

EU Consumer Law Acquis Compendium

Legislation

United Kingdom (UK) Nr. 11

Full name and/or number of the statute (in original language):

Sale of Goods Act 1979

Translation of the name:

Sale of Goods Act 1979

Reference in Official Journal (if appropriate):

Date of coming into force:

Subsequent amendments:

Text:

Sale of Goods Act 1979

2 Contract of sale

(1) A contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price.

(2) There may be a contract of sale between one part owner and another.

(3) A contract of sale may be absolute or conditional.

(4) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale.

(5) Where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition later to be fulfilled the contract is called an agreement to sell.

(6) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

5 Existing or future goods

(1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by him after the making of the contract of sale, in this Act called future goods.

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends on a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

11 When condition to be treated as warranty

(1) This section does not apply to Scotland.

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

(3) 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; and a stipulation may be a condition, though called a warranty in the contract.

(4) Subject to section 35A below where a contract of sale is not severable and the buyer has accepted the goods or part of them, the breach of a 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 is an express or implied term of the contract to that effect.

(5) . . .

(6) Nothing in this section affects a condition or warranty whose fulfilment is excused by law by reason of impossibility or otherwise.

(7) Paragraph 2 of Schedule 1 below applies in relation to a contract made before 22 April 1967 or (in the application of this Act to Northern Ireland) 28 July 1967.

13 Sale by description

(1) Where there is a contract for the sale of goods by description, there is an implied term that the goods will correspond with the description.

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(1A) As regards England and Wales and Northern Ireland, the term implied by subsection (1) above is a condition.

(2) If the sale is by sample as well as by description it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

(3) A sale of goods is not prevented from being a sale by description by reason only that, being exposed for sale or hire, they are selected by the buyer.

(4) Paragraph 4 of Schedule 1 below applies in relation to a contract made before 18th May 1973.

14 Implied terms about quality or fitness

(1) Except as provided by this section and section 15 below and subject to any other enactment, there is no implied term about 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 term that the goods supplied under the contract are of satisfactory quality.

(2A) For the purposes of this Act, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances.

(2B) For the purposes of this Act, the quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods-

(a) fitness for all the purposes for which goods of the kind in question are commonly supplied,

(b) appearance and finish,

(c) freedom from minor defects,

(d) safety, and

(e) durability.

(2C) The term implied by subsection (2) above does not extend to any matter making the quality of goods unsatisfactory-

(a) which is specifically drawn to the buyer's attention before the contract is made,

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(b) where the buyer examines the goods before the contract is made, which that examination ought to reveal, or

(c) in the case of a contract for sale by sample, which would have been apparent on a reasonable examination of the sample.

(2D) If the buyer deals as consumer or, in Scotland, if a contract of sale is a consumer contract, the relevant circumstances mentioned in subsection (2A) above include 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.

(2E) A public statement is not by virtue of subsection (2D) above a relevant circumstance for the purposes of subsection (2A) above in the case of a contract of sale, if the seller shows that—

(a) at the time the contract was made, he was not, and could not reasonably have been, aware of the statement,

(b) before the contract was made, the statement had been withdrawn in public or, to the extent that it contained anything which was incorrect or misleading, it had been corrected in public, or

(c) the decision to buy the goods could not have been influenced by the statement.

(2F) Subsections (2D) and (2E) above do not prevent any public statement from being a relevant circumstance for the purposes of subsection (2A) above (whether or not the buyer deals as consumer or, in Scotland, whether or not the contract of sale is a consumer contract) if the statement would have been such a circumstance apart from those subsections.

(3) Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known-

(a) to the seller, or

(b) where the purchase price or part of it is payable by instalments and the goods were previously sold by a credit-broker to the seller, to that credit-broker,

any particular purpose for which the goods are being bought, there is an implied term 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 skill or judgment of the seller or credit-broker.

(4) An implied term about quality or fitness for a particular purpose may be annexed to a contract of sale by usage.

(5) The preceding 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

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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.

(6) As regards England and Wales and Northern Ireland, the terms implied by subsections (2) and (3) above are conditions.

(7) Paragraph 5 of Schedule 1 below applies in relation to a contract made on or after 18 May 1973 and before the appointed day, and paragraph 6 in relation to one made before 18th May 1973.

(8) In subsection (7) above and paragraph 5 of Schedule 1 below references to the appointed day are to the day appointed for the purposes of those provisions by an order of the Secretary of State made by statutory instrument.

Sale by sample

15 Sale by sample

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

(2) In the case of a contract for sale by sample there is an implied term-

(a) that the bulk will correspond with the sample in quality;

(b) . . .

(c) that the goods will be free from any defect, making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample.

(3) As regards England and Wales and Northern Ireland, the term implied by subsection (2) above is a condition.

(4) Paragraph 7 of Schedule 1 below applies in relation to a contract made before 18 May 1973.

20 Passing of risk

(1) Unless otherwise agreed, the goods remain at the seller's risk until the property in them is transferred to the buyer, but when the property in them is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not.

(2) But where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party at fault as regards any loss which might not have occurred but for such fault.

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(3) Nothing in this section affects the duties or liabilities of either seller or buyer as a bailee or custodian of the goods of the other party.

(4) In a case where the buyer deals as consumer or, in Scotland, where there is a consumer contract in which the buyer is a consumer, subsections (1) to (3) above must be ignored and the goods remain at the seller's risk until they are delivered to the consumer.

27 Duties of seller and buyer

It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

29 Rules about delivery

(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties.

(2) Apart from any such contract, express or implied, the place of delivery is the seller's place of business if he has one, and if not, his residence; except that, if the contract is for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

(3) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(4) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until the third person acknowledges to the buyer that he holds the goods on his behalf; but nothing in this section affects the operation of the issue or transfer of any document of title to goods.

(5) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour; and what is a reasonable hour is a question of fact.

(6) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

32 Delivery to carrier

(1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier (whether named by the buyer or not) for the purpose of transmission to the buyer is prima facie deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case; and if the seller omits to do so, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit; and if the seller fails to do so, the goods are at his risk during such sea transit.

(4) In a case where the buyer deals as consumer or, in Scotland, where there is a consumer contract in which the buyer is a consumer, subsections (1) to (3) above must be ignored, but if in pursuance of a contract of sale the seller is authorised or required to send the goods to the buyer, delivery of the goods to the carrier is not delivery of the goods to the buyer.

34 Buyer's right of examining the goods

. . . 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 and, in the case of a contract for sale by sample, of comparing the bulk with the sample.

35 Acceptance

(1) The buyer is deemed to have accepted the goods subject to subsection (2) below-

(a) when he intimates to the seller that he has accepted them, or

(b) 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.

(2) Where goods are delivered to the buyer, and he has not previously examined them, he is not deemed to have accepted them under subsection (1) above until he has had a reasonable opportunity of examining them for the purpose-

(a) of ascertaining whether they are in conformity with the contract, and

(b) in the case of a contract for sale by sample, of comparing the bulk with the sample.

(3) Where the buyer deals as consumer or (in Scotland) the contract of sale is a consumer contract, the buyer cannot lose his right to rely on subsection (2) above by agreement, waiver or otherwise.

(4) The buyer is also deemed to have accepted the goods when after the lapse of a rea-

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sonable time he retains the goods without intimating to the seller that he has rejected them.

(5) The questions that are material in determining for the purposes of subsection (4) above whether a reasonable time has elapsed include whether the buyer has had a reasonable opportunity of examining the goods for the purpose mentioned in subsection (2) above.

(6) The buyer is not by virtue of this section deemed to have accepted the goods merely because-

(a) he asks for, or agrees to, their repair by or under an arrangement with the seller, or

(b) the goods are delivered to another under a sub-sale or other disposition.

(7) Where the contract is for the sale of goods making one or more commercial units, a buyer accepting any goods included in a unit is deemed to have accepted all the goods making the unit; and in this subsection "commercial unit" means a unit division of which would materially impair the value of the goods or the character of the unit.

(8) Paragraph 10 of Schedule 1 below applies in relation to a contract made before 22nd April 1967 or (in the application of this Act to Northern Ireland) 28th July 1967.

PART 5A ADDITIONAL RIGHTS OF BUYER IN CONSUMER CASES

48A Introductory.

(1) This section applies if—

(a) the buyer deals as consumer or, in Scotland, there is a consumer contract in which the buyer is a consumer, and

(b) the goods do not conform to the contract of sale at the time of delivery.

(2) If this section applies, the buyer has the right—

(a) under and in accordance with section 48B below, to require the seller to repair or replace the goods, or

(b) under and in accordance with section 48C below—

(i) to require the seller to reduce the purchase price of the goods to the buyer by an appropriate amount, or

(ii) to rescind the contract with regard to the goods in question.

(3) For the purposes of subsection (1)(b) above goods which do not conform to the contract of sale at any time within the period of six months starting with the date on which the goods

were delivered to the buyer must be taken not to have so conformed at that date.

(4) Subsection (3) above does not apply if -

it is established that the goods did so conform at that date;

its application is incompatible with the nature of the goods or the nature of the lack of conformity.

48B Repair or replacement of the goods.

(1) If section 48A above applies, the buyer may require the seller—

(a) to repair the goods, or

(b) to replace the goods.

(2) If the buyer requires the seller to repair or replace the goods, the seller must—

(a) repair or, as the case may be, replace the goods within a reasonable time but without causing significant inconvenience to the buyer;

(b) bear any necessary costs incurred in doing so (including in particular the cost of any labour, materials or postage).

(3) The buyer must not require the seller to repair or, as the case may be, replace the goods if that remedy is—

(a) impossible, or

disproportionate in comparison to the other of those remedies, or

disproportionate in comparison to an appropriate reduction in the purchase price under paragraph (a), or rescission under paragraph (b), of section 48C(1) below.

(4) One remedy is disproportionate in comparison to the other if the one imposes costs on the seller which, in comparison to those imposed on him by the other, are unreasonable, taking into account—

(a) the value which the goods would have if they conformed to the contract of sale,

(b) the significance of the lack of conformity, and

(c) whether the other remedy could be effected without significant inconvenience to the buyer.

(5) Any question as to what is a reasonable time or significant inconvenience is to be determined by reference to—

- (a) the nature of the goods, and
- (b) the purpose for which the goods were acquired.

48C Reduction of purchase price or rescission of contract

(1) If section 48A above applies, the buyer may—

(a) require the seller to reduce the purchase price of the goods in question to the buyer by an appropriate amount, or

(b) rescind the contract with regard to those goods,

if the condition in subsection (2) below is satisfied.

(2) The condition is that—

(a) by virtue of section 48B(3) above the buyer may require neither repair nor replacement of the goods; or

(b) the buyer has required the seller to repair or replace the goods, but the seller is in breach of the requirement of section 48B(2)(a) above to do so within a reasonable time and without significant inconvenience to the buyer.

(3) For the purposes of this Part, if the buyer rescinds the contract, any reimbursement to the buyer may be reduced to take account of the use he has had of the goods since they were delivered to him.

48D Relation to other remedies etc.

If the buyer requires the seller to repair or replace the goods the buyer must not act under subsection (2) until he has given the seller a reasonable time in which to repair or replace (as the case may be) the goods.

The buyer acts under this subsection if--

in England and Wales or Northern Ireland he rejects the goods and terminates the contract for breach of condition;

in Scotland he rejects any goods delivered under the contract and treats it as repudiated;

he requires the goods to be replaced or repaired (as the case may be).

48E Powers of the court

(1) In any proceedings in which a remedy is sought by virtue of this Part the court, in addition to any other power it has, may act under this section.

(2) On the application of the buyer the court may make an order requiring specific performance or, in Scotland, specific implement by the seller of any obligation imposed on him by virtue of section 48B above.

(3) Subsection (4) applies if—

(a) the buyer requires the seller to give effect to a remedy under section 48B or 48C above or has claims to rescind under section 48C, but

(b) the court decides that another remedy under section 48B or 48C is appropriate.

(4) The court may proceed—

as if the buyer had required the seller to give effect to the other remedy, or if the other remedy is rescission under section 48C

as if the buyer had claimed to rescind the contract under that section.

(5) If the buyer has claimed to rescind the contract the court may order that any reimbursement to the buyer is reduced to take account of the use he has had of the goods since they were delivered to him.

(6) The court may make an order under this section unconditionally or on such terms and conditions as to damages, payment of the price and otherwise as it thinks just.

48F Conformity with the contract

For the purposes of this Part, goods do not conform to a contract of sale if there is, in relation to the goods, a breach of an express term of the contract or a term implied by section 13, 14 or 15 above.

Buyer's remedies

51 Damages for non-delivery

(1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.

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(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered or (if no time was fixed) at the time of the refusal to deliver.

52 Specific performance

(1) In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the plaintiff's application, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages.

(2) The plaintiff's application may be made at any time before judgment or decree.

(3) The judgment or decree may be unconditional, or on such terms and conditions as to damages, payment of the price and otherwise as seem just to the court.

(4) The provisions of this section shall be deemed to be supplementary to, and not in derogation of, the right of specific implement in Scotland.

53 Remedy for breach of warranty

(1) Where there is a breach of warranty by the seller, or where the buyer elects (or is compelled) to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may-

(a) set up against the seller the breach of warranty in diminution or extinction of the price, or

(b) maintain an action against the seller for damages for the breach of warranty.

(2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(3) In the case of breach of warranty of quality such loss is prima facie the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had fulfilled the warranty.

(4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

(5) This section does not apply to Scotland.

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53A Measure of damages - Scotland

- (1) The measure of damages for the seller's breach of contract is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach.
- (2) Where the seller's breach consists of the delivery of goods which are not of the quality required by the contract and the buyer retains the goods, such loss as aforesaid is prima facie the difference between the value of the goods at the time of the delivery to the buyer and the value they would have had if they had fulfilled the contract.
- (3) This section applies to Scotland only.

55 Exclusion of implied terms

- (1) Where a right, duty or liability would arise under a contract of sale of goods by implication of law, it may (subject to the Unfair Contract Terms Act 1977) be negated or varied by express agreement, or by the course of dealing between the parties, or by such usage as binds both parties to the contract.
- (2) An express term does not negative a term implied by this Act unless inconsistent with it.
- (3) Paragraph 11 of Schedule 1 below applies in relation to a contract made on or after 18th May 1973 and before 1st February 1978, and paragraph 12 in relation to one made before 18th May 1973.

61 Interpretation

- (1) In this Act, unless the context or subject matter otherwise requires-

"action" includes counterclaim and set-off, and in Scotland condescendence and claim and compensation;

"bulk" means a mass or collection of goods of the same kind which-

- (a) is contained in a defined space or area; and
- (b) is such that any goods in the bulk are interchangeable with any other goods therein of the same number or quantity;

"business" includes a profession and the activities of any government department (including a Northern Ireland department) or local or public authority;

"buyer" means a person who buys or agrees to buy goods;

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"consumer contract" has the same meaning as in section 25(1) of the Unfair Contract Terms Act 1977; and for the purposes of this Act the onus of proving that a contract is not to be regarded as a consumer contract shall lie on the seller

"contract of sale" includes an agreement to sell as well as a sale;

"credit-broker" means a person acting in the course of a business of credit brokerage carried on by him, that is a business of effecting introductions of individuals desiring to obtain credit-

- (a) to persons carrying on any business so far as it relates to the provision of credit, or
- (b) to other persons engaged in credit brokerage;

"defendant" includes in Scotland defender, respondent, and claimant in a multiple pinding;

"delivery" means voluntary transfer of possession from one person to another except that in relation to sections 20A and 20B above it includes such appropriation of goods to the contract as results in property in the goods being transferred to the buyer;

"document of title to goods" has the same meaning as it has in the Factors Acts;

"Factors Acts" means the Factors Act 1889, the Factors (Scotland) Act 1890, and any enactment amending or substituted for the same;

"fault" means wrongful act or default;

"future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale;

"goods" includes all personal chattels other than things in action and money, and in Scotland all corporeal moveables except money; and in particular "goods" includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale and includes an undivided share in goods;

"plaintiff" includes pursuer, complainer, claimant in a multiplepinding and defendant or defender counter-claiming;

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

"property" means the general property in goods, and not merely a special property;

"repair" means, in cases where there is a lack of conformity in goods for the purposes of section 48F of this Act, to bring the goods into conformity with the contract"

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"sale" includes a bargain and sale as well as a sale and delivery;

"seller" means a person who sells or agrees to sell goods;

"specific goods" means goods identified and agreed on at the time a contract of sale is made and includes an undivided share, specified as a fraction or percentage, of goods identified and agreed on as aforesaid;

"warranty" (as regards England and Wales and Northern Ireland) means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

(2) . . .

(3) A thing is deemed to be done in good faith within the meaning of this Act when it is in fact done honestly, whether it is done negligently or not.

(4) A person is deemed to be insolvent within the meaning of this Act if he has either ceased to pay his debts in the ordinary course of business or he cannot pay his debts as they become due, . . .

(5) Goods are in a deliverable state within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them.

(5A) References in this Act to dealing as consumer are to be construed in accordance with Part I of the Unfair Contract Terms Act 1977; and, for the purposes of this Act, it is for a seller claiming that the buyer does not deal as consumer to show that he does not.

(6) As regards the definition of "business" in subsection (1) above, paragraph 14 of Schedule 1 below applies in relation to a contract made on or after 18th May 1973 and before 1st February 1978, and paragraph 15 in relation to one made before 18th May 1973.