

BILL

Supplement to the Sierra Leone Gazette Extraordinary Vol. CXLX. No. 52

dated 28th June, 2019

THE CONSUMER PROTECTION ACT, 2019

ARRANGEMENT OF SECTIONS

Section No.

PART I-PRELIMINARY

1. Application.
2. Interpretation.
3. Act not in derogation of any other enactment

PART II- ESTABLISHMENT OF NATIONAL CONSUMER PROTECTION COMMISSION OF SIERRA LEONE

4. Establishment of Commission.
5. Composition of the Commission.
6. Functions, powers and duties of the Commission.
7. Tenure of office of members of Commission.
8. Termination of appointment.
9. Arrangement of business.
10. Disclosure of interest by members of Commission.
11. Confidentiality.
12. Delegation by Commission.
13. Staff of Commission.
14. Chief Executive Officer.
15. Inspectors.

16. Consultants.
17. Accounts and audit.
18. Annual Report.
19. Limitation of liability.
20. Funds of the Commission.
21. Establishment of Dispute Resolution Committee.
22. Objective of the Dispute Resolution Committee.
23. Complaints to the Commission.
24. Complaints triage.
25. Adjudication.
26. Adjudication procedure.
27. Testing of goods subject to complaint.
28. Reasons for adjudication decision.
29. Adjudication orders.
30. Consent orders.
31. Appeal against adjudication determinations.
32. Enforcement of orders.
33. Unfair supplier conducts allegations.
34. Right to participate in hearing.
35. Powers of High Court.
36. Rules of Procedure.
37. Witnesses.
38. Incriminating questions..
39. Record of High Court hearings.
40. Interim orders.
41. Orders of High Court.

42. Administrative fines.
43. Costs.
44. Appeals
45. Commission to institute proceedings.
46. Offences.

PART III - CONSUMER RIGHTS RELATING TO THE QUALITY OF GOODS AND SERVICES.

47. Consumer's rights to safe, good quality goods.
48. Implied warranty of quality.
49. Warranty on repaired goods.
50. Consumer's rights to demand quality service.
51. Term purporting to exclude, restrict or modify the contract.

PART IV - PROHIBITED CONDUCT

52. Misleading or deceptive conduct.
53. Unfair conduct.
54. Consideration by the High Court.
55. Supplier not to use unfair terms.
56. Unfair terms in a consumer contract
57. Assessment of unfair terms.
58. Effect of unfair term.
59. Injunctions to prevent continued use of unfair terms.
60. Commission may require the supply of information.
61. Declaration by the High Court.
62. False or misleading representation about goods or services.
63. Offering rebates, gifts, prizes or other free items.

64. Bait advertising.
65. Wrongly accepting payment.
66. Assertion of right to payment for unsolicited goods or services.
67. Pyramid selling.
68. Multiple pricing.
69. Referral selling.
70. Harassment and coercion.
71. General safety requirement for goods.
72. Prohibition against unsafe goods.
73. Liability for loss or damage suffered by an injured individual.
74. Liability for loss or damage suffered by a person other than an injured individual.
75. Defences to defective goods actions.
76. Time for commencing defective goods actions.
77. Liability joint and several.
78. Representative actions by the Commission.
79. Making information standards for goods and services.
80. Supplying goods that do not comply with information standards.
81. Supplier to provide proof of transaction.
82. Voluntary codes of conduct.
83. Public warning notices.

PART V- INVESTIGATIONS

84. Power to obtain information and documents.
85. Power to obtain information, documents and evidence.
86. Powers in relation to documents.

87. Copies of seized documents.
88. Retention and return of seized documents.
89. Court may extend three month period.
90. Information sharing.
91. Inspector to seek Court Order.
92. Entry or search with consent.
93. Entry of premises open to the public.
94. Emergency entry.
95. Entry without consent or warrant.
96. Search warrants.
97. Announcement before entry.
98. Details of warrant to be given to occupier.
99. Seizure of things not mentioned in the warrant.
100. Copies of seized documents.
101. Retention and return of seized documents or things.
102. Court may extend three months period.
103. Requirement to assist inspector during entry.
104. Protection against self-incrimination.
105. Offence of giving false or misleading information.
106. Offence to hinder or obstruct inspector.
107. Offence of impersonate inspector.
108. Entry to be reported to the Chief Executive Officer.
109. Register of exercise of powers of entry.
110. Complaints.
111. Confidentiality.
112. Commission may require claims to be substantiated.
113. Compliance with substantiation notices.

PART VI-ENFORCEMENT AND REMEDIES

114. Outcome of investigation.
115. Referral to Court.
116. Consent orders.
117. Compliance notices.
118. Objection to notice.
119. Action against suppliers for non-compliance with warranties.
120. Injunctions.
121. Interim injunctions.
122. High Court orders.
123. Disqualifying orders.
124. Orders to redress loss or damage suffered by non-party consumers.
125. Who can bring proceedings for offences.
126. Prosecutions to be commenced within 3 years.
127. Contravention by bodies corporate.
128. Conduct by officers, employees or agents.
129. Offence to aid and abet in a contravention.
130. Offences to induce a contravention.
131. Criminal proceedings not to be brought for contravention of the general prohibitions.
132. Reasonable mistake of fact.
133. Findings in proceedings to be evidence.
134. Action for damages.
135. Awards of compensation.
136. Preference be given to compensation for victims.
137. Penalties

No.



2019

Sierra Leone

A BILL ENTITLED

The Consumer Protection Act, 2019.

Short title.

Being an Act to provide for the protection and promotion of the interests of consumers and related to that purpose provide for the establishment of the National Consumer Commission and for other related matters.

[

] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I-PRELIMINARY

Application. 1. This Act applies to the supply of goods or services in trade or commerce in Sierra Leone, including supply by entities owned wholly or partly by the State.

Interpretation.

2. In this Act, unless the context otherwise requires-

“acquire” includes purchase, exchange taking on lease, hire or by credit;

“adjudicator” means a legal practitioner appointed under section 25 to determine a resolution to disputes between consumers and suppliers;

“appropriate laboratory” means a laboratory or organization recognized by Government and includes any such laboratory or organization established by or under any enactment for carrying out analysis or tests of any goods with a view to determining whether the goods suffer from any defect;

“auction” means any sale of goods or services at which some or all of the persons present compete for the purchase of goods or services, whether by way bidding;

“Chief Executive Officer” mean the Chief Executive Officer appointed under section 14;

“Commission” means the National Consumer Protection Commission of Sierra Leone established under section 4;

“complaint” means any aspect of the goods, services or the conduct of the supplier which cause or has the potential to cause detriment to a consumer;

“consumer” means any person who acquires goods or services for personal, domestic or household use or consumption whether for the benefit of themselves or other persons, but does not include a person who obtains such goods or services for resale or for any commercial purpose;

“commercial purpose” does not include use of goods or services exclusively for the purpose of earning a livelihood by means of self-employment;

“consumer association” means a voluntary body of persons whose principal objective is the protection and promotion of consumer interests;

“consumer contract” means an agreement, whether or not in writing and whether of specific or general use, to supply goods or services to a consumer;

“consumer representative” means a person or organisation who with the agreement of the consumer provides assistance and support to the consumer in expressing views or taking other actions;

“credit” is provided if a right is granted by a person to another person to-

- (a) defer payment of a debt;
- (b) incur a debt and defer its payment; or
- (c) purchase property or services and defer payment for that purchase in whole or in part;

“credit contract” means a contract under which credit is or may be provided;

“creditor” means a person who provides, or may provide, credit under a credit contract;

“debtor” means a person to whom credit has been provided, or may be provided, under a credit contract;

“default fees” means fees or charges payable on a breach of a credit contract by a debtor or on the enforcement of a credit contract by a creditor;

“distributor” in relation to any particular goods, means a person who in trade and commerce is supplied with those goods by a producer, importer or other distributor and in turn supplies those goods to either another distributor or to a retailer;

“interest charge” means a charge that accrues over time and is determined by applying a rate to an amount owing under a credit contract;

“goods” includes all tangible items or articles acquired or used by a consumer including-

- (a) ships, aircraft and other vehicles;
- (b) animals (including fish);
- (c) minerals, trees and crops, whether on, under or attached to land or not;
- (d) gas, electricity, water, telecommunications;

“Government” means the Government of the Republic of Sierra Leone;

“guarantor” in relation to a credit contract means a person who-

- (a) guarantees the performance of a debtor’s obligations under the contract;

(b) indemnifies a creditor against any loss that the creditor may incur in connection with the contract; or

(c) assumes liability for performing the obligations of a debtor under the contract;

“importer” with respect to any particular goods, means a person who brings those goods or causes them to be brought from outside Sierra Leone to Sierra Leone, with the intention of making them available for supply in trade or commerce.

“Inspector” means an inspector appointed under this Act;

“Minister” means the Minister responsible for trade and “Ministry shall be construed accordingly”;

“price” of goods or services, means the amount paid or payable (including any charge of any description) for their acquisition.

“producer” with respect to any particular goods, means a person who-

(a) grows, nurtures, harvests, mines, generates, refines, creates, manufactures or otherwise produces the goods within Sierra Leone, or causes any of those things to be done, with the intention of making them available for supply in trade or commerce; or

(b) by applying a personal or business name, trade mark, trade description or other visual representation on or in relation to the goods, has created or established reasonable expectation that the person is a person contemplated in paragraph (a);

“pyramid scheme” means a scheme for the supply of goods, services or financial benefit where-

- (a) a person, in order to take part in the scheme, makes a payment or provides another benefit to or for the benefit of any other person, whether or not the other person is described in the scheme; and
- (b) the person who makes the payment or provides the benefit:
 - (i) receives a payment or other benefit; or
 - (ii) receives the promise of a payment or other benefit or the promise that another person will receive a payment or other benefit for inducing or enabling any other person or persons to take part in the scheme; or for enabling or assisting participants in the scheme to be promoted, transferred or to have their status changed; or for providing participants in the scheme with, or enabling participants in the scheme to be provided with, training, facilities or other services.

“retailer” with respect to any particular goods, means a person who, in trade and commerce, supplies those goods to a consumer.

“services” includes any rights benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce including in relation to:

- (a) the performance of work (including work of a professional nature) whether with or without the supply of goods;
- (b) the provision of any education, information, advice or consultation;
- (c) provision of transportation;
- (d) the provision of any accommodation including for rental; or
- (e) the provision of facilities for, amusement, entertainment, recreation or instruction,

but does not include rights or benefits being the supply of goods or the performance of work under a contract of service;

“supply” in relation to goods includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase agreement and offer as a prize or reward or give-away for the purpose of advertisement or in furtherance of trade or commerce; and in relation to services includes provide, grant or confer.

“supplier” in relation to a supply of goods or services, means the person who has supplied or holds themselves out as being able to supply the goods or services;

“substantiation notice” means a notice under section 112

“trade or commerce” means-

- (a) trade or commerce within Sierra Leone; or
- (b) trade or commerce between Sierra Leone and places outside Sierra Leone; and includes any business or professional activity (whether or not carried on for profit).

“unfair supplier conduct” means a conduct that is covered by the general and specific prohibitions contained under Part IV.

Act not in derogation of any other enactment.

3. This Act shall be in addition to and not in derogation of any existing enactment.

PART II - ESTABLISHMENT OF NATIONAL CONSUMER PROTECTION COMMISSION OF SIERRA LEONE

Establishment of Commission.

4. (1) There is hereby established a body to be known as the National Consumer Protection Commission of Sierra Leone, hereafter referred to as the “Commission”.

(2) The Commission shall be a body corporate with perpetual succession having a common seal and shall in its corporate name be capable of-

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property; and
- (c) performing all other things as necessary for the proper carrying out of its functions .

Composition of the Commission.

5. The Commission shall consist of the following members who shall be appointed by the President on the recommendation of the Minister and subject to the approval of Parliament:-

- (a) a Chairman and a Deputy Chairman who shall both have proven knowledge and experience on matters relating to consumer protection;
- (b) the Permanent Secretary of the Ministry or his representative;

- (c) the Solicitor-General or his representative;
- (d) two representatives of registered associations concerned with consumer protection;
- (e) a representative of the Sierra Leone Chamber of Commerce, Industry and Agriculture;
- (f) four other persons having experience and knowledge in consumer protection, industry, commerce, economics, law or public administration; and
- (g) the Chief Executive Officer.

6. (1) The Commission shall be responsible for the administration of this Act and any other Acts assigned to the Commission.

Functions, powers and duties of the Commission.

(2) Without prejudice to the generality of subsection (1), the Commission shall-

- (a) monitor the operation of consumer markets in Sierra Leone and consider how they may be improved for the long term interests of consumers and make recommendations to the Minister as appropriate;
- (b) conduct research on consumer protection policies, enactments and make recommendations to the Minister for improvement as appropriate;
- (c) disseminate information to enable consumers to acquire knowledge of consumer rights and obligations and the skills needed to make informed choices about goods and services;
- (d) formulate and implement consumer education

- (e) provide guidance to suppliers and other interested persons on the carrying out of the functions and exercise of the powers of the Commission under this Act;
- (f) investigate allegations of non-compliance with this Act and take action to ensure that appropriate remedies are imposed;
- (g) liaise with other Government and non Government organisations to identify any practices that are inconsistent with this Act and develop proposals for the reform of such practices and report to the Minister progress and recommendations for further action as appropriate;
- (h) liaise and exchange information, knowledge and expertise with consumer agencies in other countries;
- (i) recognize consumer bodies duly registered under any enactment as the proper bodies, in their areas of operation, to represent consumers.
- (j) cooperate with and assist any association or body of persons to develop and promote the observance of standards of conduct for the purposes of ensuring compliance with this Act, and;
- (k) do all such acts and things as are necessary, incidental or conducive to the carrying out of its functions under this Act.

7. (1) Subject to this Part, a member of the Commission shall hold office for a term of 5 years and may be reappointed to serve another final term of 5 years.

Tunure of
office of
members of
commission

(2) Upon the expiration of the term for which a member of the Commission is appointed, the member shall continue to hold office until another member is appointed but in no case shall an extension of the period exceed four months.

8. The office of a member of the Commission shall be vacated-

Termination
of appoin-
tment.

- (a) upon the member's death;
- (b) if the member is adjudged bankrupt;
- (c) if the member is absent from three consecutive meetings of the Commission of which the member has had notice, without the prior approval of the Commission;
- (d) upon the expiry of one month's notice of the member's intention to resign, given by the member in writing to the President;
- (e) if the member becomes mentally or physically incapable of performing duties as a member;
- f) if the member is removed by the President; or
- g) if the member is convicted of an offence involving fraud or dishonesty.

9. (1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.

Arrangement
of business.

(2) The Commission shall meet for the transaction of its business at least once in every 3 months at such places and times as the Chairman may determine.

(3) Upon giving notice of not less than 14 days, a meeting of the Commission may be called by the Chairperson and shall be called if not less than one third of the members so request in writing; but if the urgency of a particular matter does not permit the giving of any notice, a special meeting may be called upon giving a shorter notice.

5. (4) The quorum for a meeting of the Commission shall be

(5) The Chairperson shall preside at meetings of the Commission and in the absence of the Chairperson the Deputy-Chairperson shall preside, but if none of them is present, the members shall elect a person from among their number to preside.

(6) A decision of the Commission on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have, in addition to a deliberative vote, a casting vote.

(7) Where a member is for any reason unable to attend any meeting of the Commission, the member may in writing, nominate another person from the same institution or organization to attend a meeting in that member's stead and such person shall be deemed to be a member for the purpose of that meeting.

(8) The Commission may invite any person whose presence, in its opinion, is desirable to attend and participate in the deliberations of a meeting of the Commission, but that person shall have no vote.

(9) The validity of any proceedings, act or decision of the Commission shall not be affected by any vacancy in the membership of the Commission or any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the proceedings.

(10) The Commission shall cause minutes to be kept of the proceedings of every meeting of the Commission.

10. (1) If any person is present at a meeting of the Commission or a committee of the Commission at which any matter in which that person or any member of the person's immediate family is directly or indirectly interested in a private capacity, is the subject of consideration, that person shall, as soon as practicable after the commencement of the meeting, disclose that interest and shall not, unless the Commission otherwise directs, take part in any consideration or discussion of or vote on any question relating to that matter.

Disclosure of interest by members of commission.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which the disclosure is made.

(3) A person who fails to disclose any interest in subsection (i) shall be guilty of misconduct and shall be liable to be removed as a member of the Commission.

(4) The Chairperson shall give written notice to the Minister of all pecuniary interests that the Chairperson has or acquires in any business carried on in Sierra Leone or in any body corporate carrying on such business.

11. (1) A person shall not, without the consent in writing given by, or on behalf of, the Commission, publish or disclose to any unauthorized person, otherwise than in the course of that person's duties, the contents of any document, communication or information whatsoever, which relates to, or which has come to that person's knowledge in the course of that person's duties under this Act.

Confidentiality

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction, to a fine not exceeding 20,000,000 leones or to imprisonment for a period not exceeding 2 years, or to both the fine and imprisonment.

(3) A person who, having information which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates the information to any other person, commits an offence and is liable, on conviction, to a fine not exceeding 20,000,000 Leones or to imprisonment for a term not exceeding 2 years, or to both the fine and imprisonment.

Delegation by
commission.

12. (1) The Commission may, by resolution, delegate to a member of the Commission, either generally or otherwise as provided by the instrument of delegation, any of its powers under this Act.

(2) A power delegated under subsection (1) may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3) A delegation under this section shall be revocable at will and shall not prevent the exercise of a power by the Commission.

Staff of
Commission.

13. There shall be appointed by the Commission on such terms as the Commission may determine, such staff as the Commission requires for the efficient discharge of its functions under this Act.

Chief Ex-
ecutive
Officer.

14. (1) The President shall appoint a Chief Executive Officer who shall be a person with proven knowledge and experience on matters relating to consumer protection subject to the approval of Parliament.

(2) The Chief Executive Officer shall hold office for a term of 5 years and based on his performance, may be reappointed for another final term of 5 years subject to a maximum of 2 terms.

(3) The Director-General shall be an *ex-officio* member of the Commission but shall have no right to vote at any meeting of the Commission.

(4) The Chief Executive Officer of the Commission shall, subject to the direction of the Commission, be responsible for the day-to-day management of the Commission.

(5) The Chief Executive Officer shall-

(a) prepare and take minutes of the Commission's meetings and hearings;

- (b) carry out administrative functions on behalf of the Commission;
- (c) assist the Commission to prepare guidelines, procedures and reports;
- (d) receive on behalf of the Commission any complaints;
- (e) receive and deal with correspondence and communications on behalf of the Commission; and
- (t) carry out any other functions as required by the Commission and under this Act.

15. (1) The Chief Executive Officer may designate any ^{Inspector.} employee of the Commission or any person appointed as inspector under any other enactment to be an inspector for the purposes of this Act.

(2) The Chief Executive Officer may not designate a person as an inspector under this section unless he is satisfied that the person is appropriately qualified or has successfully completed appropriate training.

(3) The Chief Executive Officer shall provide an inspector with an identity card which should be used as evidence of the inspector's appointment under the Act.

(4) An inspector in performing any function under this Act shall-

- (a) have in his possession his identity card; and
- (b) show the identity card to any person who requests to see it or is subject to an investigation under this Act.

Consultant. 16. (1) The Commission may engage consultants to advice and perform services for the Commission.

(2) The terms and conditions of engagement of consultants shall be determined by the Commission.

Accounts and audit. 17. (1) The Commission shall keep proper book of accounts and other records of income and expenditure.

(2) The accounts of the Commission shall be subject to audit by the Auditor-General.

(3) The accounts of the Commission and the audit report shall be provided to the Minister with the annual report of the Commission.

Annual Report. 18. (1) The Commission shall prepare a report on its activities during each financial year.

(2) The Commission shall provide the Minister with the annual report not later than four months after the end of the financial year.

(3) The Minister shall as soon as practicable, lay a copy of the report before the Parliament.

Limitation of Liability. 19. (1) A person or body to whom this section applies shall not be liable for anything done or omitted in the performance or purported performance of a function of the Commission unless it is shown that the act or omission was in bad faith.

(2) Subsection (1) applies to-

(a) the Commission;

(b) each Commissioner, the Chief Executive Officer, inspector or a person who is, or is acting as, an officer, employee or agent of the Commission or performing a function on behalf of the Commission.

20. (1) The activities of the Commission shall be financed by funds consisting of. Funds of Commission.

- (a) any monies appropriated from time to time by Parliament for the purpose of the Commission;
- (b) all monies given to the Agency by way of gifts, endowments, bequest, grant or other contributions by persons and organisations for the purposes of the Commission; and
- (c) all other moneys which may, from time to time, accrue to the Commission.

(2) The funds of the Commission shall be applied only for the purposes of the approved budget of the Commission.

21. (1) The Commission shall establish committees as it deems necessary for the implementation of its functions under this Act. Establishment of Committee.

(2) The committees established under subsection (1) shall comprise members of the Commission and non-members.

22. (1) Notwithstanding the generality of section 21 there is hereby established a Dispute Resoulation Committee The Dispute Resolution committee.

(2) The objective of the Dispute Resolution Committee shall be to assist consumers and suppliers resolve disputes which are brought to the attention of the Commission.

(3) The Dispute Resolution Committee shall provide information, advice, conciliation, mediation and adjudication services.

(4) The Dispute Resolution Committee shall be established in each of the 4 provinces of Sierra Leone to facilitate the resolution of compliants at the local level.

23. (1) A consumer or consumer representative on behalf of a consumer may submit a complaint- Complaints to the Commission.

- (a) regarding goods or services; or

(b) alleged unfair supplier conduct in the provision of goods and services.

(2) The Commission's staff shall assist a complainant, where necessary, to submit the complaint in writing.

Complaints
triage.

24. (1) The Commission shall within 14 days review each complaint it receives and determine a way to deal with the complaint.

(2) The Commission shall deal with the complaint as it considers appropriate and may-

(a) issue a no-action response on the basis that the complaint is frivolous, vexatious or not supported by evidence to provide a basis for action;

(b) refer the complaint to the Dispute Resolution Committee for further examination, including contact with the supplier;

(c) refer the complaint to an inspector for consideration as to whether the conduct involved indicates possible non-compliance with this Act or any other relevant enactment.

Adjudication.

25. (1) Where a complaint cannot or is unlikely to be resolved by the Dispute Resolution Committee, the complaint may be referred for adjudication.

(2) An adjudicator may be appointed on a full-time or part-time basis on prescribed terms and conditions.

(3) An adjudicator shall be a legal practitioner who is qualified to be appointed as a High Court Judge, has proven knowledge and experience on matters relating to consumer protection and shall be capable of providing an independent assessment of matters raised by consumer complaints.

(4) An adjudicator shall perform his functions independently of the Commission but may be assisted by the Dispute Resolution Committee.

26. (1) An adjudicator shall ensure that details of the complaint are provided to the supplier or suppliers involved and provide a time period for a response to be received. Adjudication Procedure.

(2) Where the supplier involved in the complaint-

(a) denies or disputes the allegation contained in the complaint; or

(b) omits or fails to present a response within the stipulated time by the adjudicator,

the adjudicator shall proceed to decide the matter as considered fair and just.

(3) An adjudicator in determining a complaint shall have regard to evidence provided by the Commission's staff and the parties involved in the dispute.

(4) A dispute may be adjudicated on paper or at a hearing convened by the adjudicator.

(5) The time and place of any hearing shall be determined by the adjudicator so as to secure a reasonable opportunity for parties to appear before him with little inconvenience and expense as is practicable.

(6) Every complaint shall be heard expeditiously and informally.

27. (1) Where the complaint alleges a defect in goods which requires analysis or testing of the goods, the adjudicator through the Commission may obtain a sample of the goods from the complainant and submit it to an appropriate laboratory for analysis. Testing of goods subject to complaint.

(2) The adjudicator shall instruct the laboratory to analyse the sample and determine whether it has any of the alledged defects or has any other defects.

(3) The laboratory shall submit its analysis report within 15 days from the receipt of the sample.

(4) The period for submission of the report referred to in subsection (3) may be extended for such period as the adjudicator may determine.

(5) The Commission may where it considers appropriate require one or more parties to a dispute to contribute to the cost of the analysis of the sample.

(6) A copy of the report shall be made available to the other party together with such comments as the adjudicator may make.

(7) Where any party disputes the correctness of the finding of the laboratory or its methodology, the adjudicator shall require that party to submit his objections in writing.

(8) The adjudicator shall give a reasonable opportunity to both parties in the dispute to be heard as to the correctness or otherwise of the report of the laboratory and any other objections to it and issue such orders as it deems appropriate.

Reasons for
adjudication
decision.

28. In determining how a complaint is to be resolved, the adjudicator shall give reasons for his decision which shall be in writing.

Adjudication
Order.

29. (1) Prior to determining a complaint, the adjudicator may make such interim orders as appears fair and proper on the facts and circumstances of the complaint.

(2) Where an adjudicator determines that a complaint is justified in whole or in part, he may issue an appropriate order to the other party directing him to do one or more of the following:-

- (a) remove any defect in the goods or services supplied to the consumer which is the subject of the complaints;

- (b) replace the goods or services complained of with goods or services which are free from defect;
- (c) refund to the complainant the price or charges paid by the complainant;
- (d) pay such amount as may be determined as compensation to the consumer for any loss or injury suffered by the consumer;
- (e) pay such sum as may be determined by the Adjudicator if he is of the opinion that loss or injury has been suffered by a large number of consumers who are not readily identifiable;
- (f) provide for adequate costs to parties;
- (g) issue any other order that is appropriate to the circumstances of the complaint.

30. If the parties to a dispute agree to the proposed terms of an appropriate order of the adjudicator, the adjudicator without hearing any evidence may confirm that resolution or agreement as a consent order. Consent orders.

31. (1) A party to a dispute may appeal to the High Court against a determination or orders of an adjudicator. Appeal against adjudication determinations.

(2) An appeal shall be filed within 30 days of the decision or order of the adjudicator.

(3) The High Court may hear an appeal after the expiration of thirty days if it is satisfied that there was sufficient cause for not filing within the prescribed period.

32. An order made by an adjudicator or the High Court may be directed to the Sheriff who shall execute and enforce the order. Enforcement of orders.

Unfair
supplier
conduct
allegation.

33. The Commission shall deal with allegations of unfair supplier conduct as it considers appropriate and may-

- (a) investigate the conduct to ascertain whether it is likely to be unfair in terms of this Act;
- (b) take administrative action in response to the conduct by issuing a compliance notice;
- (c) issue a public warning; or
- (d) take an action against the supplier in the court.

Right to
participate in
hearing.

34. The following persons may participate in a hearing under this Part, in person or through a legal practitioner, and may put questions to witnesses and inspect any books, documents or items presented at the hearing-

- (a) the Commission;
- (b) the applicant or complainant;
- (c) the respondent; and
- (d) any other person who has a material interest in the hearing, unless, in the opinion of the High Court that interest is adequately represented by another participant.

Powers of
High Court.

35. (1) The Judge presiding at a hearing may-

- (a) direct or summon any person to appear at any specified time and place;
- (b) question any person under oath or affirmation;
- (c) summon or order any person-
 - (i) to produce any book, document or item necessary for the purposes of the hearing; or
 - (ii) to perform any other act in relation to this Act; and
- (d) give directions prohibiting or restricting the publication of any evidence given to the High Court.

36. Subject to the rules of procedure of the High Court, a Judge presiding at a hearing may determine the procedure for that hearing, taking into consideration the circumstances of the matter

Rules of
Procedure.

37. The law regarding a witness's privilege in a criminal matter in the High Court shall apply to a person who provides information during a hearing.

Witnesses.

38. The High Court may order a person to answer any question or to produce any article or document, even if it is self-incriminating to do so.

Incriminating
questions.

39. The High Court shall provide the parties and members of the public reasonable access to the record of each hearing, subject to any ruling to protect confidential information.

Record of
High Court
hearings.

Interim
Orders.

40. (1) At any time, whether or not a hearing has commenced into a complaint, a complainant may apply to the High Court for an interim order in respect of that complaint, and the High Court may grant such an order if-

- (a) there is evidence that the allegations may be true; and
- (b) an interim order is reasonably necessary to-
 - (i) prevent serious, irreparable harm to that person; or
 - (ii) prevent the purposes of this Act from being frustrated;
- (c) the respondent has been given a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and
- (d) the balance of convenience favours the granting of the order.

(2) An interim order under this section shall not extend beyond-

- (a) the conclusion of a hearing into the complaint; or
- (b) 6 months after the date of issue of the interim order-

(3) If an interim order has been granted, and a hearing into that matter has not been concluded within 6 months after the date of that order, the High Court, on good cause shown, may extend the interim order for a further period not exceeding 6 months.

41. (1) At the conclusion of a hearing, the High Court shall issue written reasons for its decision. Orders of High Court.

(2) Subject to this Act the High Court may make any order permitted in the circumstances under this Act.

(3) Without prejudice to subsection (2), the High Court may in relation to a consumer complaint-

- (a) order the payment of a sum of money-
 - (i) found to be owing by one party to another party;
 - (ii) by way of damages (including exemplary damages and damages in the nature of interest);
 - (iii) by way of restitution;
- (b) vary any term of a contract;
- (c) declare that a term of a contract is, or is not, void;
- (d) order the refund of any money paid under a contract or under a void contract;
- (e) make an order in the nature of an order for specific performance of a contract;
- (f) order rescission of a contract;
- (g) order rectification of a contract;
- (h) declare that a debt is, or is not owing,
- (i) order a party to do or refrain from doing something.

(4) Without prejudice to subsection (2), the High Court may in relation to alleged conduct in breach of this Act make orders including-

- (a) declaring conduct to be prohibited in terms of this Act;
- (b) restraining any prohibited conduct;
- (c) imposing an administrative fine under Section 42, with or without the addition of any other order under this section;
- (d) confirming a consent agreement under this Act as an order of the Court.

Administrative
fines.

42. (1) The High Court may impose an administrative fine and the fine so imposed shall not exceed-

- (a) 10 per cent of the respondent's annual turnover during the preceding financial year;
or
- (b) 500,000,000 Leones.

(2) In determining an appropriate fine, the High Court shall consider the following matters-

- (a) the nature, duration, gravity and extent of the contravention;
- (b) any loss or damage suffered as a result of the contravention;
- (c) the behaviour of the respondent;
- (d) the market circumstances in which the contravention took place;

- (e) the level of profit derived from the contravention;
- (f) the degree to which the respondent has cooperated with the Commission and the High Court; and
- (g) whether the respondent has previously been found in contravention of this Act.

(3) For the purpose of this section, the annual turnover of a supplier at the time an administrative fine is assessed, shall be the total income of that supplier during the immediately preceding year.

(4) A fine payable under this Act shall be paid into the Consolidated fund.

43. (1) Subject to subsection (2), each party participating in a hearing shall bear his own costs. Costs.

(2) If the High Court-

- (a) has not made a finding against a respondent, it may award costs against a complainant who referred the complaint; or
- (b) has made a finding against a respondent, it may award costs against the respondent.

44. A participant in a hearing before the High Court may appeal a decision by that Court to the Court of Appeal. Appeals.

Commission
to institute
proceedings.

45. (1) The Commission may institute proceedings in the High Court on its own behalf for recovery of an administrative fine imposed under this Act.

(2) A proceeding under subsection (1) shall be initiated at any time as from the imposition of the administrative fine.

Offences.

46. A person who-

- (a) does anything calculated to improperly influence the High Court or the Commission concerning any matter connected with an investigation;
- (b) anticipates any findings of the High Court or the Commission concerning an investigation in a way that is calculated to influence the proceeding or findings;
- (c) does anything in connection with an investigation that would have been contempt of court if the proceedings had occurred in a court of law;
- (d) knowingly provides false information to the Commission;
- (e) defames the High Court or a Judge of the High Court, in their respective official capacities;
- (f) wilfully interrupts the proceedings of a hearing or misbehaves in the place where a hearing is being conducted;
- (g) acts contrary to a warrant to enter and search;
or

- (h) without authority, but claiming to have authority in terms of section 92 enters or searches premises or removes an article or document;

commits an offence and is liable on conviction to a fine not exceeding 50,000,000 leones or to a term of imprisonment not exceeding 2 years.

PART III - CONSUMER RIGHTS RELATING TO THE QUALITY OF GOODS AND SERVICES

47. (1) This section shall not apply to goods bought at auctions where an auctioneer acts as agent for the owner. Consumers right to safe quality goods.

(2) Except to the extent contemplated in subsection (5), every consumer has a right to receive goods that-

- (a) are reasonably suitable for the purposes for which they are generally intended;
- (b) are of good quality, in good working order and free of any defects;
- (c) are useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and
- (d) comply with any applicable standards set under the Standards Bureau Act or any other enactment.

(3) In addition to the right set out in subsection (2), if a consumer has specifically informed the supplier of the particular purpose for which the consumer wishes to acquire any goods, or the use to which the consumer intends to apply those goods, and the supplier-

- (a) ordinarily offers to supply such goods; or
- (b) acts in a manner consistent with being knowledgeable about the use of those goods, the consumer has a right to expect that the goods are reasonably suitable for the specific purpose that the consumer has indicated.

(4) In determining whether any particular goods satisfied the requirements of subsection (2) or (3), all of the circumstances of the supply of those goods shall be considered, including-

- (a) the manner in which, and the purposes for which, the goods were marketed, packaged and displayed, the use of any trade description or mark, any instructions for, or warnings with respect to the use of the goods;
 - (b) the range of things that might reasonably be anticipated to be done with or in relation to the goods; and
 - (c) the time when the goods were produced and supplied.
- (5) For the purposes of subsection (4)-
- (a) it shall be irrelevant whether a product failure or defect was latent or patent, or whether it could have been detected by a consumer before taking delivery of the goods; and
 - (b) a product failure or defect may not be inferred in respect of particular goods solely on the grounds that better goods have subsequently become available from the same or any other producer or supplier.

48. (1) In any transaction or agreement pertaining to the supply of goods to a consumer there shall be an implied provision that the producer or importer, the distributor and the retailer each warrant that the goods comply with the requirements and standards contemplated under section 47, except to the extent that those goods have been altered contrary to the instructions, or after leaving the control, of the producer or importer, a distributor or the retailer, as the case may be. Implied warranty of quality.

(2) Within 6 months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 71, and the supplier shall, at the direction of the consumer, either-

- (a) repair or replace the failed, unsafe or defective goods; or
- (b) refund to the consumer the price paid by the consumer, for the goods.

(3) If a supplier repairs any particular goods or any component of such goods, and within three months after that repair, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered, the supplier shall-

- (a) replace the goods; or
- (b) refund to the consumer the price paid by the consumer for the goods.

(4) The implied warranty imposed under this section, and the right to return goods set out in subsection (2), shall be in addition to any other implied warranty or condition imposed by the common law, this Act or any other enactment and any express warranty or condition stipulated by the producer or importer, distributor or retailer, as the case may be.

49. (1) A service provider may imposed a warranty every new or reconditioned part installed during any repair or maintenance work, and the labour required to install it, for a period of three months after the date of installation or such longer period as the supplier may specify in writing. Warranty on repaired goods.

(2) A warranty under this section shall-

- (a) be concurrent with any other deemed, implied or express warranty;
- (b) be void if the consumer has subjected the part, or the goods or property in which it was installed, to misuse or abuse; and
- (c) not apply to ordinary wear and tear, having regard to the circumstances in which the goods are intended to ordinarily be used.

Consumers
right to
demand
quality
service.

50. (1) When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer shall have a right to-

- (a) the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services;
- (b) the performance of the services in a manner and quality that consumers are generally entitled to expect;
- (c) the use, delivery or installation of goods that are free of defects and of a quality that consumers are generally entitled to expect, if such goods are required for performance of the services; and
- (d) the return of any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier for the purpose of performing such services, having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the supplier and the consumer before or during the performance of the services.

(2) If a supplier fails to perform a service in line with the standards contemplated under subsection (1), the consumer may require the supplier to either-

- (a) remedy any defect in the quality of the services performed or goods supplied; or
- (b) refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.

51. (1) A term of a contract including a term that is not set out in the contract but is incorporated in the contract by another term of the contract shall be void to the extent that the term purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying-

Term purporting to exclude, restrict or modify the contract.

- (a) the application of all or any of the provisions of this Part;
- (b) the exercise of a right conferred by such a provision; or
- (c) any liability of a person in relation to a failure to comply with an implied warranty that applies to a supply of goods or services.

(2) For the purpose of this section a term of a contract shall not be taken to exclude, restrict or modify the application of this part unless the term does so expressly or it is inconsistent with this part.

PART IV—PROHIBITED CONDUCT

52. (1) A supplier shall not in connection with the supply or possible supply of goods or services to a consumer engage in a conduct that is misleading or deceptive or is likely to mislead or deceive.

Misleading or deceptive conduct.

Unfair
conduct.

53. (1) A supplier shall not, in connection with the supply or possible supply of goods or services to a consumer engage in conduct that is, in all the circumstances, unfair.

(2) For the purpose of this section a supplier shall not be taken to engage in an unfair conduct if he institutes legal proceedings in relation to the supply or possible supply of goods or services.

(3) For the purpose of determining whether a person has contravened this subsection the High Court shall-

- (a) not have regard for any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
- (b) have regard to conduct engaged in, or circumstances existing, before the commencement of this section.

Consideration
by the High
Court.

54. Without in any way limiting the matters to which the High Court may have regard for the purpose of determining whether a supplier has contravened section 53 the High Court may have regard to-

- (a) the relative strengths of the bargaining positions of the supplier and the consumer;
- (b) whether, as a result of conduct engaged in by the supplier, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier;
- (c) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services;

- (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer or a person acting on behalf of the consumer by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services; and
- (e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from a person other than the supplier.

55. A supplier shall not use a term in a contract that the High Court has declared to be unfair. Supplier not to use unfair terms.

56. A term in a consumer contract shall be regarded as unfair if in all the circumstances, it causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer. Unfair term in a consumer contract.

57. Without prejudice to section 56, in determining whether a term of a consumer contract is unfair, the High Court may take into account whether the term has the object or effect of- Assessment of unfair term.

- (a) permitting the supplier but not the consumer to avoid or limit performance of the contract;
- (b) permitting the supplier but not the consumer to terminate the contract;

- (c) penalising the supplier but not the consumer for a breach or termination of the contract;
- (d) permitting the supplier but not the consumer to vary the terms of the contract;
- (e) permitting the supplier but not the consumer to renew or not to renew the contract;
- (f) permitting the supplier to determine the price without the right of the consumer to terminate the contract;
- (g) permitting the supplier unilaterally to vary the characteristics of the goods or services to be supplied under the contract;
- (h) permitting the supplier unilaterally to determine whether the contract had been breached or to interpret its meaning;
- (i) limiting the supplier's vicarious liability for its agents;
- (j) permitting the supplier to assign the contract to the consumer's detriment without the consumer's consent;
- (k) limiting the consumer's right to sue the supplier or limiting the evidence the consumer can lead in proceedings on the contract; or
- (l) imposing the evidential burden on the consumer in proceedings on the contract.

Effect of
unfair terms.

58. (1) An unfair term in a consumer contract shall be void.

(2) Notwithstanding sub-section (1) the contract shall continue to bind the parties if it is capable of existing without the unfair term or the prescribed unfair term.

59. (1) The Commission may apply to the High Court for an injunction against any supplier who, in the Commission's opinion, is using, or recommending the use of an unfair term in consumer contracts.

Injunctions to prevent continued use of unfair terms.

(2) The High Court, if it is satisfied that, in all the circumstances, it is just and convenient to do so, may by order grant an injunction under this section on such terms as it considers appropriate.

(3) An injunction may relate not only to the use of a particular term in a consumer contract but to any similar term or to a term having like effect, used or recommended for use by any person.

60. (1) The Commission may exercise the powers conferred by this section for the purposes of-

Commission may require the supply of information.

(a) facilitating the Commission's consideration of whether a term in a consumer contract is an unfair term; or

(b) ascertaining whether a supplier has complied with a court order as to the continued use, or recommendation for use of a term in a consumer contract.

(2) The Commission may, by notice in writing, require a supplier to supply to the Commission-

(a) a copy of any contract that is the subject of the Commission's considerations in subsection (1);

(b) information about the use or recommendation for use by that supplier of any contract term in dealings with consumers.

(3) The notice referred to in subsection (2) may be varied or revoked by the Commission by a subsequent notice in writing.

(4) A supplier to whom the notice is addressed shall comply with the notice within 14 days of receiving it.

(5) A supplier shall not, without reasonable excuse, refuse or fail to comply with a requirement of the Commission under this section within the required time.

Declaration
by the High
Court.

61. The Commission may apply to the High Court for an order declaring that a term of a consumer contract is an unfair term.

(2) The High Court may make a declaration in relation to a matter under subsection (1) or any related matter.

False or
misleading
representation
about goods
or services.

62. A supplier in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, shall not make a false or misleading representation-

- (a) the goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use;
- (b) the services are of a particular standard, quality, value or grade;
- (c) that a particular person has agreed to acquire goods or services;
- (d) concerning a testimonial by any person relating to goods or services;
- (e) that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits;
- (f) with respect to the price of goods or services;

- (g) concerning the availability of facilities for the repair of goods or of spare parts for goods;
- (h) concerning the place of origin of goods;
- (i) concerning the need for any goods or services;
- (j) concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy; or
- (k) concerning a requirement to pay for a contractual right.

63. (1) A supplier shall not offer any rebate, gift, prize or other free item with the intention of not providing it, or of not providing it as offered, in connection with-

Offering rebates, gifts, prizes or other free items.

- (a) the supply or possible supply of goods or services;
- (b) the promotion by any means of the supply or use of goods or services.

(2) If a person offers any rebate, gift, prize or other free item in connection with-

- (a) the supply or possible supply of goods or services; or
- (b) the promotion by any means of the supply or use of goods or services

the person shall within the time specified in the offer or (if no such time is specified) within a reasonable time after making the offer, provide the rebate, gift, prize or other free item in accordance with the offer.

(3) Subsection (2) shall not apply if-

- (a) the person's failure to provide the rebate, gift, prize or other free item in accordance with the offer was due to the act or omission of another person, or to some other cause beyond the person's control; and
- (b) the person took reasonable precautions and exercised due diligence to avoid the failure.

(4) Subsection (2) shall not apply to an offer that the person makes to another person if-

- (a) the person offers to the other person a different rebate, gift, prize or other free item as a replacement; and
- (b) the other person agrees to receive the different rebate, gift, prize or other free item.

Bait
adventure.

64. (1) A supplier shall not advertise goods or services for supply at a specified price if-

- (a) there are reasonable grounds for believing that the person will not be able to supply those goods or services at that price for a period that is, and in quantities that are, reasonable having regard to-
 - (i) the nature of the market in which the person carries on business;
 - (ii) the nature of the advertisement; and
- (b) the person is aware or ought reasonably to be aware of those grounds.

(2) A supplier who advertises goods or services for supply at a specified price shall offer such goods or services for supply at that price from a period that is, and in quantities that are, reasonable having regard to-

- (a) the nature of the market in which the person carries on business; and
- (b) the nature of the advertisement.

65. (1) A supplier shall not accept payment or other consideration for goods or services if, at the time of the acceptance, the person intends not to supply the goods or services. Wrongly accepting payment.

(2) A supplier shall not accept payment or other consideration for goods or services if at the time of the acceptance, the person intends to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted.

(3) A supplier shall not accept payment or other consideration for goods or services if, at the time of the acceptance-

- (a) there are reasonable grounds for believing that the supplier will not be able to supply the goods or services-
 - (i) within the period specified by or on behalf of the supplier at or before the time the payment or other consideration was accepted; or
 - (ii) if no period is specified at or before that time, within a reasonable time; and
- (b) the supplier is aware or ought reasonably to be aware of those grounds.

(4) A supplier who accepts payment or other consideration for goods or services shall supply all the goods or services-

(a) within the period specified by or on behalf of the supplier at or before the time the payment or other consideration was accepted; or

(b) within a reasonable time if no period is specified.

(5) Subsection (4) shall not apply if-

(a) the supplier's failure to supply all the goods or services within the period, or within a reasonable time, was due to the act or omission of another person, or to some other cause beyond the supplier's control; and

(b) the supplier took reasonable precautions and exercised due diligence to avoid the failure.

(6) Subsection (4) shall not apply if- the supplier offers to supply different goods or services as a replacement to the consumer to whom the original supply was to be made; and the consumer agrees to receive the different goods or services.

(7) Subsections (1), (2), (3) and (4) shall apply whether or not the payment or other consideration that the supplier accepted represents the whole or a part of the payment or other consideration for the supply of the goods or services.

66. (1) A supplier shall not assert a right to payment from a consumer for unsolicited goods or services unless he has reasonable cause to believe that there is a right to the payment.

Assertion of right to payment for unsolicited goods or services.

(2) A supplier shall not send to another person an invoice or other document that states the amount of a payment, or sets out the charge, for supplying unsolicited goods or unsolicited services unless he has reasonable cause to believe that there is a right to the payment or charge.

(3) In a proceeding against a supplier in relation to contravention of this section, the supplier shall bear the onus of proving that the person had reasonable cause to believe that there was a right to the payment or charge.

67. (1) A person shall not establish, promote or take any part in a pyramid selling scheme.

Pyramid selling.

(2) A person shall not induce another person to establish, promote or take any part in a pyramid selling scheme.

(3) This section shall not apply to a scheme for the supply of goods or services if any payment made or other benefit provided for the goods or services supplied under the scheme bears a reasonable relationship to the value of those goods or services.

68. Where goods have more than one displayed price, it shall be an offence for a supply to take place for a price that is not the lower, or lowest, of the displayed prices.

Multiple pricing.

69. A supplier shall not induce a consumer to acquire goods or services by representing that the consumer will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission or other benefit in return for-

Referral selling.

- (a) giving the person the names of prospective customers; or
- (b) otherwise assisting the person to supply goods or services to other consumers if receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

Harassment
and coercion.

70. A person shall not use physical force, harassment or coercion, in connection with-

- (a) the supply or possible supply of goods or services; or
- (b) the payment for goods or services.

General safety
requirement
for goods.

71. (1) A supplier shall not supply, or offer to or advertise to supply, any goods or services which are unsafe.

(2) An unsafe good or service shall be one that under normal or reasonably foreseeable conditions of use including duration presents unacceptable risks to the health and safety of consumers.

(3) In determining whether a good or service is unsafe, the following shall be taken into account:-

- (a) the characteristics of the goods or services, including composition, packaging, instructions for use;
- (b) the effect of the goods or services on other goods or services where it is reasonably foreseeable that they will be used with other goods or services;
- (c) the presentation of the goods or services and information supplied about use of the goods or services;

- (d) the categories of consumers at risk when using the goods or services, in particular children and the elderly.

(4) The feasibility of obtaining higher levels of safety or the availability of other goods or services presenting a lesser degree of risk shall not constitute grounds for considering goods or services to be unsafe.

72. (1) The Minister may on the recommendation of the Commission by order declare any goods or any class of goods to be prohibited goods where the goods or goods of that class have caused or are likely to cause injury to any person or property or are otherwise unsafe.

Prohibition
against unsafe
goods.

(2) The Minister may on the recommendation of the Commission by order declare any services or any class of services to be prohibited services where the services or services of that class have caused or are likely to cause injury to any person or property or are otherwise unsafe.

(3) An order made under subsections (1) or (2) may require the supplier, in such manner and within such period as may be specified in the order, and at the supplier's own expense, to do any or all of the following-

- (a) recall the prohibited goods or services;
- (b) stop the supply of, or the offer to supply, the prohibited goods or services;
- (c) stop the advertisement of the prohibited goods or services;
- (d) disclose to the public any information relating to-

-
- (i) the characteristics of the prohibited goods or services which render them unsafe;
 - (ii) the circumstances in which use of the prohibited goods or services are unsafe;
 - (iii) any other matter relating to the prohibited goods or services or the use of the prohibited goods or services as may be specified;
- (e) repair or replace the prohibited goods or services;
- (f) refund to any consumer to whom the prohibited goods or services were supplied the price paid or the value of the consideration given for the prohibited goods or services or any lesser amount as may be reasonable having regard to the use of the prohibited goods or services.
- (4) Where an order under subsections (1) or (2) is in force, a supplier shall not-
- (a) supply or offer to supply or advertise to supply, any prohibited goods or services; and
 - (b) supply goods or services of a kind to which the order relates to which contains the defect or has the characteristic the notice identifies as a defect or an unsafe characteristic of, the prohibited goods or services; or

- (c) in any other case, supply goods or services of a kind to which the order relates.

(5) A person shall not import any goods or services or any class of goods or services which do not comply with this section.

73. (1) A producer of goods shall be liable to compensate an individual if-
- (a) the producer supplies the goods in trade or commerce;
- (b) the goods have a safety defect; and
- (c) the individual suffers injuries because of the safety defect.
- Liability for loss or damage suffered by an injured individual.

(2) The individual may recover the amount of the loss or damages he suffered, by bringing in an action against the manufacturer.

(3) Where goods have been imported into Sierra Leone and the manufacturer of the goods at the time of importation does not have a place of business in Sierra Leone, the importer of the goods shall be considered to be the producer under subsections (1) and (2).

(4) Where an individual dies because of the injuries associated with a defective good the producer or importer of the good shall be liable to pay compensation.

74. (I) A producer of goods shall be liable to compensate a person if-
- (a) the producer supplies the goods in trade or commerce;
- (b) the goods have a safety defect;
- (c) an individual other than the person suffers injuries because of the safety defect; and
- (d) the person suffers loss or damage because of-
- Liability for loss or damage suffered by a person other than an injured individual.

- (i) the injuries; or
 - (ii) if the individual dies because of the injuries; and
- (e) the loss or damage does not come about because of a business or professional relationship between the person and the individual.

(2) A person referred in subsection (1), may recover, by action against the producer, the amount of loss or damage suffered by the person.

(3) Where goods have been imported into Sierra Leone and the manufacturer of the goods at the time of importation does not have a place of business in Sierra Leone, the importer of the goods shall be considered to be the producer under subsections (1) and (2).

(4) Where the individual dies because of the injuries associated with defective goods the producer or importer of the goods shall be liable to pay compensation.

Defence to defective goods actions.

75. (1) In a defective goods action, it shall be a defence if it is established that-

- (a) the safety defect in the goods that is alleged to have caused the loss or damage did not exist at the time when the goods supplied by their actual producer or importer;
- (b) the goods had that safety defect only because there was compliance with a mandatory standard for them;
- (c) the state of scientific or technical knowledge at the time when the goods were supplied by their producers or importer was not such as to enable that safety defect to be discovered;

(d) the goods that had safety defect were amongst a particular sets of other goods and the safety defects are attributed to-

- (i) the design of the other goods;
- (ii) the marketings on or accompanying the other goods ;or;
- (iii) the instructions or warnings given by the producer of the other goods.

76. (1) Subject to subsection (2), a person may commence a defective goods action at any time within three years after the time the person became aware, or ought reasonably to have become aware, of all of the following:-

Time for commencing defective goods actions.

- (a) the alleged loss or damage;
- (b) the safety defect of the goods;
- (c) the identity of the person who produced or imported the goods.

(2) A defective goods action shall commence within 10 years of the supply by the producer or importer of the goods to which the action relates.

77. If 2 or more persons are liable under this Act for the same loss or damage, they shall be jointly and severally liable-

Liability joint and several.

78. (1) The Commission may, by application, commence a defective goods action on behalf of one or more persons indentified in the application who have suffered the loss or damage in relation to which the action is commenced.

Representative actions by the Commission.

(2) The Commission may, only make the application if it has obtained the written consent of the person, or each of the persons, on whose behalf the application is being made.

79. (1) The Minister may by notice published in the Gazette make an information standard for one or both of the following:-

Making information stansards for goods and services.

- (a) goods of a particular kind;

(b) services of a particular kind.

(2) Without prejudice to subsection (1), an information standard for goods or services of a particular kind may-

- (a) make provision in relation to the content of information about goods or services of that kind;
- (b) require the provision of specified information about goods or services of that kind;
- (c) provide for the manner or form in which such information is to be provided;
- (d) provide that such information is not to be provided in a specified manner or form;
- (e) provide that information of a specified kind is not to be provided about goods or services of that kind; or
- (f) assign a meaning to specified information about goods or services.

Supplying goods that do not comply with information standards.

80. A supplier shall not supply goods or services of a particular kind if-

- (a) an information standard for goods or services of that kind is in force; and
- (b) the person has not complied with that standard.

Supplier to provide proof of transaction.

81. (1) If requested to do so, a supplier who supplies goods or services to a consumer shall provide proof of the transaction as soon as practicable after the goods or services have been supplied

(2) For the purpose of this section proof of a transaction includes details of the particular goods or services supplied, the name of the supplier, the date of the supply and the terms and conditions of the supply, including the price.

(3) In relation to services, a consumer shall be entitled to be given an itemised bill before having to make payment.

(4) An itemised bill shall indicate the labour component of the work performed and the cost of materials used.

82. (1) The Commission may promote industry associations to adopt codes of conduct which aim to raise trading standards above the minimum levels required by this Act and any other relevant enactment. Voluntary codes of conduct.

(2) The Commission may give endorsement to voluntary industry association codes of conduct where the Commission is of the view that these codes of conduct are consistent with the long term interests of consumers.

(3) The Commission may remove its endorsement of a code of conduct if the Commission forms the view that the code is not operating in the long term interests of consumers.

83. The Commission may issue to the public a written notice containing a warning about the conduct of a person if the Commission- Public warning notice

- (a) has reasonable grounds to suspect that the conduct may constitute a contravention of a provision of this Act and regulations;
- (b) is satisfied that one or more other person has suffered, or is likely to suffer, detriment as a result of the conduct; and
- (c) is satisfied that it is in the public interest to issue the notice;

PART V—INVESTIGATIONS

84. (1) A member of the Commission may, by notice in writing, require a person who is believed to be capable of providing information or producing documents that may assist the Commission in monitoring compliance with this Act or regulations made under it- Power to obtain information and document

- (a) to provide to the Commission, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, that information;

- (b) to produce to the Commission, or to a person specified in the notice acting on the Commission's behalf, in accordance with the notice, those documents; or
- (c) to appear before a member of the Commission at a time and place specified in the notice to give that information, either orally or in writing, and produce those documents.

(2) A person shall not-

- (a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it in purported compliance with a notice under this section;
- (b) knowingly provide information or give evidence that is false or misleading; or
- (c) obstruct or hinder the Commission in exercising a power under this section.

(3) Subject to subsection (4), a person shall not be excused from answering a question, providing information or producing or permitting the inspection of a document on the ground that the answer, information or document may tend to incriminate the person.

(4) Notwithstanding subsection (3), the answer by a person to any question asked in a notice under this section or the provision by a person of any information or the production by any person of a document in compliance with a notice under this section, is not admissible in evidence against the person in any proceedings other than proceedings under this section.

(5) If any documents are produced to the Commission under this section, the Commission may make copies of or take extracts from the documents and retain possession of those copies and extracts.

Power to obtain information, documents and evidence.

85. (1) If a member of the Commission believes that a person is capable of providing information, producing documents or giving evidence relating to a matter that constitutes, or may constitute, a contravention of this Act, the Commission, by notice in writing, may require that person to-

-
- (a) provide to the Commission, the information in writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time limit and manner specified in the notice;
 - (b) produce to the Commission, or to a person specified in the notice acting on the Commission's behalf, the document in accordance with the notices; or
 - (c) appear before a member of the Commission at a time and place specified in the notice to give that evidence, either orally or in writing, and produce the document.

(2) The member of the Commission may require the evidence referred to in subsection (1) to be given on oath or affirmation and for that purpose may administer an oath or affirmation.

(3) A person shall not-

- (a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it;
- (b) knowingly provide information or give evidence that is false or misleading in purported compliance with a notice under this section; or
- (c) obstruct or hinder the Commission in exercising a power under this section.

(4) A person shall not be excused from answering a question, providing information or producing or permitting the inspection of a document on the ground that the answer, information or document may tend to incriminate the person.

(5) Notwithstanding subsection (4), the answer by a person to any question asked in a notice under this section, or any information given in compliance with the notice, shall not be admissible in evidence against the person-

- (a) in the case of a person not being a body corporate in any criminal proceedings other than proceedings under this section;
- (b) in the case of a body corporate in any criminal proceedings other than proceedings under this Act.

Powers in relation to documents.

86. Where documents are produced to the Commission under this Part, the Commission may-

- (a) inspect the documents;
- (b) make copies of or take extracts of the documents;
- (c) seize the documents if it-
 - (i) considers the documents necessary for obtaining evidence for the purpose of any proceedings against any person under this Act or the regulations;
 - (ii) believes on reasonable grounds that it is necessary to seize the documents to prevent their concealment, loss or destruction or their use in the contravention of the Act;
- (d) secure any seized documents against interference;
- (e) retain possession of the documents in accordance with this Part.

87. (1) Where the Commission retains possession of a document seized from a person under this Part, the Commission shall give the person, a copy of the document certified as correct by the Chief Executive Officer within 21 days of the seizure.

Copies of seized documents.

(2) A copy of a document certified under subsection (1) shall be received in the High Court to be evidence of equal validity to the original.

88. (1) Where the Commission seizes a document under this Part, the Chief Executive Officer shall take reasonable steps to return the document to the person from whom it was seized if the reason for its seizure no longer exists.

Retention and return of seized documents.

(2) If the document seized is not returned within 3 months after it was seized, the Chief Executive Officer shall take reasonable steps to return it unless-

- (a) proceedings for the purpose for which the document was retained have commenced within that three month period and those proceedings (including any appeal) have not been completed; or
- (b) a court makes an order under section 89 extending the period during which the document may be retained.

89. (1) The Commission may apply to the High Court-

- (a) within 3 months after seizure of a document under this section; or
- (b) if an extension has been granted under this section, before the end of the period of the extension,

Court may extend three month period.

for an extension (not exceeding 3 months) of the period for which the Commission may retain the document but so that the total period of retention does not exceed 12 months.

(2) A court may order an extension if it is satisfied that-

- (a) it is in the interest of justice;
- (b) the total period of retention does not exceed 12 months;
- (c) retention of the document is necessary for the purposes of an investigation into whether a contravention of this Act or regulations made under the Act has occurred or to enable evidence of a contravention of this Act or the regulations to be obtained for the purposes of a proceeding under this Act.

(3) A court shall consider the interests of the owner of the document or thing and may adjourn an application to enable notice of the application to be given to any person.

Information sharing.

90. (1) The Commission may enter into or approve of, an arrangement with a relevant agency for the purposes of sharing or exchanging information held by the Commission and the relevant agency.

(2) Under an information sharing arrangement, the Commission and the relevant agency shall be authorised to-

- (a) request and receive information held by the other party to the arrangement; and
- (b) disclose information to the other party, but only to the extent that the information is reasonably necessary to assist in the exercise of functions under this Act or the functions of the relevant agency concerned.

91. (1) If an inspector believes, on reasonable grounds, that a person may have contravened the Act or regulations made under the Act, the inspector, with the written approval of the Chief Executive Officer, may apply to a court for an order requiring any person at a time and place specified by an inspector to-

Inspector to
seek Court
Order.

- (a) answer orally or in writing any questions put by an inspector in relation to the alleged contravention;
- (b) supply orally or in writing information required by an inspector in relation to the alleged contravention;
- (c) produce to an inspector specified documents or documents of a specified class relating to the alleged contravention.

(2) If the court is satisfied on the basis of evidence presented by the inspector that there are reasonable grounds to believe that a person may have contravened this Act or regulations made under the Act, the court may grant the order sought.

(3) An order under this section shall state a day, not later than 28 days after the making of the order, on which the order ceases to have effect.

(4) Where documents are produced to an inspector under an order made under this section the inspector may-

- (a) inspect the documents or authorise a person to inspect the documents;
- (b) make copies of or take extracts of the documents;
- (c) seize the documents if the inspector considers the documents necessary for the purpose of obtaining evidence and for the purpose of any proceedings against any person under this Act or the regulations;

- (d) secure any seized documents against interference.

Entry or
search with
consent.

92. (1) If an inspector believes, on reasonable grounds, that a person has contravened this Act or regulations made under the Act, the inspector with the consent of the occupier of the premises, may-

- (a) enter and search any premises;
- (b) seize anything found on the premises which the inspector believes on reasonable grounds to be connected with the alleged contravention;
- (c) examine and take and keep samples of any goods found on the premises which the inspector believes on reasonable grounds to be connected with the alleged contravention;
- (d) in the case of any document on the premises, if the inspector believes, on reasonable grounds, that it is connected with the alleged contravention, the inspector may do all or any of the following:-
 - (i) require the document to be produced for examination;
 - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or taking of extracts to be done on the premises or elsewhere;
 - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;

- (e) make any still or moving image or audio-visual recording that the inspector believes, on reasonable grounds, is necessary for the purpose of establishing the alleged contravention.

(2) An inspector shall not enter and search any premises unless the occupier consents to that entry, and the inspector-

- (a) produces his identity card for inspection; and
- (b) informs the occupier
 - (i) of the purpose of the search;
 - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of anything during the search;
 - (iii) that the occupier may refuse to consent to the taking of any sample of goods or any copy or extract from a document found on the premises during the search; and
 - (iv) that anything seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.

(3) If an occupier consents to an entry and search, the inspector shall before entering the premises, ask the occupier to sign an acknowledgment stating-

- (a) that the occupier has been informed of the purpose of the search and that anything seized or taken in the search with the consent of the occupier may be used in evidence in proceedings;

- (b) that the occupier has been informed that he may refuse to give consent to the entry and search or to the seizure of anything or to the taking of any sample, copy or extract;
- (c) that the occupier has consented to such an entry and search; and
- (d) the date and time that the occupier consented.

(4) If an occupier consents to the seizure or taking of items during a search under this section, the inspector shall before seizing or taking the items ask the occupier to sign an acknowledgment stating-

- (a) that the occupier has consented to the seizure or taking of the items; and
- (b) the date and time that the occupier consented.

(5) An occupier who signs an acknowledgment shall be given a copy of the signed acknowledgment before the inspector leaves the premises.

(6) If in any proceeding, an acknowledgment is not produced to the Court, it shall be presumed, until the contrary is proved, that the occupier did not consent to the entry and search or to the seizure or the taking of the items.

Entry premises open to the public.

93. An inspector may do either or both of the following-

- (a) enter and inspect any part of a premises which is, at the time of the entry and inspection, open to the public;
- (b) purchase goods or services at such a premises at such a time and at such a price at which it is available to the public to purchase.

94. (1) If an inspector believes, on reasonable grounds, that there is evidence of goods being supplied from the premises which are dangerous if used or which are being supplied in contravention of an order published in the Gazette, the inspector may with the assistance, if necessary, of another inspector or a member of the police force enter and search the premises at any time. ^{Emergency entry.}

(2) If an inspector finds the goods referred to in subsection (1) on the premises during a search and the inspector is satisfied that the goods present a threat of imminent injury or death, the inspector may do all or any of the following-

- (a) seize the goods;
- (b) secure the seized goods against interference;
- (c) require the occupier to remove the goods;
- (d) examine and take and keep samples of the goods;
- (e) in the case of any document on the premises, if the inspector believes on reasonable grounds that it is necessary to do so, the inspector may do all or any of the following:-
 - (i) require the document to be produced for examination;
 - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts to be done on the premises or elsewhere;
 - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;

(iv) make any still or moving image or audio-visual recording if the inspector believes, on reasonable grounds, that it is necessary to do so.

(3) If an inspector finds any goods referred to in subsection (1) on the premises during a search (not being goods to which subsection (2) applies), the inspector may by notice prohibit the removal of the goods from the premises.

(4) The notice referred to under subsection (3) shall be given to the occupier of the premises or the person who has or may reasonably be presumed to have control over the business conducted on the premises.

(5) A person shall not remove goods from the premises in contravention of a notice under this section.

(6) If an inspector exercises a power of entry under this section without the owner or occupier being present the inspector shall, on leaving the premises, leave a notice setting out-

- (a) the time of entry;
- (b) the purpose of entry;
- (c) a description of all things done while on the premises;
- (d) the time of departure; and
- (e) the procedure for contacting the Director for further details of the entry.

Entry
without
consent or
warrant.

95. (1) For the purpose of monitoring compliance with this Act or regulations made under the Act, an order made by the High Court or under this Act an inspector may, subject to subsection (2)-

- (a) enter and search any premises at which the inspector believes, on reasonable grounds-

-
- (i) a person is conducting a business or supplying goods or services; or
 - (ii) a person is keeping a record or document that is required to be kept by this Act or that may show whether or not this Act or regulations made under it are being complied with;
- (b) examine anything found on the premises;
 - (c) take and keep samples of anything found on the premises if the inspector believes, on reasonable grounds, that it is connected with a contravention of this Act;
 - (d) seize anything found on the premises or secure anything found on the premises against interference, if the inspector believes, on reasonable grounds, that it is connected with a contravention of this Act;
 - (e) examine and test any equipment found on the premises that is of a kind used in connection with the supply of goods or services;
 - (f) in the case of any document on the premises, do all or any of the following:-
 - (i) require the document to be produced for examination;
 - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts to be done on the premises or elsewhere;

- (iii) remove the document for, so long as is reasonably necessary to make copies or take extracts from the document;
 - (g) make any still or moving image or audio-visual recording;
 - (h) bring any equipment onto the premises that the inspector believes, on reasonable grounds, is necessary for the examination or processing of things (including documents) found at the premises in order to determine whether they are things that may be seized under this section.
- (2) An inspector shall not exercise a power under this section-
 - (a) in any part of the premises that is used for residential purposes; and
 - (b) except between the hours of 9:00 am and 5:00 pm, or when the premises are open for business.
- (3) If an inspector exercises a power of entry under this section without the owner or occupier being present the inspector shall, on leaving the premises, leave a notice setting out-
 - (a) the time of entry;
 - (b) the purpose of entry;
 - (c) a description of things done while on the premises
 - (d) the time of departure; and

- (e) the procedure for contacting the Chief Executive Officer for further details of the entry.

96. (1) An inspector, with the written approval of the Chief Executive Officer, may apply to a Magistrate for the issue of a search warrant in relation to particular premises, if the inspector believes on reasonable grounds that there is on the premises evidence that a person or persons may have contravened this Act. Search warrants.

(2) If a Magistrate is satisfied, by the evidence of the inspector, on oath or by affidavit, that there are reasonable grounds to believe that there is a thing or things of a particular kind connected with a contravention of this Act or regulations made under the Act on any premises, the Magistrate may issue a search warrant authorising an inspector named in the warrant, together with any other person named or otherwise identified in the warrant and with any necessary equipment-

- (a) to enter the premises specified in the warrant, if necessary by force; and
- (b) to do all or any of the following:-
 - (i) search for;
 - (ii) seize;
 - (iii) secure against interference;
 - (iv) examine, inspect and take and keep samples of a thing or things of a particular kind named or described in the warrant and which the inspector believes, on reasonable grounds, to be connected with the alleged contravention;

-
- (c) in the case of any document of a particular kind, named or described in the warrant, if the inspector believes, on reasonable grounds, that it is connected with the alleged contravention, the inspector may do all or any of the following:-
- (i) require the document to be produced for inspection;
 - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts to be done on the premises or elsewhere;
 - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document; and
- (d) make any still or moving image or audio-visual recording of anything of a particular kind, named or described in the warrant, that the inspector believes, on reasonable grounds, to be connected with the alleged contravention.

(2) A search warrant issued under this section shall state-

- (a) the purpose for which the search is required and the nature of the alleged contravention;
- (b) any conditions to which the warrant is subject;
- (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and

- (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.

97. (1) In executing a search warrant, the inspector shall-

Announcement
before entry.

- (a) announce that he is authorised by the warrant to enter the premises; and
- (b) give any person at the premises an opportunity to allow entry to the premises if the inspector has been unable to obtain unforced entry.

(2) An inspector shall not comply with subsection (1) if he believes, on reasonable grounds that immediate entry to the premises is required to ensure-

- (a) the safety of any person; or
- (b) that the effective execution of the search warrant is not frustrated.

98. (1) If the occupier is present at premises where a search warrant is being executed, the inspector shall-

Details of
warrants to be
given
occupier.

- (a) identify himself to the occupier; and
- (b) give to the occupier a copy of the warrant.

(2) If the occupier is not present at premises where a search warrant is being executed, the inspector shall-

- (a) identify himself to a person at the premises; and
- (b) give to the person a copy of the warrant.

Seizure of things not mentioned in the warrant.

99. A search warrant shall authorise an inspector executing the search warrant to seize any thing of the kind described in the warrant and also to seize or take a sample of anything which is not of the kind described in the warrant if-

(a) the inspector believes, on reasonable grounds, that the thing-

(i) is of a kind which could have been included in a search warrant issued under this section; or

(ii) will afford evidence about the contravention of the Act; and

(b) in the case of seizure, the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the contravention of this Act.

Copies of sized documents.

100. (1) If an inspector retains possession of a document seized from a person under this Part, the inspector shall give the person, within 21 days of the seizure, a copy of the document certified as correct by the inspector.

(2) A copy of a document certified under subsection (1) shall be received in all courts to be evidence of equal validity to the original.

Retention and return of seized documents or things.

101. (1) If an inspector seizes a document or other thing under this Part, the inspector shall take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.

(2) If the document or thing seized has not been returned within three months after it was seized, the inspector shall take reasonable steps to return it unless-

- (a) proceedings for the purpose for which the document or thing was retained have commenced within that three month period and those proceedings (including any appeal) have not been completed;
- (b) the Court makes an order under section 102 extending the period during which the document or thing may be retained; or
- (c) the Court makes an order permitting the destruction of the thing.

(3) This section shall not apply to a sample taken by an inspector in the exercise of a power under this Part.

102. (1) An inspector may apply to a court-

- (a) within three months after seizing a document or other thing under this Part; or
- (b) if an extension has been granted under this section, before the end of the period of the extension-

Court may extend three months period.

for an extension not exceeding 3 months of the period for which the inspector may retain the document or thing but so that the total period of retention does not exceed 12 months.

(2) The High Court may order such an extension if it is satisfied that-

- (a) it is in the interests of justice;

- (b) the total period of retention does not exceed 12 months; and
- (c) retention of the document or other thing is necessary-
 - (i) for the purposes of an investigation into whether a contravention of the Act has occurred; or
 - (ii) to enable evidence of a contravention of the Act to be obtained for the purposes of a proceeding under the Act.

(3) At least seven days prior to the hearing of an application under this section, notice of the application shall be sent to the owner of the document or thing described in the application.

Requirement to assist inspector during entry.

103. An occupier of a premises or an agent or employee of the occupier shall reasonably assist an inspector exercising his power of entering and shall-

- (a) give information to the inspector orally or in writing;
- (b) produce documents to the inspector.

Protection against self-incrimination.

104. (1) It shall be a reasonable excuse for an individual to refuse or fail to give information or do any other thing that the person is required to do by or under this Part, if the giving of the information or the doing of that other thing would tend to incriminate the person.

(2) Notwithstanding subsection (1), it shall not be a reasonable excuse for an individual to refuse or fail to produce a document that the person is required to produce by or under this Part, if the production of the document would tend to incriminate the person.

105. A person shall not-

(a) give information to an inspector under this Part that he believes to be false or misleading in any material particular; or

Offence of giving false or misleading information.

(b) produce a document to an inspector under this Part that he knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

106. A person shall not hinder or obstruct an inspector who is exercising a power under this Act unless he has reasonable excuse to do so.

Offence to hinder or obstruct inspector.

107. A person who is not an inspector shall not hold himself to be one.

Offence to impersonate inspector.

108. (1) If an inspector exercises a power of entry under this Part, the inspector shall report the exercise of the power to the Chief Executive Officer within 7 days after the entry.

Entry to be reported to the chief Executive Officer.

(2) The report shall include all relevant details of the entry including particulars of-

(a) the time and place of the entry;

(b) the purpose of the entry;

(c) the things done while on the premises, including details of things seized, samples taken, copies made and extracts taken; and

(d) the time of departure from the premises.

Register of
exercise of
powers of
entry.

109. The Chief Executive Officer shall keep a register containing the particulars of all matters reported to the Chief Executive Officer under section 108.

Complaints

110. (1) Any person may complain to the Chief Executive Officer about the exercise of a power by an inspector under this part.

(2) The Chief Executive Officer shall-

(a) investigate any complaint made to the Chief Executive Officer; and

(b) provide a written report to the complainant on the results of the investigation.

Confidentiality.

111. (1) An inspector shall not give to another person any information he acquires in carrying out his functions whether directly or indirectly unless it is necessary in order to carry out the inspector's functions under this part.

(2) Subsection (1) shall not apply to the giving of information-

(a) to a court in the course of legal proceedings;

(b) pursuant to an order of a court;

(c) to the extent reasonably required to enable the investigation or the enforcement of the Act;

- (d) with the written authority of the Chief Executive Officer; or
- (e) with the written authority of the person to whom the information relates.

112. (1) This section shall apply to a person who has made a claim or representation promoting, or apparently intended to promote the supply, or possible supply, of goods or services by the person or another person. Commission may require claims to be substantiated.

(2) The Commission may give the person who made the claim or representation a written notice that requires the person to do one or more of the following-

- (a) give information or produce documents to the Commission that could be capable of substantiating or supporting the claim or representation;
- (b) give information or produce documents to the Commission that could be capable of substantiating-
 - (i) the quantities in which and the period for which;
 - (ii) the person or other person is or will be able to make such a supply-
- (c) give information or produce documents to the Commission that are of a kind specified in the notice within 21 days after the notice is given to the person who made the claim or representation.

(3) The notice shall-

- (a) name the person to whom it is given; and
- (b) specify the claim or representation to which it relates.

(4) The notice may relate to more than one claim or representation that the person has made.

Compliance
with
substantiation
notices

113. (1) A person who is given a sub-stantiation notice shall comply within the compliance period.

(2) Notwithstanding subsection (1), an individual may refuse or fail to give particular information or produce a particular document in compliance with a substantiation notice on the ground that the information or production of the document might tend to incriminate the individual or to expose the individual to a penalty.

PART VI—ENFORCEMENT AND REMEDIES

Outcome of
investigation.

114. After concluding an investigation into a complaint, the Commission may respond as it considers appropriate or-

- (a) take no further action;
- (b) propose a draft consent order in terms of section 116;
- (c) issue a compliance notice in terms of section 117;
- (d) refer the matter to the High Court;
- (e) refer the matter for prosecution.

115. (1) If the Commission issues a notice action response to a complaint, other than on the grounds contemplated in section 23, or determines to take no further action in relation to a complaint following an investigation, the complainant concerned may refer the matter directly to the High Court. Referral to Court.

(2) If a matter is referred directly to the High Court the respondent may apply to the High Court, in the prescribed manner and form and within the prescribed time, for an order that the matter be referred to the Court.

(3) A referral to the High Court whether by the Commission or by a complainant in terms of subsection (1), shall be in the prescribed form.

(4) The High Court shall conduct a hearing into any matter referred to it under this Part; and may make any applicable order set out in this Act.

116. (1) If a matter has been investigated by the Commission, and the Commission and the respondent agree to the proposed terms of an appropriate order, the High Court, without hearing any evidence, may confirm that agreement as a consent order. Consent orders.

(2) After hearing a motion for a consent order, the High Court shall—

- (a) make an order as agreed to and proposed by the Commission and the respondent;
- (b) indicate any changes that shall be made in the draft order before it will make the order;
or
- (c) refuse to make the order.

(3) With the consent of a complainant, a consent order confirmed in under subsection (1) may include an award of damages to the complainant.

Compliance notices.

117. (1) Subject to subsection (2), the Commission may issue a compliance notice in the prescribed form to a person whom the Commission, on reasonable grounds, believes has engaged in conduct that contravenes this Act.

(2) A compliance notice shall set out-

- (a) the name of the person to whom the notice applies;
- (b) the provision of the Act that have not been complied with;
- (c) details of the nature and extent of the non compliance;
- (d) any steps that are required to be taken and the period within which those steps shall be taken; and
- (e) any penalty that may be imposed in terms of the Act if those steps are not taken.

(3) A compliance notice issued under this section shall remain in force until-

- (a) it is set aside by the High Court upon a review; or
- (b) the Commission issues a compliance certificate contemplated in subsection (4).

(4) If the requirements of a compliance notice have been satisfied the Commission shall issue a compliance certificate.

(5) If a person to whom a compliance notice has been issued fails to comply with the notice, the Commission may either-

- (a) apply to the Court for the imposition of an administrative fine or other order; or
- (b) refer the matter for prosecution as an offence, but may not do both in respect of any particular compliance notice.

118. (1) Any person issued with a notice under section 117 may apply to the High Court in the prescribed manner and form to review that notice within- ^{Objection to notice.}

- (a) 15 business days after receiving that notice; or
- (b) such longer period as may be allowed by the High Court on good cause shown.

(2) After considering any representations by the applicant and any other relevant information, the High Court may confirm, modify or cancel all or part of a notice.

(3) If the High Court confirms or modifies all or part of a notice, the applicant shall comply with that notice as confirmed or modified, within the time period specified in it.

Action
against
suppliers for
non-
compliance
with warran-
ties.

119. (1) The High Court may consider an application from a consumer or a consumer's representative against a supplier for failure to comply with an implied warranty provision or provisions in Part IV.

(2) The Commission may make an application to the High Court on behalf of a consumer against a supplier for failure to comply with an implied warranty provision or provisions when it considers there are public interest grounds for doing so.

(3) The High Court may impose an administrative fine for non-compliance with Part IV and impose orders that are considered appropriate in the circumstances.

Injunctions.

120. (1) The High Court may grant an injunction, in such terms as it considers appropriate, if it is satisfied that a person has engaged, or is proposing to engage in conduct that constitutes or would constitute a breach of the Act or regulations made under it.

(2) The High Court may grant the injunction on application by the Commission or any other person.

(3) Without prejudice to subsection (1), the High Court may grant an injunction-

(a) restraining a supplier from engaging in unfair supplier conduct;

(b) restraining a supplier from supplying goods or services-

(i) for a specified period; or

(ii) except on specified terms and conditions.

(4) Without limiting subsection (1), the High Court may grant an injunction requiring a supplier to do any of the following-

- (a) refund money;
- (b) transfer property;
- (c) honour a promise;
- (d) destroy or dispose of goods.

121. If an application is made under section 120, the High Court may, if it considers it is desirable to do so, grant an interim injunction under this section pending the determination of the application. Interim
injunction.

122. The High Court may, on application of the Commission, make one or more of the following orders in relation to a person who has engaged in conduct that contravenes a provision of this Act or constitutes an involvement in a contravention of such a provision- High Court
orders.

- (a) an order directing the person to perform a service that is specified in the order, and that relates to the conduct, for the benefit of the community or a section of the community;
- (b) an order for the purpose of ensuring that the person does not engage in the conduct, similar conduct, or related conduct, during the period of the order (which must not be longer than 3 years) including-

- (i) an order directing the person to establish a compliance program for employees or other persons involved in the person's business, being a program designed to ensure their awareness of the responsibilities and obligations in relation to such conduct;
 - (ii) an order directing the person to establish an education and training program for employees or other persons involved in the person's business, being a program designed to ensure their awareness of the responsibilities and obligations in relation to such conduct; and
 - (iii) an order directing the person to revise the internal operations of the person's business which led to the person engaging in such conduct;
- (c) an order requiring the person to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to;
- (d) an order requiring the person to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order:

- (i) to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to; and
- (ii) to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.

123. (1) The High Court may, on application of the Commission, make an order disqualifying a person from managing corporations for a period that the High Court considers appropriate if the High Court is satisfied that-

Disqualifying orders.

- (a) the person has contravened, has attempted to contravene or has been involved in a contravention of any of the provisions of the Act; and
- (b) the disqualification is justified.

(2) In determining whether the disqualification is justified under subsection (1), the High Court may have regard to-

- (a) the person's conduct in relation to the management, business or property of any corporation; and
- (b) any other matters that it considers appropriate.

Orders to redress loss or damage suffered by non-party consumers.

124. (1) Where a person, in contravention of this Act, has caused or is likely to cause a class of persons who are non-party consumers, to suffer loss or damage, the High Court may, on application by the Commission, make such order or orders, other than the award of damages, against that person, as the High Court may consider appropriate.

(2) An order under subsection (1) may be made against the person who engaged in the contravening conduct, or a person involved in that conduct.

(3) The order shall be an order that the High Court considers will redress, in whole or in part, the loss or damage suffered by the non-party consumers in relation to the contravening conduct or declared term.

(4) An application under subsection (1) may be made at any time within 6 years after the day on which the cause of action that relates to the contravening conduct accrued.

(5) In determining whether to make an order under subsection (2) against a person, the High Court may have regard to the conduct of the person, and of the non-party consumers in relation to the contravening conduct, since the contravention occurred.

(6) In determining whether to make an order under subsection (2), the High Court need not make a finding about which persons are non-party consumers in relation to the contravening conduct or declared term.

(7) A non-party consumer shall be bound by an order made under subsection (2) against a person if-

- (a) the loss or damage suffered, or likely to be suffered, by the non-party consumer in relation to the contravening conduct, or the declared term, to which the order relates has been redressed, prevented or reduced in accordance with the order; and
- (b) the non-party consumer has accepted the redress, prevention or reduction of the damage.

125. (1) Proceedings for an offence against this Act or regulations made under it may only be brought by the Commission or a person authorised by the Commission for the purposes of this section. Who can bring proceedings for offences.

(2) This section shall not apply to proceedings for an indictable offence.

126. A prosecution for an offence against a provision of this Act or regulations made under it may be commenced at any time within 3 years after the commission of the offence. Prosecutions to be commenced within 3 years.

127. (1) If a body corporate contravenes or commits an offence against any provision of this Act or regulations made under it, each officer of the body corporate is deemed to have contravened the same provision if the officer knowingly authorised or permitted the contravention. Contravention by bodies corporate.

(2) A person may be proceeded against and, in the case of an offence, convicted under a provision of this Act or regulations in accordance with subsection (1) whether or not the body corporate has been proceeded against under that provision.

Conduct by officers, employees or agents.

128. An officer, employee or agent who within the scope of his duties engages in a conduct on behalf of a body corporate shall be deemed to be engaged by the body corporate.

Offence to aid abet in a contravention.

129. A person shall not aid, abet, counsel or procure another person to contravene a provision of this Act.

Offences to induce a contravention.

130. A person shall not induce or attempt to induce, whether by threats, promises or otherwise any other person to contravene a provision of this Act.

Criminal proceedings not to be brought for contravention of the general prohibitions.

131. Criminal proceedings shall not lie against a person in relation to contraventions of the general prohibitions contained in Part V.

Reasonable mistake of fact.

132. In a prosecution for a contravention of this Act or regulations made under it the High Court may have regard to whether the defendant proves that the contravention was caused by a reasonable mistake of fact.

133. In a proceeding against a person under this part a finding of fact by a Court that a person has contravened, or to have been involved in a contravention of, a provision of this Act shall be evidence of that fact and the finding may be proved by production of a document under the seal of the court from which the finding appears.

Findings in proceedings to be evidence

134. (1) A person who suffers loss, injury or damage because of a contravention of this Act or regulations made under it may recover the amount of the loss, damage or damages in respect of the injury by proceeding against any person who contravened the Act or regulations or was involved in the contravention.

Actions for damages.

(2) A Court may award damages to be paid on any terms or conditions that the Court considers just and equitable and suitable to achieve the purposes of this Act against a supplier for collective injury to all or a class of consumers generally,

135. If a person is found guilty of an offence under this Act, the Court, in addition to any other penalty it may fix, may order that the person pay to a person who, in the opinion of the court, was humiliated or distressed by the conduct constituting the offence an amount of up to 40,000,000 Leones.

Awards of compensation.

136. If a court considers that-

- (a) it is appropriate to impose a fine on a person in relation to a contravention of this Act or regulations made under it; and

Preference to be given to compensation for victims.

- (b) it is appropriate to order the defendant to pay compensation to a person who has suffered loss or damage as result of that contravention or conduct; and
- (c) the defendant does not have sufficient financial resources to pay both the fine and the compensation –

the Court shall give preference to making an order for compensation.

Penalties. 137. Any person convicted of an offence under this Act for which no fine has been provided, is liable to-

- (a) a fine not exceeding 30,000,000 Leones for an individual and up to 40,000,000 Leones for a body corporate; or
- (b) imprisonment for a period not exceeding 2 years; or
- (c) to both a fine and imprisonment.

MEMORANDUM OF OBJECTS AND REASONS

The issue of competition and consumer protection has assumed relative importance in Sierra Leone as a result of the rising tides of globalisation in the world economy. It is generally accepted that when businesses occupy dominant positions in the market place or collude with each other it invariably results in abuse of market power, which in turn adversely affects private sector development, trade and economic growth.

In an effort to create a level playing field for all businesses, it has become necessary to put in place an effective consumer protection regime to ensure that consumers are not exploited. This also affords consumers wider choice in products, greater access to those products, fair terms and basis for accessing those products, guarantees of the safety of the products, the right of redress to consumers when the rights and conditions afforded them under the consumer protection regime are compromised.

This Bill also aims to protect and promote the interests of consumers especially the interests of consumers who are vulnerable or disadvantaged due to their economic circumstances or circumstances relating to their educational background or their inability to access professionals who can act on their behalf to secure their rights.

This Bill also aims at-

- (a) preventing the production and supply of harmful and defective goods and the sale of such goods including the adoption of measures to secure the removal of those goods from the market;
- (b) ensuring that goods supplied to consumers are labelled in accordance with the prescribed standards;

-
- (c) ensuring that hazardous and or other goods the distribution, consumption or use of which are regulated by legislation are sold or supplied in accordance with the relevant legislation;
 - (d) ensuring that services are provided in compliance with applicable law;
 - (e) preventing unfair trading practices, such as misleading or deceptive or fraudulent conduct;
 - (f) preventing the inclusion of unconscionable terms in contracts for the sale and supply of goods and services;
 - (g) empowering consumers to make informed decisions and to reduce information asymmetries as between consumers and businesses in the market;
 - (h) ensuring that measures are in place to sanction and punish suppliers who are liable for defects in goods and services and for violation of product standards, consumer safety or any other activity which occasion loss or damage to consumers;
 - (i) ensuring that institutional arrangements and priorities are set and maintained to address violations of consumer safety and standards by producers and suppliers and that appropriate sanctions, defences and remedies are defined;
 - (j) ensuring the physical safety and wellbeing of consumers in relation to access to food, drugs and other goods and services that are fit for human use and consumption;

- (k) providing environmental protection to promote sustainable production and consumption to secure the future of Sierra Leoneans.

The Bill also seeks to establish the National Consumer Protection Commission of Sierra Leone whose basic function is the administration of the Act. In performing this function, the Commission among other functions, may conduct research on consumer protection policies and enactments and make recommendations to the Minister responsible for Trade. It may also

investigate allegations of non-compliance with this Act to ensure that appropriate remedies are imposed.

MADE this day of , 2019.

DR. EDWARD HINGA SANDY,
Ministry of Trade and Industry.

Freetown
Sierra Leone
April, 2019.