

CHAPTER 326E

CONSUMER GUARANTEES

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CHAPTER 326E

CONSUMER GUARANTEES

An Act to amend the law relating to

2002-21.

- (a) *the guarantees available to consumers upon the supply of goods or services; and*
- (b) *the rights of redress against suppliers and manufacturers in respect of a failure of goods or services to comply with any such guarantees,*

and for connected purposes.

[16th January, 2003] Commence-
ment.

PART I

PRELIMINARY

1. This Act may be cited as the *Consumer Guarantees Act*.

Short title.

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

Definitions.

“acquire”

(a) in relation to goods, means obtain by way of gift, purchase, or exchange, or take on lease, hire, or hire-purchase;

(b) in relation a service, includes accept;

“business” means

(a) any undertaking, whether or not carried on for gain or reward; or

- (b) any undertaking in the course of which
 - (i) goods are acquired or supplied or a service is acquired or supplied; or
 - (ii) any interest in land is acquired or disposed of, whether or not free of charge;

"complaint" means a complaint to the Tribunal under this Act, and "complainant" has a corresponding meaning;

"consumer" means an individual who

- (a) acquires from a supplier goods or a service of a kind ordinarily acquired for personal, domestic or household use or consumption; and
- (b) does not acquire the goods or service, or hold himself out as acquiring the goods or service, for the purpose of
 - (i) resupplying them or it in trade; or
 - (ii) consuming them or it in the course of a process of production or manufacture; or
- (c) in the case of goods, does not acquire them, or hold himself out as acquiring them, for the purpose of repairing or treating other goods or fixtures on land;

"express guarantee" means an assurance or undertaking which

- (a) is given or made in connection with the supply of goods or in connection with the promotion by any means of the supply or use of goods; and
- (b) relates to
 - (i) the quality, quantity, performance, efficacy or characteristics of the goods; or
 - (ii) the provision of a service that is or may at any time be required in respect of the goods; or

- (iii) the supply of parts that are or at any time may be required for the goods; or
- (iv) the future availability of identical goods constituting or forming part of a set of which the goods in relation to which the assurance, undertaking or representation is given or made form part;

but does not include a guarantee set out in section 5 or 6 or in any of sections 8 to 13;

goods includes

- (a) goods attached to, or incorporated in, any real or personal property;
- (b) ships, aircraft, and vehicles;
- (c) animals, including fish;
- (d) minerals, trees, and crops, whether or not on, under or attached to land; and
- (e) computer software;

but, notwithstanding paragraph (a), does not include a whole building attached to land, unless the building is a structure that is easily removable and is not designed for residential accommodation;

"guarantee", in relation to goods or a service, means an assurance or undertaking

- (a) which is given in respect of the goods or the service; and
- (b) for breach of which redress against a supplier or a manufacturer is afforded to a consumer by this Act;

"hire-purchase agreement" has the same meaning as in the *Hire-Purchase Act*;

Cap. 328.

“manufacturer” means a person who carries on the business of assembling, producing or processing goods, and includes

- (a) any person who holds himself out to the public as the manufacturer of goods;
- (b) any person who attaches his brand or mark, or causes or permits his brand or mark to be attached, to the goods;
- (c) where goods are manufactured outside Barbados and the foreign manufacturer of the goods does not have an ordinary place of business in Barbados, a person who imports or distributes those goods;

“the Minister” means the Minister responsible for Consumer Affairs;

“ordinary place of business in Barbados”, in relation to a manufacturer, does not include a Barbados subsidiary of a foreign manufacturer;

“ownership”, in relation to anything, means the general property in that thing;

“price” includes valuable consideration in any form;

“Public Counsel” means the holder of the office established under that name by the *Utilities Regulation Act*;

Cap. 282.

“security” includes charge and encumbrance;

“service” means any rights, benefits, privileges or facilities that are, or are to be, provided, granted, or conferred by a supplier under any of the following classes of contract:

- (a) a contract for, or in relation to,
 - (i) the performance of work (including work of a professional nature), whether with or without the supply of goods; or

- (ii) the provision in trade of facilities for accommodation, amusement, the care of persons or animals or things, entertainment, instruction, parking or recreation;
- (b) a contract of insurance, including life assurance and life reinsurance;
- (c) a contract between a bank and a customer of the bank;
- (d) any contract for, or in relation to, the lending of money or the granting of credit, or the making of arrangements for the lending of money or the granting of credit, or the buying or discounting of a credit instrument, or the acceptance of deposits,

but does not include any rights, benefits, privileges or facilities that are or are to be provided, granted, or conferred by the supplier by simply paying or crediting any money to the consumer without the performance of any other task (other than one that is merely incidental to the making of the payment or credit);

‘‘subsidiary’’ has the same meaning as in section 442 of the *Companies Act*;

Cap. 308.

‘‘supplier’’ means a person who in trade

- (a) supplies goods to a consumer by
 - (i) transferring the ownership or the possession of the goods pursuant to a contract of sale, exchange, lease, hire, or hire-purchase to which that person is a party; or
 - (ii) transferring the ownership of the goods pursuant to a gift from that person; or
- (b) supplies a service to a consumer,

and includes

- (A) where the rights of the supplier have been transferred by assignment or by operation of law, the person for the time being entitled to those rights;
- (B) a person who, in trade, assigns or procures the assignment of goods to a financier to enable the financier to supply those goods, or goods of that kind, to the consumer; and
- (C) a person who, in trade, is acting as agent for another where that other is not supplying in trade;

isupplyî,

- (a) in relation to goods, means supply (or re-supply) by way of gift, sale, exchange, lease, hire, or hire purchase; and
- (b) in relation to a service, means provide, grant or confer;

itradeî means any trade, business, industry, profession, occupation, activity of commerce or undertaking relating to the supply or acquisition of goods or services;

ithe Tribunalî means the Consumer Claims Tribunal established by section 41.

When goods are supplied or a service is supplied.

3. For the purposes of this Act,

- (a) goods shall be treated as supplied to a person at the time when he acquires the right to possess the goods;
- (b) a service shall be treated as supplied to a person at the time when the service is provided or granted to, or conferred upon, him.

This Act not an exclusive Code.

4. Any right or remedy available under any other enactment or rule of law is not affected by this Act

- (a) unless the right or remedy is expressly or impliedly repealed by this Act; and

- (b) except to the extent to which the right or remedy is expressly or impliedly modified by this Act.

PART II

GUARANTEES IN RESPECT OF SUPPLY OF GOODS

5. (1) Subject to section 49, the following guarantees apply where goods are supplied to a consumer: Guarantees as to title.

- (a) that the supplier has a right to sell the goods;
- (b) that the goods are free from any undisclosed security;
- (c) that the consumer has the right to undisturbed possession of the goods, except in so far as that right is varied pursuant to
- (i) a term of the agreement for supply in a case where that agreement is a hire-purchase agreement; or
- (ii) a security, or a term of the agreement for supply, in respect of which the consumer has received
- (A) oral advice, acknowledged in writing by him, as to the way in which his right to undisturbed possession of the goods could be affected, being advice sufficient to enable a reasonable consumer to understand the general nature and effect of the variation; or
- (B) a written copy of the agreement for supply or security, or a written copy of the part of the agreement or security which provides for the variation.

(2) The reference in paragraph (a) of subsection (1) to a right to sell goods is a reference to a right to dispose of the ownership of the goods to the consumer at the time of delivery of the goods to the consumer.

(3) In paragraph (b) of subsection (1) "undisclosed security" means a security that was neither disclosed to the consumer in writing before he agreed to the supply nor created by him or with his consent.

(4) Nothing in paragraph (a) or (b) of subsection (1) applies in a case where the goods are only hired or leased.

(5) Where the goods are only hired or leased, the guarantee set out in paragraph (c) of subsection (1) confers a right to undisturbed possession of the goods only for the period of the hire or lease.

(6) Part III gives the consumer a right of redress against the supplier where goods fail to comply with a guarantee set out in subsection (1).

Guarantee as to acceptable quality.

6. (1) Subject to section 49, there is a guarantee, where goods are supplied to a consumer, that the goods are of acceptable quality.

(2) Where goods fail to comply with the guarantee set out in subsection (1),

(a) Part III may give the consumer a right of redress against the supplier; and

(b) Part IV may give the consumer a right of redress against the manufacturer.

Meaning of "acceptable quality".

7. (1) Goods are of acceptable quality for the purposes of section 6(1) if they are as

(a) fit for all the purposes for which goods of the type in question are commonly supplied;

(b) acceptable in appearance and finish;

(c) free from minor defects;

(d) safe; and

(e) durable

as a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defects, would regard as acceptable, having regard to

- (A) the nature of the goods;
- (B) the price, where relevant;
- (C) any statements made about the goods on any packaging or label on the goods;
- (D) any representation made about the goods by the supplier or the manufacturer; and
- (E) all other relevant circumstances of the supply of the goods.

(2) Where any defects in goods have been specifically drawn to the consumer's attention before he agreed to the supply, then, notwithstanding that a reasonable consumer may not have regarded the goods as acceptable with those defects, the goods will not fail to comply with the guarantee set out in section 6(1) by reason only of those defects.

(3) Where goods are displayed for sale or hire, defects disclosed on a written notice displayed with the goods are to be treated as having been specifically drawn to the consumer's attention for the purposes of subsection (2).

(4) Goods will not fail to comply with the guarantee set out in section 6(1) if

- (a) the goods have been used by the consumer in a manner, or to an extent, which is inconsistent with the manner or extent of use that a reasonable consumer would expect to obtain from the goods; and
- (b) the goods would have complied with that guarantee if they had not been used by the customer in that manner or to that extent.

ss.8-9

(5) A reference in subsection (2) or (3) to a defect is a reference to a failure of the goods to comply with the guarantee set out in section 6(1).

Guarantees
as to fitness.

8. (1) Subject to section 49, the following guarantees apply where goods are supplied to a consumer:

- (a) that the goods are reasonably fit for any particular purpose that the consumer makes known, expressly or by implication, to the supplier as the purpose for which the goods are being acquired by the consumer;
- (b) that the goods are reasonably fit for any particular purpose for which the supplier represents that they are fit or will be fit.

(2) The guarantees set out in subsection (1) do not apply where the circumstances show that

- (a) the consumer does not rely on the supplier's skill or judgment;
or
- (b) it is unreasonable for the consumer to rely on the supplier's skill or judgment.

(3) This section applies whether or not the purpose is a purpose for which the goods are commonly supplied.

(4) Part III gives the consumer a right of redress against the supplier where goods fail to comply with a guarantee set out in subsection (1).

Guarantee
as to corre-
spondence
with
description.

9. (1) Subject to section 49, where goods are supplied by description to a consumer, there is a guarantee that the goods correspond with the description.

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

(3) If the goods are supplied by reference to a sample or demonstration model as well as by description, the guarantees set out in this section and in section 10 both apply.

(4) Where goods fail to comply with the guarantee set out in subsection (1),

- (a) Part III gives the consumer a right of redress against the supplier; and
- (b) Part IV may give the consumer a right of redress against the manufacturer.

10. (1) Subject to section 49, the following guarantees apply where goods are supplied to a consumer by reference to a sample or demonstration model:

Guarantees as to compliance with sample.

- (a) that the goods correspond with the sample or demonstration model in quality;
- (b) that the consumer will have a reasonable opportunity to compare the goods with the sample.

(2) If goods are supplied by description as well as by reference to a sample or demonstration model, the guarantees set out in this section and section 9 both apply.

(3) Part III gives the consumer a right of redress against the supplier where goods fail to comply with a guarantee set out in subsection (1).

11. (1) Subject to section 49, where goods are supplied to a consumer there is a guarantee that the goods are unused, unless before the consumer agrees to the supply

Guarantee as to prior use.

- (a) the supplier discloses to the consumer that the goods are not unused; or
- (b) the consumer knows or ought to know that the goods are not unused or are likely not to be unused.

(2) For the purposes of this section, goods are unused notwithstanding that they have been used by the supplier or any other person to test, prepare or deliver them, if they have not been so used to an unreasonable extent.

(3) Part III gives the consumer a right of redress against the supplier where goods fail to comply with the guarantee set out in subsection (1).

Guarantee
as to price.

12. (1) Subject to section 49, where goods are supplied to a consumer there is a guarantee that the consumer is not liable to pay to the supplier more than a reasonable price for the goods in any case where the price for the goods is not

- (a) determined by the contract; or
- (b) left to be determined in a manner agreed by the contract; or
- (c) left to be determined by the course of dealing between the parties.

(2) Where there is a failure to comply with the guarantee set out in subsection (1), the consumer's right of redress is to refuse to pay more than a reasonable price.

(3) Nothing in this Act confers any other right of redress in respect of the guarantee set out in subsection (1).

Guarantee
as to repairs
and spare
parts.

13. (1) Subject to section 49, where goods are first supplied to a consumer in Barbados (whether or not that supply is the first ever supply of the goods), there is a guarantee that the manufacturer will take reasonable action to ensure that facilities for repair of the goods and supply of parts for the goods are reasonably available for a reasonable period after the goods are so supplied.

(2) Part IV gives the consumer a right of redress against the manufacturer where goods fail to comply with the guarantee set out in subsection (1).

14. (1) This section has effect in relation to the liability of suppliers in respect of express guarantees. Express guarantees: liability of supplier in certain circumstances.

(2) Where an express guarantee is stated on a label or packaging attached to or accompanying goods supplied by a supplier to a customer, the supplier is bound by the express guarantee unless he made clear to the consumer before the supply that he does not accept the guarantee.

(3) Subject to subsection (4), a supplier of goods is bound by an express guarantee contained in an advertisement originating from or carried out by the manufacturer of the goods if and only if the supplier expressly or impliedly adopts the express guarantee.

(4) Notwithstanding that a supplier may not be bound by an express guarantee by virtue of subsection (2) or (3), any descriptive statement that appears on a label or on packaging attached to or accompanying goods or in an advertisement mentioned in subsection (3) shall form part of the description of the goods for the purposes of section 9.

(5) Part III gives a consumer a right of redress against a supplier where goods fail to comply with an express guarantee that is binding on the supplier by virtue of this section.

15. (1) This section has effect in relation to the liability of manufacturers in respect of express guarantees. Express guarantees: liability of manufacturer in certain circumstances.

(2) An express guarantee made by a manufacturer in a document relating to goods binds the manufacturer if, in connection with the supply of the goods to a consumer, the document is given by the supplier to the consumer with the actual or apparent authority of the manufacturer.

- (3) An express guarantee which
- (a) is included in a document relating to goods; and
 - (b) purports to have been made by the manufacturer of the goods; and

- (c) is given to a consumer by a supplier of the goods in connection with the supply of the goods

shall be presumed to have been made by the manufacturer, unless that presumption is rebutted by evidence to the contrary.

(4) Where there is evidence that a document containing an express guarantee by a manufacturer in respect of goods was given to a consumer by a supplier in connection with the supply of the goods to the consumer, it shall be presumed that the document was given to the consumer with the authority of the manufacturer, unless that presumption is rebutted by evidence to the contrary.

(5) Part IV gives a consumer a right of redress against a manufacturer where goods fail to comply with an express guarantee that is binding on him by virtue of this section.

Where goods are supplied in connection with a service.

16. The guarantees set out in this Part apply whether or not the goods in question are supplied in connection with a service.

PART III

REDRESS AGAINST SUPPLIERS IN RESPECT OF GOODS

Right of redress against supplier where goods do not comply with guarantees.

17. Subject to section 18, this Part gives a consumer a right of redress against a supplier of goods where the goods fail to comply with any guarantee that is binding on a supplier by virtue of Part II.

Exception in respect of guarantee as to acceptable quality.

18. Notwithstanding section 17, where

- (a) the manufacturer, or a servant or agent of the manufacturer, makes a representation, other than a statement on any packaging or label, in respect of goods; and
- (b) the goods would have complied with the guarantee set out in section 6 if that representation had not been made,

there is no right of redress against the supplier under this Act in respect of the failure of the goods to comply with that guarantee.

19. (1) Where a consumer has a right of redress against the supplier in accordance with this Part in respect of the failure of any goods to comply with a guarantee, the consumer may exercise the following remedies.

Remedies
against
supplier
where goods
do not
comply with
guarantees.

(2) Where the failure can be remedied, the consumer may

(a) require the supplier to remedy the failure within a reasonable time in accordance with section 20;

(b) where a supplier who has been required to remedy a failure refuses or neglects to do so, or does not succeed in doing so within a reasonable time,

(i) have the failure remedied elsewhere and obtain from the supplier all reasonable costs incurred in having the failure remedied; or

(ii) subject to section 21, reject the goods in accordance with section 23.

(3) Where the failure cannot be remedied or is of a substantial character within the meaning of section 22, the consumer may

(a) subject to section 21, reject the goods in accordance with section 23; or

(b) obtain from the supplier damages in compensation for any reduction in value of the goods below the price paid or payable by the consumer for the goods.

(4) In addition to the remedies set out in subsections (2) and (3), the consumer may obtain from the supplier damages for any loss or damage to the consumer resulting from the failure (other than loss or damage through reduction in value of the goods) which was reasonably foreseeable as being liable to result from the failure.

(5) Damages referred to in subsection (4) may include a sum in respect of any personal injury, distress, inconvenience, disappointment or vexation suffered as a direct result of the failure.

Options of
supplier who
has been
required to
provide
remedy.

20. (1) A supplier may comply with a requirement to remedy a failure of any goods to comply with a guarantee

(a) by

(i) repairing the goods, in a case where the failure does not relate to title; or

(ii) curing any defect in title, in a case where the failure relates to title; or

(b) by replacing the goods with goods of identical type; or

(c) where the supplier cannot reasonably be expected to repair the goods, by providing a refund of any money paid or other consideration provided by the consumer in respect of the goods.

(2) Where a consumer obtains goods to replace defective goods pursuant to subsection (1), the replacement goods shall, for the purposes of this Act, be deemed to be supplied by the supplier and the guarantees and obligations arising under this Act consequent upon a supply of goods to a consumer shall apply to the replacement goods.

(3) A refund referred to in subsection (1)(c) means a refund in cash of the money paid or the value of any other consideration provided, or both, as the case may require.

Loss of
right to
reject
goods.

21. (1) The right to reject goods conferred by this Act shall not apply if

(a) the right is not exercised within a reasonable time within the meaning of subsection (2); or

(b) the goods have been disposed of by the consumer, or have been lost or destroyed while in the possession of a person other than the supplier or an agent of the supplier; or

- (c) the goods were substantially damaged after delivery to the consumer for reasons not related to their state or condition at the time of supply; or
- (d) the goods have been attached to or incorporated in any real or personal property and they cannot be detached or isolated without damaging them.

(2) In section (1)(a) the term "reasonable time" means a period from the time of supply of the goods in which it would be reasonable to expect the defect to become apparent having regard to

- (a) the type of goods;
- (b) the use to which a consumer is likely to put them;
- (c) the length of time for which it is reasonable for them to be used; and
- (d) the amount of use to which it is reasonable for them to be put before the defect becomes apparent.

(3) This section applies notwithstanding section 35 of the *Sale of Goods Act*. Cap. 318.

22. For the purposes of section 19, a failure to comply with a guarantee is of a substantial character in any case where

- (a) the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; or
- (b) the goods depart in one or more significant respects from the description by which they were supplied or, where they were supplied by reference to a sample or demonstration model, from the sample or demonstration model; or

Meaning of "failure of a substantial character" in section 19.

- (c) the goods are substantially unfit for a purpose for which goods of the type in question are commonly supplied or, where section 8(1) applies, the goods are unfit for a particular purpose made known to the supplier or represented by the supplier to be a purpose for which the goods would be fit, and the goods cannot easily and within a reasonable time be remedied to make them fit for such purpose; or
- (d) the goods are not of acceptable quality within the meaning of section 7 because they are unsafe; or
- (e) the goods are not unused in accordance with section 11.

Manner of
rejecting
goods.

23. (1) The consumer shall exercise the right to reject goods under this Act by notifying the supplier of the consumer's decision to reject the goods and of the ground or grounds for rejection.

(2) Where the consumer exercises the right to reject goods, the consumer shall return the rejected goods to the supplier

- (a) unless,
 - (i) because of the nature of the failure to comply with the guarantee in respect of which the consumer has the right to reject the goods; or
 - (ii) because of the size or height or method of attachment, the goods cannot be returned or removed or transported without significant cost to the consumer, in which case the supplier shall collect the goods at the expense of the supplier; or
- (b) unless the goods have already been returned to, or retrieved by, the supplier.

(3) Where the ownership in the goods has passed to the consumer before the consumer exercises the right of rejection, the ownership in the goods reverts in the supplier when the supplier receives the notification mentioned in subsection (1).

24. (1) Where the consumer exercises the right to reject goods, he may choose to have either

Options of consumer who rejects goods.

- (a) a refund of any money paid or other consideration provided by him in respect of the rejected goods; or
- (b) goods of the same type and of similar value to replace the rejected goods, where such goods are reasonably available to the supplier as part of the stock of the supplier;

and the supplier shall make provision accordingly.

(2) A refund referred to in subsection (1)(a) means a refund in cash of the money paid or the value of any other consideration provided, or both, as the case may require.

(3) The obligation to refund cannot be satisfied by permitting the consumer to acquire goods from the supplier.

(4) Where a consumer obtains goods to replace rejected goods pursuant to subsection (1)(b), the replacement goods shall, for the purposes of this Act, be deemed to be supplied by the supplier, and the guarantees and obligations arising under this Act consequent upon a supply of goods to a consumer shall apply in relation to the replacement goods.

25. Where a consumer acquires goods from a supplier and gives them to another person as a gift, that other person may, subject to any defence which would be available to the supplier against the consumer, exercise any rights or remedies under this Part which would be available to that other person if he had acquired the goods from the supplier; and any reference in this Part to a consumer shall include a reference to that other person accordingly.

Rights of recipients of gifts of goods from consumers.

PART IV

REDRESS AGAINST MANUFACTURERS
IN RESPECT OF GOODS

Right of
redress
against
manu-
facturers.

26. This Part gives a consumer a right of redress against a manufacturer of goods where

- (a) the goods fail to comply with the guarantee as to acceptable quality set out in section 6; or
- (b) the goods fail to comply with the guarantee as to correspondence with description set out in section 9 owing to the failure of the goods to correspond with any description applied to the goods by or on behalf of the manufacturer or with the express or implied consent of the manufacturer; or
- (c) the goods fail to comply with the guarantee as to repairs and spare parts set out in section 13; or
- (d) the goods fail to comply with an express guarantee that is binding on the manufacturer by virtue of section 15.

Exceptions
to right of
redress
under
section 26.

27. Notwithstanding section 26, there is no right of redress against a manufacturer under this Act in respect of goods which

- (a) fail to comply with the guarantee as to acceptable quality only because of
 - (i) an act or default or omission of, or any representation made by, any person other than the manufacturer or a servant or agent of the manufacturer; or
 - (ii) a cause independent of human control occurring after the goods left the control of the manufacturer; or
 - (iii) the price charged by the supplier being higher than the manufacturer's recommended retail price or the average retail price; or

- (b) fail to correspond with the guarantee as to correspondence with description because of
- (i) an act or default or omission of a person other than the manufacturer or a servant or agent of the manufacturer; or
 - (ii) a cause independent of human control occurring after the goods left the control of the manufacturer.

28. (1) Subject to subsection (3), where a consumer has a right of redress against a manufacturer under this Part, the consumer, or any person who acquires the goods from or through the consumer, may obtain damages from the manufacturer

Remedies against manufacturers where goods do not comply with guarantees.

- (a) subject to subsection (2)(b), for any reduction resulting from the failure, being a reduction in the value of the goods
- (i) below the price paid or payable by the consumer for the goods; or
 - (ii) below the average retail price of the goods at the time of supply,

whichever price is lower;

- (b) for any loss or damage (including personal injury, distress, inconvenience, disappointment or vexation to the consumer or that other person resulting from the failure but excluding loss or damage through a reduction in value of the goods) which was reasonably foreseeable as being liable to result from the failure.

(2) Subject to subsection (3), where the consumer, or any person who acquires the goods from or through the consumer, is entitled by an express guarantee given by the manufacturer to require the manufacturer to remedy the failure by

- (a) repairing the goods; or

(b) replacing the goods with goods of identical type,
no action shall be commenced under subsection (1)(a) unless the consumer or that other person has required the manufacturer to remedy the failure and the manufacturer either

- (A) has refused or neglected to remedy the failure; or
- (B) has not succeeded in remedying the failure within a reasonable time.

(3) This section does not apply to any person who acquires goods from or through a consumer unless that person comes within paragraph (b) of the definition of consumer in section 2.

PART V

GUARANTEES IN RESPECT OF SERVICES

Guarantee as to reasonable care and skill.

29. (1) Subject to section 49, where a service is supplied to a consumer there is a guarantee that the service will be carried out with reasonable care and skill.

(2) Part VI gives a consumer a right of redress against a supplier who fails to comply with the guarantee set out in subsection (1).

Guarantee as to fitness.

30. (1) Subject to section 49, where a service is supplied to a consumer there is a guarantee that the service, and any product resulting from the service, will be

- (a) reasonably fit for any particular purpose; and
- (b) of such a nature and quality that it can reasonably be expected to achieve any particular result,

being the purpose that the consumer makes known to the supplier, before or at the time of the making of the contract for the supply of the service, as the particular purpose for which the service is required or the result that the consumer desires to achieve, as the case may be, except where the circumstances show that

- (A) the consumer does not rely on the supplier's skill or judgment; or
- (B) it is unreasonable for the consumer to rely on the supplier's skill or judgment.

(2) Part VI gives a consumer a right of redress against a supplier who fails to comply with the guarantee set out in subsection (1).

31. (1) Subject to section 49, where a service is supplied to a consumer there is a guarantee that the service will be completed within a reasonable time in any case where the time for the service to be carried out is not

Guarantee as to time of completion.

- (a) determined by the contract; or
- (b) left to be determined in a manner agreed by the contract; or
- (c) left to be determined by the course of dealing between the parties.

(2) Part VI gives a consumer a right of redress against a supplier who fails to comply with the guarantee set out in subsection (1).

32. (1) Subject to section 49, where a service is supplied to a consumer there is a guarantee that the consumer is not liable to pay to the supplier more than a reasonable price for the service in any case where the price for the service is not

Guarantee as to price.

- (a) determined by the contract; or
- (b) left to be determined in a manner agreed by the contract; or
- (c) left to be determined by the course of dealing between the parties.

(2) Where there is a failure to comply with the guarantee set out in subsection (1), the consumer's right of redress is to refuse to pay more than a reasonable price.

(3) Nothing in this Act confers any other right of redress in respect of the guarantee set out in subsection (1).

PART VI

REDRESS AGAINST SUPPLIERS IN RESPECT
OF SERVICES

Right of
redress
where
service does
not comply
with
guarantees.

33. Where a service supplied to a consumer fails to comply with a guarantee set out in any of sections 29 to 31, the consumer may,

- (a) where the failure can be remedied,
 - (i) require the supplier to remedy it within a reasonable time;
 - (ii) where a supplier who has been required to remedy the failure refuses or neglects to do so, or does not succeed in doing so within a reasonable time,
 - (A) have the failure remedied elsewhere and recover from the supplier all reasonable costs incurred in having the failure remedied; or
 - (B) subject to section 36, cancel the contract for the supply of the service in accordance with section 38;
- (b) where the failure cannot be remedied or is of a substantial character within the meaning of section 37,
 - (i) subject to section 36, cancel the contract for the supply of the service in accordance with section 38; or
 - (ii) obtain from the supplier damages in compensation for any reduction in value of the product of the service below the charge paid or payable by the consumer for the service;
- (c) in addition to the remedies set out in paragraphs (a) and (b), obtain from the supplier damages for any loss or damage (including personal injury, distress, inconvenience, disappointment or vexation to the consumer resulting from the failure but excluding loss or damage through reduction in value of the product of the service) which was reasonably foreseeable as being liable to result from the failure.

34. Notwithstanding section 33, there is no right of redress against a supplier under this Act in respect of a service or any product resulting from a service which fails to comply with a guarantee set out in section 30 or 31 of this Act only because of

Exceptions to right of redress under section 33.

- (a) an act or default or omission of, or any representation made by, any person other than the supplier or a servant or agent of the supplier; or
- (b) a cause independent of human control.

35. Nothing in section 33 limits or affects the rights of a consumer under Part III or Part IV where goods are supplied in connection with a service.

Where goods supplied in connection with a service.

36. Where the service to be supplied under the contract is merely incidental to the supply of goods, the consumer cannot cancel the contract under this Act if he has or had the right to reject the goods under section 19.

Cancellation where service incidental to supply of goods.

37. For the purposes of section 33(b), a failure to comply with a guarantee is of a substantial character in any case where

Meaning of "failure of a substantial character" in section 33.

- (a) the service would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; or
- (b) the product of the service is substantially unfit for a purpose for which services of the type in question are commonly supplied and the product cannot easily and within a reasonable time be remedied to make it fit for the purpose; or
- (c) if section 30 applies, the product of the service is unfit for a particular purpose, or is of such a nature and quality that the product of the service cannot be expected to achieve any particular result, made known to the supplier, and the product cannot easily and within a reasonable time be remedied to make it fit for the particular purpose or to achieve the particular result; or

(d) the product of the service is unsafe.

Rules
relating to
cancellation.

38. (1) The cancellation by a consumer of a contract for the supply of a service does not take effect

(a) before the time at which the cancellation is made known to the supplier; or

(b) where it is not reasonably practicable to communicate with the supplier, before the time at which the consumer indicates, by means which are reasonable in the circumstances, his intention to cancel the contract.

(2) Subject to subsection (3), the cancellation may be made known by words, or by conduct indicating an intention to cancel, or both, and it is not necessary to use any particular form of words so long as the intention to cancel is made known.

(3) Where it is reasonably practicable to communicate with the supplier, subsection (2) has effect subject to any provision in the contract for the supply of a service requiring notice of cancellation in writing.

Effect of
cancellation.

39. (1) Where a consumer cancels a contract for the supply of a service under this Act,

(a) the consumer is entitled to recover from the supplier a refund of any money paid or other consideration provided in respect of the service unless a court or the Tribunal orders that the supplier may retain the whole or part of the money paid or other consideration provided by the consumer;

(b) so far as the contract has been performed at the time of the cancellation, no party is, by reason of the cancellation, divested of any property transferred or money paid pursuant to the contract, except as otherwise provided in paragraph (a);

(c) so far as the contract remains unperformed at the time of the cancellation, no party is obliged or entitled to perform it further.

- (2) Nothing in subsection (1) affects
- (a) the right of a party to recover damages in respect of a misrepresentation or the repudiation or breach of the contract by another party; or
 - (b) the right of the consumer to recover damages under paragraph (b)(ii) or (c) of section 33 for failure to comply with a guarantee; or
 - (c) the right of the consumer under this Act to reject goods supplied in connection with the service.

40. Nothing in this Part limits or affects

Savings.

- (a) any rule of law or any enactment which imposes on the supplier a duty stricter than imposed by this Part; or
- (b) any rule of law whereby any term not inconsistent with this Part is to be implied in a contract for the supply of a service; or
- (c) any enactment which defines or restricts the rights, duties, or liabilities arising in connection with a service of any description; or
- (d) any rule of law or any enactment relating to contracts of employment or contracts of apprenticeship; or
- (e) any rule of law conferring immunity from suit on an attorney-at-law for work done in the course of, or in connection with, proceedings before any court or tribunal.

PART VII

RESOLUTION OF DISPUTES

41. (1) There is established a tribunal called the Consumer Claims Tribunal.

The
Consumer
Claims
Tribunal.
Schedule.

(2) The *Schedule* has effect as to the constitution of the Tribunal and otherwise in relation to the Tribunal.

Enforcement
of rights
under this
Act.

42. (1) A person who has a right of redress against another person under Part III, IV or VI may enforce that right by making a complaint to the Tribunal under this Part.

(2) Subsection (1) does not affect the right of any person to enforce in a court a right mentioned in that subsection, but a person shall not institute proceedings in both the Tribunal and a court in respect of any such right.

Public
Counsel.

43. Where a person believes that a right that he has under Part III, IV or VI has not been complied with, he may refer the matter to the Public Counsel, who may, if the person so wishes and the Public Counsel agrees,

(a) endeavour to assist him by mediating on his behalf with the person against whom he seeks to enforce the right; and

(b) where a settlement is not achieved under paragraph (a), represent him in proceedings before the Tribunal.

Function
and
jurisdiction
of Tribunal.

44. (1) The function of the Tribunal is to enforce the rights conferred upon consumers and others by this Act and for that purpose to exercise the jurisdiction specified in subsection (2).

(2) The jurisdiction of the Tribunal is to determine complaints made to it under this Part where the value of the subject-matter of the complaint does not exceed the sum of \$10 000 and, subject to section 48, to make awards and other decisions in accordance with its powers under this Act.

(3) Subject to section 48, an award or other decision made by the Tribunal in exercise of its powers under this Act is final and is not subject to any appeal.

Complainant
to try to
settle.

45. (1) The Tribunal shall not proceed to determine a complaint unless it is satisfied that the complainant has made all reasonable efforts to obtain redress for his complaint and has failed to obtain such redress.

(2) The Tribunal may make such enquiries, and hold such hearings, as it thinks fit for the purpose of discharging its duty under subsection (1).

46. (1) Where a consumer cancels under this Act a contract for the supply of a service, a court or the Tribunal in any proceedings or on application made for the purpose may from time to time, if it is just and practicable to do so, make an order or orders granting relief under this section.

Ancillary power of Tribunal to grant relief.

(2) An order under this section may

(a) vest in any party to the proceedings the whole or any part of any real or personal property that was the subject of the contract or was the whole or part of the consideration for it;

(b) direct any party to the proceedings to transfer or assign to any other such party or to give him the possession of the whole or any part of any real or personal property that was the subject of the contract or was the whole or part of the consideration for it;

(c) without prejudice to any right to recover damages, direct any party to the proceedings to pay to any other such party such sum as the court or Tribunal thinks just;

(d) direct any party to the proceedings to do or refrain from doing in relation to any other party any act or thing as the court or Tribunal thinks just;

(e) permit a supplier to retain the whole or part of any money paid or other consideration provided in respect of the service under the contract.

(3) Any such order, or any provision of it, may be made upon such terms and subject to such conditions as the court or Tribunal thinks fit, not being in any case a term or condition that would have the effect of preventing a claim for damages by any party.

(4) In considering whether to make an order under this section, and in considering the terms of any order it proposes to make, the court or Tribunal shall have regard to

- (a) any benefit or advantage obtained by the consumer by reason of anything done by the supplier in or for the purpose of supplying the service;
- (b) the value, in the opinion of the court or Tribunal, of any work or service performed by the supplier in or for the purpose of supplying the service;
- (c) any expenditure incurred by the consumer or the supplier in or for the purpose of the performance of the service;
- (d) the extent to which the supplier or the consumer was or would have been able to perform the contract in whole or in part; and
- (e) such other matters as the court or Tribunal thinks fit.

(5) No order shall be made under subsection (2)(a) that would have the effect of depriving a person, not being a party to the contract, of the possession of or an estate or interest in any property acquired by him in good faith and for valuable consideration.

(6) No order shall be made under this section in respect of any property if any party to the contract has so altered his position in relation to the property, whether before or after the cancellation of the contract, that, having regard to all relevant circumstances, it would in the opinion of the court or Tribunal be inequitable to any party to make such an order.

(7) An application for an order under this section may be made by

- (a) the consumer;
- (b) the supplier;
- (c) any person claiming through or under the consumer or the supplier; or

(d) any other person if it is material for him to know whether relief under this section will be granted.

47. (1) Where

(a) an order or award is made by the Tribunal under this Act; and

(b) the Registrar of the Tribunal certifies that the order or award has been so made, and specifies the terms of the order or award in the certificate,

Enforcement of Tribunal's orders and awards.

the order or award is enforceable as if it were an order made by a magistrate's court in civil proceedings.

(2) A certificate of the Registrar under subsection (1) is conclusive evidence of the matters specified in the certificate.

48. An appeal lies to the Court of Appeal in accordance with rules of court on a question of law from any decision of, or arising in any proceedings before, the Tribunal under, or by virtue of, this Act.

Appeals.

PART VIII

MISCELLANEOUS PROVISIONS

49. (1) Nothing in this Act applies in any case where goods are supplied or a service is supplied otherwise than in trade.

Exceptions generally.

(2) Nothing in this Act gives any person a right of redress against a charitable organisation in any case where goods are supplied or a service is supplied by the charitable organisation for the principal purpose of benefiting the person to whom the supply is made.

(3) Nothing in this Act applies in any case where goods are supplied

(a) by auction; or

(b) by competitive tender.

ss.50-51

No
contracting
out except
for business
transactions.

50. (1) Subject to this section and to sections 40 and 49, the provisions of this Act have effect notwithstanding any provision to the contrary in any agreement; and any written term or acknowledgment that purports to negative or vary any of the guarantees set out in this Act or states that the provisions of this Act do not apply or that in any way purports to limit, modify or abrogate any liability of a supplier for the failure of goods or a service to comply with any of those guarantees is void.

Cap. 318.

(2) Section 54 of the *Sale of Goods Act* shall be read subject to the provisions of this section.

(3) Every supplier and every manufacturer commits an offence who purports to contract out of any provision of this Act, and is liable on summary conviction to a fine of \$2 500 or a term of 6 months imprisonment or to both such fine and imprisonment.

(4) Nothing in subsection (1) limits or affects any term in an agreement in writing between a supplier and a consumer to the extent that the term

(a) imposes a stricter duty on the supplier than that imposed by this Act; or

(b) provides a remedy more advantageous to the consumer than the remedies provided by this Act.

(5) Nothing in subsection (1) prevents a consumer who has a claim under this Act from agreeing to settle or compromise that claim.

Exemplary
damages.

51. (1) In addition to any other remedy provided by this Act or any other law, a consumer or other person may recover exemplary damages from any supplier or manufacturer who has committed a wilful and knowing violation of this Act.

(2) In any action in which exemplary damages are claimed, evidence with respect to the existence of similar conduct in transactions between the supplier or manufacturer and other consumers is admissible for the purpose of proving that a violation of this Act was wilful or proving the degree of wilfulness of the violation.

52. The damages that a consumer may recover for a failure of goods supplied under a hire-purchase agreement to comply with a guarantee set out in this Act shall be assessed, in the absence of evidence of the contrary, on the basis that the consumer will complete the purchase of the goods or would have completed that purchase if the goods had complied with the guarantee.

Assessment of damages in hire-purchase cases.

53. (1) The liability under this Act of an assignee of the rights of a supplier under a contract of supply shall not exceed the amount owing by the consumer under the contract at the date of the assignment.

Liability of assignees and financiers.

(2) The liability under this Act of a financier who has lent money on the security of goods supplied to a consumer shall not exceed the amount owing by the consumer at the date of the loan.

(3) Where an assignee referred to in subsection (1) or a financier referred to in subsection (2) suffers any loss because of a liability to the consumer under this Act, the assignee or financier is, subject to any agreement with the supplier, entitled to be indemnified by the supplier against that loss.

(4) No assignment of the rights under a contract of supply affects the exercise of any right or remedy given by this Act against the supplier.

54. In any action brought under this Act against a supplier or a manufacturer for the failure of goods or a service to comply with any of the guarantees set out in this Act, lack of privity of contract between the person bringing the action and the supplier or the manufacturer is not a defence, and the supplier or manufacturer shall be conclusively presumed to have received consideration.

Privity of contract not necessary.

55. (1) Where in an action under this Act against a manufacturer of goods

Presumption against manufacturer in certain cases.

(a) a plaintiff proves that the goods fail to comply with a guarantee set out in section 6 or 8, but does not prove what caused the goods so to fail; and

(b) it is reasonable to infer that the manufacturer is responsible for the failure,

the manufacturer shall be held liable for the failure unless he proves either

(A) that the goods were in compliance with the guarantee in question when they left his control; or

(B) that the failure is due to a cause for which he bears no responsibility.

(2) Where an action mentioned in subsection (1) is being tried by a court, it is

(a) for the jury, where there is a jury;

(b) for the court acting as a jury, where there is no jury,

to make the inference mentioned in paragraph (b) of that subsection.

Parol evidence relating to express guarantees.

56. Parol or extrinsic evidence establishing the existence of an express guarantee is admissible in any dispute under this Act between a consumer and a supplier or manufacturer, even though that evidence adds to, varies or contradicts a written contract.

Express guarantees not to limit or exclude guarantees under this Act.

57. An express guarantee may not disclaim, exclude or limit a guarantee set out in section 5 or 6, or in any of sections 8 to 13.

Application to Crown.

58. This Act binds the Crown.

Transitional.

59. This Act does not apply in relation to any contract for the supply of goods or a service if the contract was made before 16th January, 2003.

Regulations.

60. (1) The Minister may make regulations under this section for carrying out the objects of this Act.

(2) Regulations under this section are subject to affirmative resolution.

SCHEDULE

(Section 41(2))

THE CONSUMER CLAIMS TRIBUNAL

Constitution of the Tribunal

1. The Tribunal shall consist of 5 members appointed by the Minister by notice published in the *Gazette*.

2. The Minister shall appoint a member as Chairman and may appoint one or more members as Deputy Chairman or Deputy Chairmen.

3. A member of the Tribunal shall have experience in either law, economics, business or consumer affairs, but the member appointed as Chairman shall be legally qualified.

4. (1) Subject to the following provisions of this paragraph, the members of the Tribunal shall hold and vacate office in accordance with the terms of their appointment.

(2) A person shall not be appointed for a term exceeding 3 years, but previous membership shall not affect eligibility for re-appointment.

(3) A member may at any time resign his membership by notice in writing addressed to the Minister.

(4) If the Minister is satisfied that a member

(a) has been incapacitated by physical or mental illness; or

(b) is otherwise unable or unfit to discharge the functions of a member,

the Minister may by notice published in the *Gazette* declare the office of the member to be vacant and, thereupon, the office shall become vacant.

(5) If the Chairman or a Deputy Chairman ceases to be a member for any reason, he shall also cease to be Chairman or, as the case may be, a Deputy Chairman.

5. In case of the temporary absence or inability to act of a member, the Minister may by notice published in the *Gazette* appoint a suitable person to act in the member's place.

6. The Minister shall publish in the *Gazette* notice of every resignation of a member.

7. (1) The Minister responsible for Finance may direct what sums shall be paid by way of remuneration to any member of the Tribunal or to any person appointed to assist the Tribunal, and may direct payment of any other expenses consequent upon a discharge of the functions of the Tribunal.

(2) Payments directed to be made under sub-paragraph (1) shall be made out of moneys voted for the purpose by Parliament.

Proceedings of the Tribunal

8. There shall be appointed a Registrar of the Tribunal, who shall be a public officer.

9. For the purpose of exercising its jurisdiction, the Tribunal shall normally consist of a chairman and two other members.

10. The Tribunal may, at the discretion of the Chairman, sit in private where it appears expedient that the Tribunal should do so.

11. If at any time every person who is Chairman or a Deputy Chairman is absent or otherwise unable to act, such member of the Tribunal as the Minister may direct may perform any of the functions of the Chairman.

12. The validity of any proceedings of the Tribunal shall not be affected by any vacancy among the members or by any defect in the appointment of a member.

13. (1) In the hearing and determination of any matter before it, the Tribunal may act without regard to technicalities and legal form and shall not be bound to follow the rules of evidence stipulated in the *Evidence Act*; but the Tribunal may inform itself on any matter in such manner as it thinks just and may take into account opinion evidence and such facts as it considers relevant and material, but in any such case the parties to the proceedings shall be given the opportunity, if they so desire, of adducing evidence.

(2) The parties to the proceedings shall be entitled to appear in person or may be assisted in the preparation of their respective cases by counsel or by a duly authorised representative but the Tribunal shall not award costs to any party to a proceeding before the Tribunal other than sums in respect of the reasonable costs incurred in any one or more of the following only:

- (a) the filing of documents;
- (b) the obtaining of any expert report;
- (c) the enforcement of an award of the Tribunal;

and any such award of costs shall be in the discretion of the Tribunal.

14. Subject to this *Schedule*, the Tribunal shall regulate its own procedure and may make rules for that purpose.

15. Without prejudice to the generality of paragraph 14, the Tribunal, as respecting the attendance and examination of witnesses, the production and inspection of documents and all other matters necessary for the exercise of its jurisdiction, shall have all such powers as are vested in a magistrate's court in an action in that court.