

Ireland

Notification Art. 33 CRD

National provisions going beyond Art. 5(1) to (3) and Art. 7(1) of Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees

In its transposition of Directive 1999/44/EC, Ireland opted to retain the general six-year time limit for contractual claims provided for in section 11(1) of the Statute of Limitations, 1957.

Section 11(Limitation of actions of contract and tort and certain other actions)

(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued—

(a) actions founded on simple contract;

Directive 1999/44/EC on Certain aspects of the sale of consumer goods and associated guarantees is given effect in Ireland by the European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003 (S.I. No 11 of 2003). The Regulations operate in tandem with the domestic legislation contained in the Sale of Goods Acts 1893 and 1980.¹ The Sale of Goods Acts can be said to provide additional protections to consumers in four main respects: (i) rights in respect of goods under sales contracts; (ii) guarantees; (iii) remedies; and (iv) the time limit for claims. The relevant provisions of the Acts are set out below.

1. Rights In Respect of Goods Under Sales Contracts

Section 14 Sale of Goods Act 1893 (Implied undertakings as to quality or fitness)

(1) Subject to the provisions of this Act and of any statute in that behalf, there is no implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied under a contract of sale.

(2) Where the seller sells goods in the course of a business there is an implied condition that the goods supplied under the contract are of merchantable quality, except that there is no such condition—

(a) as regards defects specifically drawn to the buyer's attention before the contract is made, or

(b) if the buyer examines the goods before the contract is made, as regards defects which that examination ought to have revealed.

(3) Goods are of merchantable quality if they are as fit for the purpose or purposes for which goods of that kind are commonly bought and as durable as it is reasonable to expect having regard to any description applied to them, the price (if relevant) and all the other relevant circumstances, and any reference in this Act to unmerchantable goods shall be construed accordingly.

¹ The collective citation for the Sale of Goods Act 1893 and Part II of the Sale of Goods and Supply of Services Act 1980 (Sale of Goods).

(4) Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known to the seller any particular purpose for which the goods are being bought, there is an implied condition that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the seller's skill or judgement.

(5) An implied condition or warranty as to quality or fitness for a particular purpose may be annexed to a contract of sale by usage.

(6) The foregoing provisions of this section apply to a sale by a person who in the course of a business is acting as agent for another as they apply to a sale by a principal in the course of a business, except where that other is not selling in the course of a business and either the buyer knows that fact or reasonable steps are taken to bring it to the notice of the buyer before the contract is made.

Section 15 Sale of Goods Act 1893 (Sale by sample)

(1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample—

(a) There is an implied condition that the bulk shall correspond with the sample in quality:

(b) There is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample:

(c) There is an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

Section 12 Sale of Goods and Supply of Services Act 1980 (Implied warranty for spare parts and servicing)

(1) In a contract for the sale of goods there is an implied warranty that spare parts and an adequate aftersale service will be made available by the seller in such circumstances as are stated in an offer, description or advertisement by the seller on behalf of the manufacturer or on his own behalf and for such period as is so stated or, if no period is so stated, for a reasonable period.

(2) The Minister may, after such consultation with such interested parties as he thinks proper, by order define, in relation to any class of goods described in the order, what shall be a reasonable period for the purpose of subsection (1).

(3) Notwithstanding section 55 (1) of the Act of 1893 (inserted by section 22 of this Act) any term of a contract exempting from all or any of the provisions of this section shall be void.

Section 13 Sale of Goods and Supply of Services Act (Implied condition on sale of motor vehicles)

(1) In this section “motor vehicle” means a vehicle intended or adapted for propulsion by mechanical means, including—

(a) a bicycle or tricycle with an attachment for propelling it by mechanical power, and

(b) a vehicle the means of propulsion of which is electrical or partly electrical and partly mechanical.

(2) Without prejudice to any other condition or warranty, in every contract for the sale of a motor vehicle (except a contract in which the buyer is a person whose business it is to deal in motor vehicles) there is an implied condition that at the time of delivery of the vehicle under the contract it is free from any defect which would render it a danger to the public, including persons travelling in the vehicle.

(3) Subsection (2) of this section shall not apply where—

(a) it is agreed between the seller and the buyer that the vehicle is not intended for use in the condition in which it is to be delivered to the buyer under the contract, and

(b) a document consisting of a statement to that effect is signed by or on behalf of the seller and the buyer and given to the buyer prior to or at the time of such delivery, and

(c) it is shown that the agreement referred to in paragraph (a) is fair and reasonable.

(4) Save in a case in which the implied condition as to freedom from defects referred to in subsection (2) is either not incorporated in the contract or has been effectively excluded from the contract pursuant to that subsection, in the case of every sale of a motor vehicle by a person whose business it is to deal in motor vehicles a certificate in writing in such form as the Minister may by regulations prescribe shall be given to the buyer by or on behalf of the seller to the effect that the vehicle is, at the time of delivery, free from any defect which would render it a danger to the public, including persons travelling in the vehicle.

(5) Where an action is brought for breach of the implied condition referred to in subsection (2) by reason of a specific defect in a motor vehicle and a certificate complying with the requirements of this section is not proved to have been given, it shall be presumed unless the contrary is proved that the proven defect existed at the time of delivery.

(6) Regulations under subsection (4) may apply to motor vehicles generally or to motor vehicles of a particular class or description (defined in such manner and by reference to such things as the Minister thinks proper) and different forms of certificate may be prescribed for different classes or descriptions of vehicles.

(7) A person using a motor vehicle with the consent of the buyer of the vehicle who suffers loss as the result of a breach of the condition implied by subsection (2) in the contract of sale may maintain an action for damages against the seller in respect of the breach as if he were the buyer.

(8) The Statute of Limitations, 1957, is hereby amended—

(I) by the insertion in section 11 (2) of the following paragraph—

“(d) An action for damages under section 13 (7) of the Sale of Goods and Supply of Services Act, 1980, shall not be brought after the expiration of two years from the date on which the cause of action accrued.”;

(II) by the insertion in section 49 of the following subsection—

“(5) In the case of an action claiming damages under section 13 (7) of the Sale of Goods and Supply of Services Act, 1980, subsection (1) of this section shall have effect as if for the words ‘six years’ there were substituted the words ‘two years’.”.

(9) Notwithstanding section 55 (1) of the Act of 1893 (inserted by section 22 of this Act) any term of a contract exempting from all or any of the provisions of this section shall be void.

2. Guarantees (Sections 15 to 19 Sale of Goods and Supply of Services Act 1980)

Section 15 (Definition of guarantee)

In sections 16 to 19, “guarantee” means any document, notice or other written statement, howsoever described, supplied by a manufacturer or other supplier, other than a retailer, in connection with the supply of any goods and indicating that the manufacturer or other supplier will service, repair or otherwise deal with the goods following purchase.

Section 16 (Terms of guarantee)

- (1) A guarantee shall be clearly legible and shall refer only to specific goods or to one category of goods.
- (2) A guarantee shall state clearly the name and address of the person supplying the guarantee.
- (3) A guarantee shall state clearly the duration of the guarantee from the date of purchase but different periods may be stated for different components of any goods.
- (4) A guarantee shall state clearly the procedure for presenting a claim under the guarantee which procedure shall not be more difficult than ordinary or normal commercial procedure.
- (5) A guarantee shall state clearly what the manufacturer or other supplier undertakes to do in relation to the goods and what charges, if any, including the cost of carriage, the buyer must meet in relation to such undertakings.
- (6) It shall be an offence for the manufacturer or other supplier of goods to supply in connection with the goods a guarantee which fails to comply with this section.

Section 17 (Liability of seller under guarantee)

- (1) Where the seller of goods delivers a guarantee to the buyer, irrespective of when or how it is delivered, the seller shall be liable to the buyer for the observance of the terms of the guarantee as if he were the guarantor, unless he expressly indicates the contrary to the buyer at the time of delivery.
- (2) Where, however, the seller, being a retailer, gives the buyer his own written undertaking that he will service, repair or otherwise deal with the goods following purchase, it shall be presumed, unless the contrary is proved, that he has not made himself liable to the buyer under the guarantee so delivered.
- (3) Sections 16, 18 and 19 shall apply to any such undertaking as they apply to a guarantee.

(4) The liability of a seller to a buyer under this section is without prejudice to the rights conferred on the buyer under section 19.

Section 18 (Exclusion of buyer's rights under guarantee)

(1) Rights under a guarantee shall not in any way exclude or limit the rights of the buyer at common law or pursuant to statute and every provision in a guarantee which imposes obligations on the buyer which are additional to his obligations under the contract shall be void.

(2) A provision in a guarantee which purports to make the guarantor or any person acting on his behalf the sole authority to decide whether goods are defective or whether the buyer is otherwise entitled to present a claim shall be void.

Section 19 (Right of action under guarantee)

(1) The buyer of goods may maintain an action against a manufacturer or other supplier who fails to observe any of the terms of the guarantee as if that manufacturer or supplier had sold the goods to the buyer and had committed a breach of warranty, and the court may order the manufacturer or supplier to take such action as may be necessary to observe the terms of the guarantee, or to pay damages to the buyer. In this subsection, "buyer" includes all persons who acquire title to the goods within the duration of the guarantee and, where goods are imported, "manufacturer" includes the importer.

(2) In any case in which a guarantor is liable to an owner in damages, the court may at its discretion and on such terms as the court may deem just afford the guarantor the opportunity of performing these obligations under the guarantee to the satisfaction of the court within a time to be limited by the court.

3. Remedies

The undertakings as to the quality or fitness for purpose of goods, their correspondence with description and sample, and the safety of motor vehicles implied into sales contracts by the Sale of Goods Acts 1893 and 1980 are characterised as conditions of the contract. The implied undertaking as to spare parts and servicing is characterised as a warranty. Section 11 of the Sale of Goods Act 1893 provides that breach of a condition may give rise to a right to treat the contract as repudiated, while breach of a warranty may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated. The right to reject the goods and repudiate the contract is subject to the provisions of sections 34 and 35 of the 1893 Act on examination and acceptance. Where a buyer does not have the right to reject the goods and repudiate the contract by virtue of these or other provisions, section 53(2) of the 1893 Act give the buyer a right to request the seller either to remedy the breach or replace the goods. If the seller refuses to comply with this request or fails to do so within a reasonable time, the buyer is entitled to reject the goods and repudiate the contract or to have the breach remedied elsewhere and to maintain an action against the seller for the cost of doing so.

Section 11 Sale of Goods Act 1893 (When condition to be treated as warranty)

(1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of such condition as a breach of warranty, and not as a ground for treating the contract as repudiated.

(2) Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

(3) Where a contract of sale is not severable, and the buyer has accepted the goods, or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there be a term of the contract, express or implied, to that effect.

(4) Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by law by reason of impossibility or otherwise.

Section 34 (Buyer's right of examining the goods)

(1) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

Section 35 (Acceptance)

The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or, subject to section 34 of this Act, when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller or when, without good and sufficient reason, he retains the goods without intimating to the seller that he has rejected them.

Section 53 (Remedy for breach of warranty)

(2) Where—

(a) the buyer deals as consumer and there is a breach of a condition by the seller which, but for this subsection, the buyer would be compelled to treat as a breach of warranty, and

(b) the buyer, promptly upon discovering the breach, makes a request to the seller that he either remedy the breach or replace any goods which are not in conformity with the condition,

then, if the seller refuses to comply with the request or fails to do so within a reasonable time, the buyer is entitled:

(i) to reject the goods and repudiate the contract, or

(ii) to have the defect constituting the breach remedied elsewhere and to maintain an action against the seller for the cost thereby incurred by him.

4. Time Limit for Contractual Claims

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