

S. I. No. 11 of 2003

European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003

I, MARY HARNEY, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 ⁽¹⁾, on certain aspects of the sale of consumer goods and associated guarantees, hereby make the following regulations:

Citation.

1. These Regulations may be cited as the European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003.

Interpretation.

2. (1) In these Regulations -

"consumer" means a natural person who, as regards a sale or associated guarantee, is acting for purposes which are outside that person's trade, business or profession;

"consumer goods" means any tangible moveable item, other than -

- (a) goods sold by way of execution or otherwise by authority of law,
- (b) water or gas where it is not put up for sale in a limited volume or set quantity, and
- (c) electricity;

"Directive" means Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees¹;

"enactment" includes an instrument made under an enactment;

"guarantee" means any undertaking by a seller or producer to the consumer, given without extra charge, to reimburse the price paid or to replace, repair or handle consumer goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising;

¹ OJ L 171, 7.7.1999, p. 12

"producer" means any manufacturer of consumer goods, importer of consumer goods into the territory of the Community or any person purporting to be a producer by placing his or her name, trade mark or other distinctive sign on the consumer goods;

"repair" means, in the event of lack of conformity of consumer goods, to bring the goods into conformity with the contract of sale;

"seller" means any natural or legal person who, under a contract, sells consumer goods in the course of his or her trade, business or profession.

(2) A reference in these Regulations to -

(a) a Regulation is a reference to a Regulation of these Regulations, unless it is indicated that reference to some other provision is intended, and

(b) a paragraph or subparagraph is a reference to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(3) A word or expression that is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Directive.

(4) Contracts for the supply of consumer goods to be manufactured or produced shall be regarded as contracts of sale for the purpose of these Regulations.

Relationship between Regulations and consumer protection enactments.

3. (1) Subject to paragraphs (3) and (4), these Regulations are in addition to, and not in substitution for, any other enactment relating to the sale of goods or the terms of contracts concluded with consumers, and in particular -

(a) the Sale of Goods and Supply of Services Acts 1893 and 1980,
and

(b) the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27 of 1995).

(2) In particular, Regulation 4 is in addition to, and not in substitution for, a provision of any other enactment that provides that a consumer shall not be deprived, by virtue of a choice of the kind mentioned in that Regulation, of the protection afforded by any enactment.

(3) In a case where the level of protection for the consumer afforded by a particular provision of these Regulations is greater than that afforded by a particular provision of another enactment, or to the extent that the invocation of a latter such provision by the consumer would diminish the first-mentioned level of protection for him or her -

(a) the consumer may opt to invoke the particular provision of these Regulations to the exclusion of the other provision, and

(b) the other provision may be invoked, and shall be construed and operate so as to be capable of being invoked, by the consumer in a

manner that does not diminish the first-mentioned level of protection for him or her,

but nothing in this paragraph operates to extend the application of these Regulations to a person who is not a consumer within the meaning of these Regulations or to goods that are not consumer goods within the meaning of these Regulations.

(4) In a case where the level of protection for the consumer afforded by a particular provision of any other enactment is greater than that afforded by a particular provision of these Regulations, or to the extent that the invocation of a latter such provision by the consumer would diminish the first-mentioned level of protection for him or her -

- (a) the consumer may opt to invoke the particular provision of that other enactment to the exclusion of the other provision of these Regulations, and
- (b) that other provision of these Regulations may be invoked, and shall be construed and operate so as to be capable of being invoked, by the consumer in a manner that does not diminish the first-mentioned level of protection for him or her,

but nothing in this paragraph operates to afford to any person the protection of that provision of the other enactment in any case where it would not otherwise be so afforded.

Choice of law provisions.

4. (1) A consumer shall not be deprived of the protection afforded by these Regulations as a result of his or her choosing as the law applicable to the contract the law of a non-Member State if the contract has a close connection with the territory of the Member States.

(2) Paragraph (1) shall have effect notwithstanding section 61(6) of the Sale of Goods Act 1893.

Goods to be in conformity with contract.

5. (1) The consumer goods delivered under a contract of sale to the consumer must be in conformity with that contract.

(2) For the purpose of these Regulations, consumer goods are presumed to be in conformity with the contract of sale if they -

- (a) comply with the description given by the seller and possess the qualities of the goods which the seller has held out to the consumer as a sample or model,
- (b) are fit for any particular purpose for which the consumer requires them and which he or she made known to the seller at the time of conclusion of the contract and which the seller has accepted,
- (c) are fit for the purposes for which goods of the same type are normally used,

- (d) show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling.

(3) There shall be deemed not to be a lack of conformity for the purposes of these Regulations if either -

- (a) at the time the contract was concluded, the consumer was aware or ought reasonably to have been aware of the lack of conformity,

or

- (b) the lack of conformity has its origin in materials supplied by the consumer.

(c)

Regulation 5: supplemental provisions.

6. (1) The seller shall not be bound by a public statement referred to in Regulation 5(2)(d) if the seller -

- (a) shows that he or she was not, and could not reasonably be expected to have been, aware of the statement,
- (b) shows that, by the time of conclusion of the contract, the statement had been corrected, or
- (c) shows that the decision to buy the consumer goods could not have been influenced by the statement.

(2) Any lack of conformity resulting from incorrect installation of the consumer goods shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the contract of sale of the goods and the goods were installed by the seller or under his or her responsibility. The foregoing also applies if the goods, intended to be installed by the consumer, are installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.

Liability of seller and remedies available to consumer.

7. (1) The seller shall be liable to the consumer for any lack of conformity referred to in Regulation 5 which exists at the time the goods were delivered.

(2) In the case of such a lack of conformity, the consumer shall, subject to, and, in accordance with, this Regulation, be entitled to have -

- (a) the goods brought into conformity free of charge by repair or replacement, or
- (b) an appropriate reduction made in the price, or
- (c) the contract rescinded with regard to those goods.

(3) In the first place, the consumer may require the seller to repair the goods or to replace them (in either case free of charge) unless this is impossible or disproportionate.

(4) Either of these remedies shall be deemed to be disproportionate if it imposes costs on the seller which, in comparison with those of the other remedy or of any other remedy mentioned in this Regulation, are unreasonable, taking into account -

- (a) the value the goods would have if there were no lack of conformity,
- (b) the significance of the lack of conformity, and
- (c) whether the alternative remedy could be completed without significant inconvenience to the consumer.

(5) Where the remedy of repair or replacement is provided the repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required them.

(6) In paragraphs (2) and (3) "free of charge" means free of the costs that must necessarily be incurred to bring the goods into conformity, including the cost of carriage, postage, labour and materials.

(7) The consumer may require an appropriate reduction of the price or have the contract rescinded if -

- (a) the consumer is entitled to neither repair nor replacement, or
- (b) the seller has not completed the repair or replacement within a reasonable time, or
- (c) the seller has not completed the repair or replacement without significant inconvenience to the consumer.

(8) The consumer is not entitled to have the contract rescinded if the lack of conformity is minor.

Presumption that lack of conformity existed at time of delivery.

8. (1) Subject to paragraph (2), any lack of conformity which becomes apparent within 6 months from the date of delivery of the goods shall, unless the contrary is proved, be presumed to have existed at the time of delivery of the goods.

(2) Paragraph (1) shall not apply if, by reason of -

- (a) the nature of the goods concerned,
- or
- (b) the nature of the lack of conformity concerned,

it would not be a reasonable inference that the lack of conformity existed at the time of delivery.

Guarantees.

9. (1) A guarantee shall be legally binding on the offerer under the conditions laid down in the guarantee statement and the associated advertising.

(2) The guarantee shall -

- (a) state that the consumer has legal rights under these Regulations and the other enactments governing the sale of consumer goods

and make clear that those rights are not affected by the guarantee, and

- (b) set out in plain intelligible language the contents of the guarantee and the essential particulars necessary for making claims under the guarantee, including the duration and territorial scope of the guarantee as well as the name and address of the guarantor.

(3) On request by the consumer, the guarantee shall be made available in writing or another durable medium available and accessible to him or her.

(4) The fact that a guarantee does not comply with any of the requirements of paragraph (2) or (3) shall not affect the validity of the guarantee and, accordingly, the consumer may invoke and enforce the guarantee despite any such non-compliance.

Provisions purporting to exclude consumer's rights.

10. Any contractual terms or agreements concluded with the seller before the lack of conformity is brought to the seller's attention which purport directly or indirectly to waive or restrict the rights resulting from these Regulations shall not be binding on the consumer.

Jurisdiction of court to order repair or replacement.

11. For the purposes of those provisions of these Regulations providing for the remedies of repair or replacement, there is, by virtue of this Regulation, vested in each court established by the Courts (Establishment and Constitution) Act 1961 jurisdiction to order the repair or replacement of consumer goods.

GIVEN under my Official Seal,

this 22nd January 2003

Mary Harney

Minister for Enterprise, Trade and Employment

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations are for the purpose of giving effect to Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees. The purpose of the Directive is to provide a common set of minimum rules that can be relied upon when a consumer is purchasing goods in any Member State of the European Union. The Regulations compliment and are in addition to the existing law in this area, namely the Sale of Goods and Supply of Services Acts 1893 and 1980 and the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995.

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