11*. 30
- (3) The Minister may withdraw a directions notice at any time, as he or she considers appropriate. 35
- (4) In this section, “information obligation” means an obligation to provide information in accordance with *subsection (1) or (4) of section 18* or *sections 24(3), 29(2) or 29(4)*.

Revocation of designation

11. (1) The Minister may revoke a designation of a qualified entity under *section 8* where—
- (a) following a review in accordance with *section 13*, or a failure to provide information requested in accordance with *subsection (4)* of that section, the Minister is of the opinion that the qualified entity no longer satisfies the designation criteria, or 5
 - (b) the qualified entity has failed to comply with a directions notice issued in accordance with *section 10*.
- (2) Where the Minister proposes to revoke a designation under *subsection (1)*, he or she shall notify the qualified entity in writing of the proposed revocation. 10
- (3) A notification under *subsection (2)* shall include particulars of the following:
- (a) the proposal to revoke a designation under *subsection (1)* and the reason for it;
 - (b) that the qualified entity is entitled to make representations in accordance with *section 12* regarding the proposal to revoke a designation;
 - (c) that if the qualified entity does not make such representations, the revocation of a designation under *subsection (1)* shall come into operation 28 days from the date of the service of the notification; 15
 - (d) that where the revocation comes into operation in accordance with *paragraph (c)*, the Minister shall, where appropriate, notify the Commission that the name of the qualified entity should be removed from the list of qualified entities maintained by the Commission in accordance with Article 5(1) of the Directive; 20
 - (e) that the qualified entity is entitled to seek a review of the decision to revoke the designation in accordance with *section 14*.

Representations

12. (1) An applicant, notified of a proposal to refuse a designation under *section 9* or a qualified entity notified of a proposal to revoke a designation under *section 11* may, within 28 days of the notification, make representations to the Minister about such proposal. 25
- (2) The Minister shall have regard to any representations made to him or her under *subsection (1)* in deciding whether to proceed with the proposed refusal or revocation of the designation concerned and shall notify the applicant, or the qualified entity as the case may be, in writing of his or her decision. 30
- (3) Where a qualified entity makes representations to the Minister in accordance with *subsection (1)* and unless a review is sought under *section 14*, revocation of a designation under *section 11* shall come into operation 28 days from the date of the notification referred to in *subsection (2)*. 35

Review of designation

13. (1) The Minister shall—

- (a) undertake a review of the designation of a qualified entity where concerns are raised by another Member State or the Commission regarding the compliance by a qualified entity with the criteria specified in Article 4(3) of the Directive, and
 - (b) undertake, at least once every 5 years, a review of the designation of a qualified entity to ensure that the qualified entity continues to satisfy the designation criteria. 5
- (2) For the purposes of a review undertaken in accordance with this section, the Minister may—
- (a) inspect and make copies of any books, records or other documents (including books, records or documents stored in non-legible form), or extracts therefrom, relating to the qualified entity, 10
 - (b) by notice in writing, request the qualified entity to provide additional information to him or her, and
 - (c) request any person at the place of work or premises concerned, including the owner or person in charge of that place or premises, to give the Minister such information and assistance as he or she may reasonably require for the purposes of a review under this section. 15
- (3) A person requested to provide information or assistance in accordance with *subsection (2)* shall comply with a request of the Minister to provide such information and assistance as the Minister may reasonably require for the purposes of the review. 20
- (4) Where a qualified entity fails or refuses to provide information requested in accordance with this section, the Minister may revoke the designation of the qualified entity under *section 11*.

Review of refusal of designation or revocation of designation

- 14.** (1) An applicant whose application for designation is refused by the Minister under *section 8(4)(b)* or a qualified entity whose designation is revoked by the Minister under *section 11* may, within 28 days from the date of the notification under *section 9(2)* or *11(2)*, as may be appropriate, request in writing a review (in this section referred to as a “review request”) of such refusal or revocation, as the case may be, in the prescribed form. 25 30
- (2) The review request shall state the grounds on which the applicant or qualified entity making the request seeks a review of the refusal or revocation, as the case may be.
- (3) The Minister shall, upon receipt of the review request, appoint an independent person (in this section referred to as a “reviewer”) to carry out a review requested under *subsection (1)*. 35
- (4) The reviewer shall, as soon as practicable after being appointed, review the refusal of designation or revocation of designation, as the case may be, and may recommend to the Minister that the Minister ought to—
- (a) affirm the decision—
 - (i) to refuse the application for designation, or 40
 - (ii) to revoke the designation,

or

(b) set aside the decision—

(i) to refuse the application for designation, or

(ii) to revoke the designation,

and recommend that the Minister reconsider the decision.

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(5) The reviewer shall, within 14 days of making his or her recommendation under *subsection (4)*, give notice to the person who made the review request, of the recommendation and the reasons for it.

Request by Minister for information

15. (1) The Minister may request a qualified entity to provide to the Minister as soon as it is practicable after the receipt of such request, such information as the Minister may reasonably require for the purposes of this Act and is so specified in the request. 10

(2) Where the Minister makes a request under *subsection (1)* for information, the qualified entity shall comply with the request.

Register

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16. (1) The Minister shall establish and maintain a register of qualified entities (in this Act referred to as the “register”).

(2) Information concerning qualified entities designated under *section 8* shall be made available to the public on a website maintained by the Minister.

(3) The Minister may publish any additional information concerning qualified entities that he or she considers appropriate on the website referred to in *subsection (2)*. 20

National contact point

17. (1) The Minister is designated as the national contact point for the purposes of the Directive.

(2) The Minister shall have the function of supporting and facilitating cooperation between qualified entities as respects the exchange and dissemination of their best practices and experience in relation to dealing with domestic infringements and cross-border infringements. 25

Information to be provided by qualified entities

18. (1) A qualified entity shall publish, on its website and in such other manner as the qualified entity considers appropriate, information relating to— 30

(a) representative actions that the qualified entity brought before the Court, or, in a case brought in a Member State other than the State, the Member State in which the representative action is brought,

(b) the status of the representative actions brought referred to in *paragraph (a)*, 35

(c) the outcomes of the representative actions brought referred to in *paragraph (a)*,

- (d) any fee which may be charged in accordance with *section 29* to a consumer who may be represented by it in that representative action,
 - (e) information concerning its designation as a qualified entity in accordance with *section 8*, and
 - (f) information about the sources of its funding, its organisational, management and membership structure, its statutory purpose (if any) and its activities. 5
- (2) A qualified entity shall provide and update the information referred to in *subsection (1)* in a timely manner and by appropriate means, in order to ensure that a consumer who is seeking to be represented in any representative action by the qualified entity may request the qualified entity accordingly pursuant to *section 24*. 10
- (3) Information referred to in *subsection (1)* shall be in such form as the Minister may prescribe.
- (4) A qualified entity shall provide a trader with the information specified in *section 25(4)* with regard to consumers.

PART 3

15

REPRESENTATIVE ACTIONS

Representative action brought by qualified entity

19. (1) A representative action may only be brought before the Court by a qualified entity.
- (2) Where it considers it appropriate to do so, the Court may deem a representative action admissible under this section where satisfied that the applicant in the action is a qualified entity. 20
- (3) Subject to *subsection (4)*, in the case of a cross-border representative action brought by a qualified entity referred to in *paragraph (b)* of the definition of that term in *section 2*, the Court shall accept the inclusion of the name of the qualified entity in the list of designated qualified entities maintained by the Commission in accordance with Article 5(1) of the Directive as sufficient evidence that such qualified entity is entitled to bring a cross-border representative action before it. 25
- (4) *Subsection (3)* shall not prevent the Court from examining whether the main purpose of the qualified entity referred to in *section 8(1)(b)* justifies the qualified entity concerned taking a representative action in a particular case. 30
- (5) A defendant trader in a representative action shall have the right to raise justified concerns to the Court regarding whether a qualified entity complies with the designation criteria.
- (6) A qualified entity may within a single representative action seek either or both of the following reliefs: 35
- (a) an injunction in accordance with *section 23*;
 - (b) redress measures in accordance with *section 26*.

- (7) Where a qualified entity seeks both reliefs referred to in *paragraphs (a) and (b) of subsection (6)* within a single representative action the Court may, where it grants both of the reliefs sought, provide that both of those reliefs may be contained in a single judgment.
- (8) In any representative action brought in accordance with this Act, a qualified entity shall be the plaintiff in the representative action, and shall have all of the rights and obligations of a plaintiff in the proceedings. 5
- (9) The consumers represented in a representative action shall be entitled to benefit from the outcome of the granting of any reliefs referred to in *subsection (6)*.
- (10) A qualified entity shall provide the Court with the following information: 10
 - (a) the sources of funding of the representative action;
 - (b) the nature of the claim and, in particular, the nature of an alleged infringement;
 - (c) the class or classes of consumers affected by the alleged infringement.
- (11) A qualified entity shall provide the Court with sufficient information regarding the consumers referred to in *subsection (10)(c)* in order that the Court may assess the admissibility of the representative action concerned in accordance with this section. 15
- (12) The Court may, on the application of a party to a representative action, or of its own motion dismiss a representative action which appears to the Court to be manifestly unfounded as soon as the Court has received the necessary information in order to make such a decision. 20
- (13) The power conferred by *subsection (12)* to dismiss a representative action is without prejudice to any other discretionary power to dismiss an action which the Court may exercise at any time during the course of proceedings.

More than one qualified entity may bring a representative action

- 20. (1) More than one qualified entity designated by different Member States may bring a representative action, where an alleged infringement affects or is likely to affect consumers in more than one Member State, in order to protect the collective interests of consumers in different Member States. 25
- (2) Where a representative action is brought by a number of qualified entities, the qualified entities participating in that action shall nominate one qualified entity to lead the conduct of the representative action. 30
- (3) The qualified entity nominated to lead the conduct in accordance with *subsection (2)* shall inform the Court of such nomination.
- (4) All qualified entities participating in a representative action shall be bound by the outcome of the representative action. 35

Consultations with trader

- 21. (1) Proceedings shall not be brought in respect of a representative action seeking an injunction under *section 23(1)(b)*, unless and until the qualified entity has engaged in prior consultations with the trader who is the subject of the proposed representative

action in order to provide the trader concerned with an opportunity to cease the infringement that would be the subject of the proposed representative action.

- (2) Before a qualified entity makes an application to bring a representative action before the Court seeking an injunction under *section 23(1)(b)*, the qualified entity shall—
- (a) request the trader concerned to cease the infringement specified in the request, 5
 - (b) request the trader concerned to enter into consultations with the qualified entity concerning the proposed representative action, or
 - (c) enter into consultations with the trader concerned with the aim of having the trader cease the infringement the subject of the proposed representative action.
- (3) Where a qualified entity and a trader have entered into consultations in accordance with *subsection (2)*, they may mutually agree to extend the period referred to in *subsection (4)(b)* if it is considered that such an extension would assist in successfully resolving the infringement by the trader concerned. 10
- (4) Where, after consultation or reasonable efforts are made to enter into consultations in accordance with *subsection (2)*, or where the trader has refused to participate in such consultations— 15
- (a) the qualified entity is of the opinion that the trader has continued to act in a manner that constitutes an infringement, and
 - (b) a period of 2 weeks has elapsed since the request under *subsection (2)(b)* was received by such trader, 20
- the qualified entity may, for the purposes of protecting the collective interests of consumers, make an application to bring a representative action before the Court seeking an injunction under *section 23*.

Alternative dispute resolution

22. (1) Where a qualified entity requests a trader to cease an infringement or enter into consultations regarding an infringement in accordance with *section 21(2)*, the entity may engage an ADR entity (within the meaning of the Regulations of 2015) for the purpose of resolving the alleged infringement to which Regulation 3 of the Regulations of 2015 applies. 25
- (2) In this section, “Regulations of 2015” means the European Union (Alternative Dispute Resolution for Consumer Disputes) Regulations 2015 (S.I. No. 343 of 2015). 30

Injunctions

23. (1) A qualified entity may, in a representative action brought in accordance with *section 19*, apply to the Court for an injunction and the Court may, on such application make an order granting one of the following: 35
- (a) an interim injunction to cease a practice or, where appropriate, to prohibit a practice where that practice has been deemed by the Court to constitute an infringement;

- (b) an injunction to cease a practice or, where appropriate, to prohibit a practice, where that practice has been found by the Court to constitute an infringement.
 - (2) In making an order under *subsection (1)(b)*, the Court may where it considers it appropriate—
 - (a) declare that the practice, the subject of the order, constitutes an infringement, and 5
 - (b) direct the trader concerned—
 - (i) to publish the decision, the subject of the order concerned in full or in part, in such form as the Court considers appropriate, or
 - (ii) to publish a corrective statement in such form as the Court considers appropriate. 10
 - (3) Before a qualified entity may commence proceedings for an injunction under *subsection (1)(b)*, the qualified entity shall be required to satisfy the Court that the entity sought to engage with the trader concerned in an effort to resolve the alleged infringement in accordance with *section 21*.
 - (4) An application to the Court for an order under this section shall be by way of motion and the Court when considering the matter may make such interim or interlocutory order (if any) as it considers appropriate. 15
 - (5) An order by which an application under this section is determined may contain such terms and conditions (if any) as to the payment of costs as the Court considers appropriate. 20
 - (6) Where a qualified entity seeks an injunction under this section, an individual consumer shall not be required to notify the qualified entity that he or she seeks to be represented by that qualified entity for such measure.
 - (7) A qualified entity in making an application under this section shall not be required to prove— 25
 - (a) actual loss or damage on the part of an individual consumer affected by the alleged infringement, or
 - (b) intent or negligence on the part of the trader, the subject of the application concerned.
- Notification to be represented by qualified entity for redress measures** 30
- 24.** (1) A consumer who is ordinarily resident in the State or habitually resident in another Member State and—
- (a) is or has been affected by an alleged infringement by a trader, and
 - (b) requests to be represented by a qualified entity in a representative action for redress measures against that trader for the specified alleged infringement, 35
- shall so notify the qualified entity concerned in the prescribed manner.
- (2) A consumer referred to in *subsection (1)* may notify the qualified entity at any time until the case has been deemed admissible by the Court in accordance with *section 19*.

- (3) A qualified entity shall, in the prescribed manner, inform any consumer who has notified the qualified entity under *subsection (1)* of any determination made by the Court in respect of which that consumer is affected, relating to—
 - (a) admissibility of the representative action in accordance with *section 19*, or
 - (b) the outcome of the determination of admissibility of the representative action. 5
- (4) A consumer who has not notified the qualified entity in accordance with this section shall not be represented by the qualified entity in the representative action and shall not be entitled to benefit from the redress measures granted by the Court in respect of that representative action.
- (5) Where a consumer no longer seeks to be represented by the qualified entity in any representative action for redress, he or she shall notify the qualified entity in the prescribed manner and shall not be entitled to benefit from any redress measures granted by the Court in respect of that representative action. 10
- (6) A qualified entity shall inform the Court of any notification made by a consumer in accordance with *subsection (5)*. 15
- (7) A consumer who has notified the qualified entity of his or her request to be represented in accordance with this section and has paid such entry fees as may be required by the qualified entity in accordance with *section 29*—
 - (a) shall be bound by the outcome of such representative action,
 - (b) shall not be represented in any other representative action with the same cause of action against the same trader, and 20
 - (c) may not bring an action individually with the same cause of action against the same trader.

Declaration by consumer concerning compensation

- 25. (1) A consumer who has notified a qualified entity of his or her request to be represented in accordance with *section 24* shall sign a declaration provided to him or her by the qualified entity, which declaration shall confirm— 25
 - (a) that he or she has not previously received compensation from the same trader for the same cause of action, and
 - (b) that he or she has been informed that receiving compensation in relation to this representative action concerned will preclude him or her from receiving any other compensation from the same trader for the same cause of action. 30
- (2) Where a consumer has signed a declaration in accordance with *subsection (1)*, he or she shall be bound by the outcome of the representative action to which that declaration relates. 35
- (3) Where a consumer has not signed a declaration in accordance with *subsection (1)*, he or she may bring an action against the trader for the same cause of action but shall be precluded from benefiting from any redress measures under *section 26* in the representative action concerned.
- (4) A qualified entity shall— 40

- (a) when the representative action is deemed admissible, provide a trader with a list of the names of the consumers who have notified their request to be represented in the representative action and have signed a declaration in accordance with *subsection (1)*, and
- (b) at the end of the representative action, provide a trader with a list of the names of the consumers who are eligible to receive redress where such consumers have not obtained compensation through other means for the same cause of action. 5

Redress measures

26. (1) A qualified entity bringing a representative action in accordance with *section 19* may seek a redress measure specified in *subsection (2)*. 10
- (2) Without prejudice to a discretionary power the Court may have in relation to redress, the Court may, in respect of a representative action before it, require a trader who is a defendant in the action to provide a consumer with one or more of the following remedies (each of which in this Act shall be referred to as a “redress measure”) as may be available by or under and in accordance with a relevant enactment to which the representative action relates, namely: 15
- (a) compensation;
 - (b) repair;
 - (c) replacement;
 - (d) price reduction; 20
 - (e) contract termination;
 - (f) reimbursement of price paid.
- (3) A consumer shall not be entitled to receive compensation more than once arising from the same cause of action against the same trader.
- (4) A qualified entity shall gather, and provide the Court with, information concerning the class or classes of consumers entitled to benefit from redress measures ordered in the representative action concerned. 25
- (5) A qualified entity shall, in such form as may be prescribed, inform consumers who are represented by it in a representative action for redress of the particulars of any redress measures ordered by the Court in the action concerned and how those consumers can benefit from any such redress measures. 30
- (6) It shall not be necessary for an individual consumer to bring a separate action to benefit from the redress measures referred to in *subsection (2)*.
- (7) The Court shall determine the period within which an individual consumer shall be entitled to avail of the redress measure ordered by the Court under this section. 35
- (8) Where the Court has ordered a redress measure and the order does not specify the individual consumers entitled to benefit from remedies provided by the redress measure, the Court shall identify and include in the order concerned the class or classes of consumers entitled to benefit from those remedies.

- (9) A qualified entity shall be entitled to bring a representative action for redress measures under this section without it being necessary for the Court or a court or administrative authority in another Member State to have previously established a finding of an infringement in separate proceedings to those before the Court.
- (10) The redress measures that may be ordered in a representative action shall be without prejudice to any additional remedies available to consumers under any enactment or European acts which were not the subject of that representative action. 5

Funding of representative actions for redress measures

- 27. (1) Where a representative action for redress measures brought in accordance with *section 26* is funded by a third party, insofar as permitted in accordance with law, the Court shall ensure, having regard to the matters referred to in *subsection (2)*, that conflicts of interests are prevented and that funding by third parties who have an economic interest in the bringing or the outcome of the representative action for redress measures does not operate to divert the representative action from the protection of the collective interests of consumers. 10 15
- (2) For the purposes of *subsection (1)*, the Court shall in particular ensure that—
 - (a) the decisions of qualified entities for the purposes of a representative action, including decisions on settlement, are not unduly influenced by a third party in a manner that would be detrimental to the collective interests of the consumers represented by the representative action, and 20
 - (b) the representative action is not brought against a defendant who is a competitor of the funding provider or a defendant on whom the funding provider is dependent.
- (3) A qualified entity bringing a representative action for redress measures in accordance with *section 26* shall disclose to the Court a financial overview that specifies the sources of funds used by it to support the representative action. 25
- (4) The Court shall assess the matters specified in *subsections (2) and (3)* in cases where any justified doubts arise with respect to such compliance, regardless of whether a party to the proceedings has raised an issue in relation to such compliance.
- (5) Where any justified doubts arise in an assessment by the Court in accordance with *subsection (4)*, the Court may in the case of redress measures— 30
 - (a) require the qualified entity to refuse, or make changes in respect of, the sources of particular funding, or
 - (b) if appropriate, refuse the application of the qualified entity to bring the representative action in accordance with *section 19*. 35
- (6) Where the application by the qualified entity concerned has been refused by the Court under *subsection (5)(b)*, that refusal shall not affect the rights of the consumers represented by that representative action to pursue other remedies.

Reckoning of time for purpose of Statute of Limitations, etc.

28. (1) Subject to *subsection (3)*, in reckoning any period of time for the purposes of any limitation period applying in the case of an individual consumer in relation to a claim for redress based on an infringement, the period beginning on the date on which a representative action is deemed admissible by the Court in accordance with *section 19* and ending on the date which is 60 days after— 5
- (a) the representative action is dismissed by the Court,
 - (b) the qualified entity has notified the Court that it has withdrawn the representative action,
 - (c) the Court has made an order under *section 23* for an injunction, 10
 - (d) the Court has made an order under *section 26* for a redress measure, or
 - (e) the Court approves a settlement in the representative action in accordance with *section 30*,
- whichever first occurs, shall be disregarded.
- (2) For the purposes of *subsection (1)*, the qualified entity shall inform consumers represented by a representative action in writing of the following dates: 15
- (a) in a case where the representative action is dismissed, the date on which it is so dismissed;
 - (b) in a case where the qualified entity has notified the Court of withdrawal of the action, the date on which the qualified entity so notified the Court; 20
 - (c) in a case where the Court has made an order under *section 23* for an injunction, the date of that order;
 - (d) in a case where the Court has made an order under *section 26* for redress measures, the date of that order;
 - (e) in a case where the Court has approved a settlement of the representative action in accordance with *section 30*, the date on which the Court so approved the settlement. 25
- (3) *Subsection (1)* shall apply only to claims for redress based on infringements that occurred on or after 25 June 2023.
- (4) In this section, “limitation period” includes any limitation period under— 30
- (a) the Statute of Limitations 1957,
 - (b) section 9(2) of the Civil Liability Act 1961, and
 - (c) the Statute of Limitations (Amendment) Act 1991.

Fees charged by qualified entity

29. (1) Subject to *subsection (5)*, a qualified entity may charge a modest fee to a consumer requesting to be represented in a representative action for redress in accordance with *section 24* in order for that consumer to participate in a specific representative action. 35

- (2) A qualified entity shall specify on its website the amount of the fee and the time period within which the fee charged in accordance with *subsection (1)* shall be paid.
- (3) Where a consumer fails, neglects or refuses to pay the entry fee within the time specified by the qualified entity in accordance with *subsection (2)*, the consumer shall not be represented by the qualified entity in the representative action and shall not be entitled to benefit from the remedies ordered in that representative action. 5
- (4) The qualified entity shall inform the consumer in writing as soon as possible after the time specified in accordance with *subsection (2)* of the matters specified in *subsection (3)*.
- (5) The maximum fee which may be charged under *subsection (1)* shall be prescribed by the Minister. 10
- (6) Notwithstanding the generality of *subsection (5)*, the Minister may prescribe different fees for different classes of representative actions and different classes of consumers.
- (7) In prescribing the maximum fee under *subsection (5)*, the Minister may take into account that any such fee— 15
 - (a) shall not discourage a consumer from seeking to be represented in a representative action, and
 - (b) shall be modest,
 having regard to the class of representative action or class of consumer concerned.

Settlements under redress measures 20

30. (1) A qualified entity and a trader may, in a representative action for redress measures, jointly propose to the Court a settlement regarding redress for the consumers represented in that action.
- (2) The Court may, in a representative action for redress measures, following consultations with a qualified entity and a trader, invite the qualified entity and the trader to reach a settlement regarding redress within a reasonable time limit. 25
 - (3) A settlement referred to in *subsection (1)* or *(2)* shall be subject to the approval of the Court and any settlement approved under this section shall be binding on the qualified entity, and the trader concerned and the individual consumers represented in the representative action concerned. 30
 - (4) If the Court does not approve a settlement under *subsection (3)*, it shall continue to hear the representative action concerned.
 - (5) The Court shall assess in a representative action for redress measures, whether to refuse to approve a settlement that is contrary to any other enactment or European acts, or includes conditions which cannot be enforced, taking into consideration the rights and interests of all parties, and in particular, those of the consumers represented in the representative action concerned. 35
 - (6) The Court shall refuse to approve any settlement which contains terms which appears to the Court to be unfair.

- (7) Redress measures provided for through an approved settlement in accordance with this section shall be without prejudice to any additional remedies available to the consumers represented in the representative action concerned under an enactment or European act which were not the subject of that settlement.
- (8) The powers conferred by this section are without prejudice to any other discretionary power which the Court may exercise at any time during the course of proceedings with a view to facilitating a settlement or the resolution of a dispute. 5

Costs

- 31. (1) Subject to *subsection (2)*, an individual consumer concerned by a representative action for redress measures shall not be liable to pay the costs of the proceedings. 10
- (2) Notwithstanding anything contained in Order 99 of the Rules of the Superior Courts (S.I. No. 15 of 1986) or any other enactment, the Court may, at its discretion, in exceptional circumstances, order an individual consumer represented in a representative action for redress measures to pay the costs of proceedings that were incurred as a result of the individual consumer’s intentional or negligent conduct. 15
- (3) The successful party to a representative action may seek to recover the costs related to providing information to consumers for the purposes of the representative action.

Admissibility of final decisions of the Court or Courts or administrative authorities of other Member States

- 32. A final decision of the Court, or of a court or administrative authority of any Member State other than the State, concerning the existence of an infringement harming the collective interests of consumers shall be admissible in evidence in proceedings before the Court in any other action to seek redress measures against the same trader for the same alleged practice. 20

Requirement to inform consumers of final decisions or settlements 25

- 33. (1) Without prejudice to *paragraphs (a), (b) and (c) of subsection (1) of section 18*, the Court shall order a trader who is a defendant in a representative action in any terms the Court considers appropriate to inform the consumers represented in the representative action, at the trader’s expense, of—
 - (a) any final decisions providing for the reliefs referred to in *section 19(6)*, or 30
 - (b) any approved settlements pursuant to *section 30*,
 by means appropriate to the circumstances of the case and within specific time limits, including, where appropriate, informing each consumer represented in the action individually.
- (2) *Subsection (1)* shall not apply if the consumers represented in the representative action are informed of the final decision or approved settlement in another manner approved by the Court. 35
- (3) *Subsection (1)* shall apply to qualified entities as respects final decisions providing for the dismissal of representative actions for redress measures as it applies to final

decisions providing for the reliefs or approved settlements referred to in that subsection.

Disclosure of evidence

34. (1) Where a qualified entity—

(a) has submitted sufficient evidence to the Court for a representative action to be deemed admissible, and 5

(b) submits to the Court that additional evidence is in the possession or control of the defendant in the representative action or a third party,

the Court may, upon an application in that behalf by the qualified entity, order that such evidence referred to in *paragraph (b)* be disclosed by the defendant or third party, as the case may be, to the qualified entity in accordance with rules of court. 10

(2) Where, in a representative action brought by a qualified entity, the defendant in the action submits to the Court that certain evidence is in the possession or control of the qualified entity or a third party, the Court may, upon an application in that behalf by the defendant, order the qualified entity or third party, as the case may be, to disclose the evidence concerned to the defendant in accordance with rules of court. 15

SCHEDULE

RELEVANT ENACTMENTS SPECIFIED FOR THE PURPOSE OF SECTION 2

RELEVANT ENACTMENTS

Part 1

ACTS OF THE OIREACHTAS

5

1. Air Navigation and Transport (International Conventions) Act 2004
2. Data Protection Act 2018

Part 2

PROVISIONS OF ACTS OF THE OIREACHTAS

1. Sections 10, 22A and 24 and Schedules 1 to 4 of the Package Holidays and Travel Trade Act 1995 10
2. Section 9(1F), section 9(3)(a), section 9(4)(a), section 9(5)(f), section 9L, section 9M and subsections (1), (2), (5) and (12) of section 39 of the Electricity Regulation Act 1999
3. Section 10(1)(ae) of the Communications Regulation Act 2002 15
4. Parts 3, 4 and 5 of the Consumer Protection Act 2007
5. Sections 76 and 77 of the Broadcasting Act 2009
6. Section 5, section 9, section 15, section 17(1), section 18 (other than subsection (6)), section 19, section 21 (other than subsection (4)), sections 22 to 29, section 30(2), section 32, section 34, sections 38 to 40, section 44, subsections (1), (2) and (5) of section 51, subsections (1), (2) and (5) of section 52, section 53(1), sections 54 and 55, section 57, section 58 (other than subsection (3)), sections 59 to 61, section 62 (other than subsections (4) and (5)), sections 63 to 68, sections 71 and 72, section 93, Parts 5 and 6, Schedules 3 and 4 of the Consumer Rights Act 2022 20

Part 3

25

STATUTORY INSTRUMENTS

1. European Communities (Requirements to Indicate Product Prices) Regulations 2002 (S.I. No. 639 of 2002)
2. European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 (S.I. No. 853 of 2004) 30
3. European Communities (General Food Law) Regulations 2007 (S.I. No. 747 of 2007)

4. European Communities (Misleading and Comparative Marketing Communications) Regulations 2007 (S.I. No. 774 of 2007)
5. European Communities (Rights of Disabled Persons and Persons with Reduced Mobility When Travelling By Air) Regulations 2008 (S.I. No. 299 of 2008)
6. European Communities (Cross Border Payments) Regulations 2010 (S.I. No. 183 of 2010) 5
7. European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010)
8. European Communities (Rail Passengers' Rights and Obligations) Regulations 2010 (S.I. No. 646 of 2010) 10
9. European Union (Protection of Consumers in respect of Timeshare, Long-term Holiday Product, Resale and Exchange Contracts) Regulations 2011 (S.I. No. 73 of 2011)
10. European Communities (Electronic Money) Regulations 2011 (S.I. No. 183 of 2011)
11. European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) 15
12. European Union (Rights of Passengers when Travelling by Sea and Inland Waterway) Regulations 2012 (S.I. No. 394 of 2012)
13. European Union (Liability of Carriers of Passengers by Sea) Regulations 2012 (S.I. No. 552 of 2012) 20
14. European Union (Requirements for Credit Transfers and Direct Debits in Euro) Regulations 2013 (S.I. No. 132 of 2013)
15. European Union (Rights of Passengers when Travelling by Bus and Coach Transport) Regulations 2013 (S.I. No. 152 of 2013)
16. European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013) 25
17. European Union (Provision of Food Information to Consumers) Regulations 2014 (S.I. No. 556 of 2014)
18. European Union (Online Dispute Resolution for Consumer Disputes) Regulations 2015 (S.I. No. 500 of 2015) 30
19. European Union (European long-term investment funds) Regulations 2015 (S.I. No. 554 of 2015)
20. European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (S.I. No. 142 of 2016)
21. European Union (Low Voltage Electrical Equipment) Regulations 2016 (S.I. No. 345 of 2016) 35
22. European Union (Payment Accounts) Regulations 2016 (S.I. No. 482 of 2016)

23. European Union (Key Information Documents for Packaged Retail and Insurance-based Investment Products (PRIIPS)) Regulations 2017 (S.I. No. 629 of 2017)
24. European Union (Payment Services) Regulations 2018 (S.I. No. 6 of 2018)
25. European Union (Non-Automatic Weighing Instruments) Regulations 2018 (S.I. No. 47 of 2018) 5
26. European Union (money market funds) Regulations 2018 (S.I. No. 269 of 2018)
27. European Union (Casual Trading Act 1995) Regulations 2018 (S.I. No. 308 of 2018)
28. European Union (Unjustified Geo-blocking of Consumers) Regulations 2018 (S.I. No. 513 of 2018) 10
29. European Union (Package Travel and Linked Travel Arrangements) Regulations 2019 (S.I. No. 80 of 2019)
30. European Union (Prospectus) Regulations 2019 (S.I. No. 380 of 2019)
31. European Union (Rail Passengers' Rights and Obligations) (Domestic Passenger Rail Services) (Renewal of Exemption) Regulations 2019 (S.I. No. 612 of 2019) 15
32. European Union (Retail Charges for Regulated Intra-EU Communications) Regulations 2020 (S.I. No. 668 of 2020)
33. European Communities (Mobile Telephone Roaming) Regulations, 2022 (S.I. No. 315 of 2022)

Part 4 20

PROVISIONS OF STATUTORY INSTRUMENTS

1. Regulations 7, 8, 13 and 14 of the European Communities (Directive 2000/31/Ec) Regulations 2003 (S.I. No. 68 of 2003)
2. Regulations 4(1), paragraphs (1) to (5) of Regulation 6, paragraphs (1) to (4) of Regulation 7 and Regulation 8 of the European Communities (General Product Safety) Regulations 2004 (S.I. No. 199 of 2004) 25
3. Regulation 26 of the European Communities (Internal Market in Electricity) Regulations 2005 (S.I. No. 60 of 2005)
4. Regulations 6 and 7, Regulations 9 to 14, Regulation 24 and the Schedule to the Medicinal Products (Control of Advertising) Regulations 2007 (S.I. No. 541 of 2007) 30
5. Paragraphs (1) to (3) of Regulation 10 and Regulation 22 of the European Union (Provision of Services) Regulations 2010 (S.I. No. 533 of 2010)
6. Regulations 4 to 8 and Regulation 13 of the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. No. 336 of 2011) 35

7. Regulation 9 and Regulations 14 to 25 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (S.I. No. 337 of 2011)
8. Paragraphs (1) and (2) of Regulation 3, paragraphs (1) and (2) of Regulation 4, Regulation 5 and Regulations 7 to 9 of the European Communities (Internal Market in Electricity and Gas) (Consumer Protection) Regulations of 2011 (S.I. No. 463 of 2011) 5
9. Regulations 7 and 8 of the European Union (Cosmetic Products) Regulations 2013 (S.I. No. 440 of 2013)
10. Regulation 18(1), Regulation 19 and Regulation 21 of the European Union (Energy Efficiency) Regulations 2014 (S.I. No. 426 of 2014) 10
11. Paragraphs (1) to (4) of Regulation 18 of the European Union (Alternative Dispute Resolution for Consumer Disputes) Regulation 2015 (S.I. No. 343 of 2015)
12. Regulations 192 to 194 of the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015) 15
13. Regulations 30 to 37 of the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017)
14. Regulations 30 to 37, 39, 41 and 42 of the European Union (Insurance Distribution) Regulations 2018 (S.I. No. 229 of 2018)
15. Regulations 6 and 7 of the Medical Devices Regulations 2021 (S.I. No. 261 of 2021) 20
16. Regulation 3, paragraphs (1) and (2) of Regulation 4 and Regulation 5 of the Medical Devices (Registration) Regulations 2021 (S.I. No. 691 of 2021)
17. Paragraph (2) of Regulation 13 and paragraph (1) of Regulation 15 of the European Union (Internal Market in Electricity) Regulations 2022 (S.I. No. 20 of 2022)
18. Paragraphs (1), (2) and (5) to (7) of Regulation 3, Regulation 4(1)(e) and Regulation 10(1) of the European Union (Internal Market in Electricity) (No. 2) Regulations 2022 (S.I. No. 37 of 2022) 25
19. Paragraphs (1) to (5) of Regulation 3 of the *In Vitro* Diagnostic Medical Devices (Registration) Regulations 2022 (S.I. No. 365 of 2022)

An Bille um Chaingne Ionadaíocha chun
Comhleasanna Tomhaltóirí a Chosaint, 2023

BILLE

(*mar a tionscnaíodh*)

dá ngairtear

Acht do thabhairt éifeacht do Threoir (AE) 2020/1828 ó Pharlaimint na hEorpa agus ón gComhairle an 25 Samhain 2020 maidir le caingne ionadaíocha chun comhleasanna tomhaltóirí a chosaint agus lena n-aisghairtear Treoir 2009/22/CE; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

*An tAire Fiontar, Trádála agus Fostaíochta a
thíolaic,*

13 Márta, 2023

Representative Actions for the Protection of
the Collective Interests of Consumers Bill
2023

BILL

(*as initiated*)

entitled

An Act to give effect to Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC; and to provide for related matters.

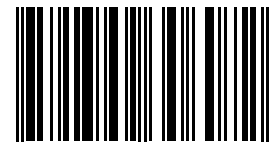
*Presented by the Minister for Enterprise, Trade and
Employment,*

13th March, 2023

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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