



## The Sale and Supply of Goods to Consumers Regulations 2002

### Are they really as bad as all that?

On 31 March 2003, the Sale and Supply of Goods to Consumers Regulations 2002 came into force in the UK, by way of implementation of the EC Directive 1999/44 on “Certain Aspects of the Sale of Consumer Goods and Associated Guarantees”. Much has been made of these new Regulations and, in particular, the reportedly draconian obligations that they are perceived to place on retailers. However, to a certain degree, the perception of the new Regulations has been coloured by a misunderstanding of consumers’ rights that existed prior to the implementation of the new Regulations and which continue to apply. Here LA Marine (the specialist shipping and marine law department of Lester Aldridge Solicitors) considers retailers’ obligations under pre-existing legislation and how these have been affected by the new Regulations.

### The existing rules

Prior to the implementation of the new Regulations, the sale of goods by a person acting in the course of a business in the UK was governed by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 (both of which were amended in 1994), the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999. The effect of certain provisions in these Acts is to imply terms into all contracts for the sale of goods, whether new or second hand, where a business sells goods to a private individual not engaged in business (ie a “consumer”).

The terms implied by these Acts grant a variety of rights to buyers. However, the most significant terms are such that their breach by the seller allows the buyer to end the contract and obtain a refund and, in certain circumstances, additional compensation. If for any reason a refund is not possible or not desirable, the buyer can simply claim compensation.

One of the primary contractual obligations implied by these Acts is a promise by the seller that they have the right to sell the goods. A seller cannot exclude this promise in their terms of business or otherwise.

A second implied contractual promise is that, where goods are sold by description, the goods supplied will match that description. By way of an example, if a consumer orders a red boat and is delivered a green boat then it does not matter whether or not there is anything wrong with the green boat - the consumer may return it to the seller and demand a refund. A seller cannot exclude this promise in his terms of business where the buyer is a consumer and may only restrict it or exclude it when selling to another business if to do so is reasonable in the circumstances.

Arguably the most significant promise implied by these Acts (and the term that gives rise to the most disputes) is that the goods sold are of satisfactory quality **at the time of sale**. This is not a guarantee by the seller that the goods will function correctly for a given period of time after sale but simply a promise that the goods were in a satisfactory condition on sale. The Acts set out various criteria to be taken into account when considering whether goods are of satisfactory quality and these will vary depending on the nature of the goods and their purpose. However, this implied term applies to the sale of second hand goods as much as it applies to new ones.



If a buyer considers that a seller is in breach of these implied promises and wishes to “reject” the goods and obtain a refund, traditionally the buyer must inform the seller of this within a “reasonable time”. This has been interpreted by the courts as being quite short (a period of two weeks being regarded as too long in one case). This has however recently been considered by the Court of Appeal, which has confirmed that any time spent by the buyer and seller discussing appropriate repairs or remedies should not be included within the “reasonable time” period.

If the buyer does not notify the seller within this “reasonable time” that he requires a refund, he will be regarded as having accepted the goods and his claim against the seller will be limited to compensation only. Although the buyer will only have a claim under these Acts if the goods are defective **at the time of the sale**, he may issue court proceedings against the seller at any time up to six years after buying the goods. This does not mean that the buyer has a valid claim if the goods do not function correctly for six years, but simply that the buyer has six years to bring a claim if the goods were defective from the outset.

Again, a seller cannot exclude in his terms of business the promise that goods are of satisfactory quality where the buyer is a consumer and may only restrict it or exclude it when selling to another business where this is reasonable.

The rights conferred on buyers by these Acts are independent from any rights the buyer may have under any manufacturer’s guarantee, which may be limited in scope and duration.

## The new Regulations

The new Regulations were introduced in the UK as a result of an EC Directive that aimed to harmonise the basic rights of consumers across the EU. The Directive should have been implemented EU-wide by 1 January 2002 but some states have still not implemented it and others have granted consumers additional rights over and above the minimum standard set out in the Directive.

The new Regulations came into force in the UK on 31 March 2003. They are drafted such that they do not replace the pre-existing rules under the above Acts but add a set of new rights. The rights that buyers (whether consumers or businesses) had before 31 March 2003 as set out above therefore remain unchanged. The new Regulations, however, only confer rights on consumers and they do not affect people or companies buying in the course of a business.

The rights given to consumers by the new Regulations only apply where goods supplied are not in conformity with the contract **at the time of the sale**. In other words, the new Regulations only apply where the buyer already has rights under the pre-existing rules such as where the goods sold either do not match their description or are of unsatisfactory quality. To this extent, the new Regulations are no wider in scope than the pre-existing rules.

However, the new Regulations do incorporate a *presumption* that **if goods fail within six months of sale then they were defective at the time of the sale**. This is not a guarantee that goods will function correctly for six months but simply a change in who bears the burden of proving the condition of the goods at the time of the sale. It is open to a seller to argue that, despite goods failing within the six month period, the goods were of satisfactory quality at the time of sale but it is up to the seller to prove this. Clearly, this may require sellers to retain detailed records of any pre-delivery inspections carried out on goods.



The primary right that the new Regulations grant to consumers is a right to demand that the seller **repairs or replaces faulty goods**. Many sellers would offer to do this as a matter of course but it is now an express right of the buyer to demand it. If so required by the buyer, the seller must repair or replace the goods at his expense within a reasonable time.

If repair or replacement is impossible or disproportionate given the nature of the goods or the defect, the seller need not repair or replace the goods. However, in this event, the buyer may require the seller to reduce the purchase price of the goods or, if the buyer returns the goods, demand a refund. The buyer's right to a refund under the new Regulations appears to be broadly similar to that under the pre-existing rules but without the restriction on it being exercised within a "reasonable time".

Finally, the new Regulations do not oblige retailers to give buyers a manufacturer's guarantee. However, where such a guarantee is supplied, it must comply with the new Regulations.

Where a seller sells goods to a consumer that do not match their description or are of unsatisfactory quality, the consumer may make his demand for repair, replacement, reduction in purchase price or refund at any time up to six years after the date of the sale. This is no different from the position under the pre-existing rules.

The Directive states that EU states must allow consumers to bring such claims up to two years after the date of sale and some interpreted this as meaning that sellers were obliged to give a minimum two year guarantee. However, there is no provision for mandatory guarantees and the UK (and some other states) have chosen to allow consumers a longer period after the sale in which to bring their claims in order to keep in line with pre-existing rules.

When the Directive was introduced there was some concern that the new rules would apply to commercial agents such as brokers. However, in the UK at least, the new Regulations apply to the same sellers as the pre-existing rules did and there is no indication at this stage that commercial brokers selling goods on behalf of private individuals will be affected.

## The European perspective

Within the provisions of the EC Directive, individual member states are entitled to enact regulations more favourable to consumers than the minimum standard laid down in the Directive, if they so wish. As a consequence, although there will in theory be a common minimum standard EU-wide, consumers enjoy differing rights in each state.

For example, German consumers have the right to demand a replacement where goods purchased are defective, as in the UK. However, if the goods are complex and not easily replaced, the seller has the right to attempt to repair the goods rather than replace them. If the seller fails adequately to repair the goods after two attempts, the buyer may return them and demand a refund. Like the UK, there is no requirement for sellers to give a manufacturer's guarantee. However, in Germany the buyer has only two years from the date of purchase of the goods to make any claim against the seller.

Spain has not yet enacted the EC Directive into its domestic law but, under existing law, sellers in Spain are obliged to give consumers a minimum six month written guarantee. The time limit within which a consumer must bring his claim under Spanish law varies according to the nature of the defect in the goods but could be as long as fifteen years after the date of sale.



France has also not yet enacted the EC Directive but current consumer protection laws in France are considered to be more favourable to consumers than the minimum standard laid down by the Directive and may therefore not change significantly when the new rules are brought into force in France.

### Where next?

The entering into force of the new Regulations makes it even more important that sellers use formal terms of business. Where such terms of business are already in use, sellers should ensure that those terms are unaffected by the changes or amended to take account of the changes.

Where goods supplied are more complex, it is vital that sellers carry out thorough pre-delivery inspections and that the results of these inspections are recorded and retained for at least six years.

Sellers should ensure that their promotional material and sales pitch is accurate and measured since whether or not goods are of “satisfactory quality” may be measured against claims or statements made by the seller or manufacturer. After sales staff should be aware of consumers’ rights under the new Regulations and be able to address any after sales issues accordingly.

Any guarantees offered by sellers, either directly or passed on from manufacturers, should be checked to ensure that they comply with the new Regulations.

In summary, although the new Regulations appear to impose significant obligations on sellers, these obligations are for the most part not significantly more onerous than those that sellers are already bound by under pre-existing legislation.

This newsletter summarises complex legal matters and should not therefore be relied upon as a definitive statement of the law. You should take specific legal advice on your own particular circumstances. For further information or advice, please contact LA Marine.

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