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International Organization for Standardization
Международная Организация по Стандартизации



Our ref. ISO/TMB

TO THE ISO MEMBER BODIES

Date 2011-10-10

PRELIMINARY ENQUIRY: Consumer warranties

Dear Sir or Madam,

At its last meeting, the Technical Management Board noted that a proposal for a new work item prepared by the Consumer Policy Committee (COPOLCO) on *Guidelines on consumer warranties*, requests the ISO Central Secretariat to carry out a preliminary enquiry to assess the interest of stakeholders other than consumers in such an activity.

A copy of the proposed new work item is attached for information only. Any member body who is willing to provide secretariat services for a project committee if ISO decides to proceed with standardization on this subject, is invited to inform the TMB Secretariat

The purpose of this enquiry is accordingly to request that you consult with stakeholders within your country to determine whether they are in agreement that ISO undertake work on this subject and more importantly whether they would be willing to commit to participation in the development of the proposed International Standard.

We would appreciate receiving your responses to tmb@iso.org by **10 January 2012** so that the TMB can decide at its meeting in February whether to formally submit the proposal for voting by the ISO member bodies.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'S. Clivio', written over a white background.

Sophie Clivio
Manager, Technical Policy
Secretary of the Technical Management Board

Enclosure



NEW WORK ITEM PROPOSAL FOR ISO – GUIDELINE STANDARD ON CONSUMER WARRANTIES

1 Title of proposal

Guideline standard on consumer warranties

2 Scope of proposed project

The standard is intended for use by producers or sellers of goods and services to give advice on the requirements for effective warranties when they are providing them with their goods and services. A draft is attached at annex.

3 Purpose and justification

Problems with warranties in relation to goods or services sold within one jurisdiction.

Problems with goods that are defective, or do not conform to the description of the contract, are one of the main reasons for consumer complaints, and also cause large financial and other detriment, both for individual consumers and for the economy as a whole¹.

For example, research in the UK² estimates that a third of all country's consumers experience problems with defective goods and substandard services, amounting to a total estimated financial loss to the country's population of £6.6 billion per year (8.4 billion Euro at the time of the study). Although the greatest proportion of this is generated by problems in the professional and financial sectors (46%), loss related to faulty goods is still a large proportion and amounts to many millions of Euros. Such problems also cause wasted time, anger, stress and additional expense; consumers in lower social strata experience greater effects, both in terms of ability to spend on other items, and in terms of stress³.

The UK research was conducted by the UK Office of Fair Trading. A survey was comprised of two main stages: stage one fieldwork taking place from 2 November to 6 December 2007, and stage two from 8 December 2007 to 13 January 2008.

The first stage consisted of an Omnibus sift among 10,022 respondents. Around 2,000 face-to-face interviews were conducted on a weekly basis. Interviews were in-home with quotas and weighting applied to ensure a representative spread of interviewing. The omnibus interviews not only provided a robust sample size for measuring the incidence of consumer problems among the overall population, but also gave an opportunity to recruit respondents for a follow-up interview.

Omnibus respondents were asked to identify any problems (up to six) that they may have experienced with various types of goods and services within the last year. Prompt materials

¹ European Union Policy Department, Economic and Scientific Policy, Consumer experience of legal guarantees, Transposition and implementation of the two year guarantee contained in the Sales Directive. IP/A/IMCO/FWC/2006-058/LOT 4/C1/SC7. Page 1

² Based on surveys of consumers conducted by the UK OFT in December 2007 and January 2008.

³ Ibid, Page 3

were used to optimize recall. The follow-up, second stage interview was conducted face-to-face with respondents who experienced at least one problem and had agreed to be re-contacted during the first stage.

Nine hundred and eighty-two respondents participated in the second stage interviews which were designed to give a more in-depth insight into problems and detriment and especially a more accurate assessment of detriment levels. In total, 1,489 problems were examined at this stage.

As mentioned above, the sample for the omnibus stage was representative of the British adult population (aged sixteen and over) in terms of demographics. It includes a range of respondents spread across gender, age, social grade, region, ethnicity and household structure.

For the second stage sampling was based on four strata according to the participants' initial estimate of detriment levels: less than five pounds, more than five pounds but less than £100, more than £100 but less than £1,000 and more than £1,000. Respondents were asked about up to two problems.

The methodology for this study involves two stages of interviews and stratification. Throughout the UK report, all results were produced using the appropriate analytical methods and weightings to ensure that results are unbiased.

Examples of the problems detailed by respondents to a survey of COPOLCO and DEVCO members on the desirability of a standard on warranties included:

- Misunderstandings about what precisely is covered;
- Problems of language;
- Disclosure of the terms of the warranty being made after it has been signed ;
- Who should bear the additional costs the consumer incurs as a result of a faulty product;
- Retailers offering to deal with a customer complaint in a way that negates the warranty;
- Manufacturers claiming that the start of the warranty period is the production date rather than the purchase date.

Examples of the problems detailed by respondents to the survey sent to members of Consumers International (CI) included:

- Problems with warranties in relation to imported goods: food, clothes, car parts, etc;
- Overselling of extended warranties;
- Costs of seeking redress;
- Uncooperative attitude of dealers failing to assist customers in accessing the manufacturer.

A separate response from **ANEC/BEUC** indicated concern with commercial warranties being offered against a small payment where the price can be disproportionate in relation to the risk to the consumer.

Problems with warranties in relation to goods or services online or across jurisdictions

Many of the comments made in a COPOLCO survey related more to general trading difficulties that consumers experience.

Examples of the problems detailed by ISO/COPOLCO/DEVCO respondents included:

- Unable to locate the seller;
- Difficulties with enforcing the terms of the warranty;
- Long (many pages) terms and conditions within which are restrictions to the warranty;
- Language;
- Online purchasing is more open to fraud and swindling.

Examples of the problems detailed by CI respondents included:

- Language;
- Importation of products that come with no warranty;
- Some businesses are fraudulent; it is difficult for customers to know which vendors are legitimate.

Need for International Standard/Guidance

Examples of the comments made in support of the responses to a question regarding demand for an international standard or guidance of some kind by ISO/COPOLCO/DEVCO respondents include:

- It would be helpful when revising relevant laws;
- Various aspects of warranties depend on the whims of individual companies, international guidance would help to set benchmarks;
- It would improve consumer protection and prevent damage to consumer rights;
- It would be helpful and would assist relevant Government departments who are able to regulate in relation to warranties;
- Guidance on warranties requirements could assist when standards are developed;
- It could assist in advocating for change in legislation'

Examples of the comments made in support of the responses to a question regarding demand for an international standard or guidance of some kind by CI respondents include:

- An international code would reinforce laws and regulations and could add a cross-border dimension to this aspect of legal instruments;
- It would provide a framework on which national standards can be based;
- International standard or guidance could help deal with claims, especially for imported goods.

The results of the survey showed that in many jurisdictions there are laws designed to regulate customer warranties offered on a voluntary basis. Respondents have supplied a wealth of information about the laws existing in their own countries which will be particularly valuable in taking this work forward. Many of those responding countries where there are no such laws claim there are some other measures available: specific laws or regulations for defective products; national voluntary agreements or codes; sector or company agreements, codes or other provisions.

Despite this range of tools available, a total of 33 respondents from the ISO/COPOLCO/DEVCO membership and the CI membership stated that there are problems for consumers in this area. Respondents provided a large number of examples of the sorts of problems that they are aware of in relation to goods and services sold, both within one legal jurisdiction, and online or across jurisdictions. Many of the problems stated could be helped by an international standard or guidance, although there are others which result from more general trading issues rather than problems related to warranties.

Twenty-five respondents (18 of the ISO/COPOLCO/DEVCO respondents and 7 of the CI respondents) said that an international standard or guidance of some sort would be helpful in their country; this is despite the existence of some relevant laws in many of these countries. It is useful to note that most of those 18 NSBs which expressed a need for an international /standard or tool in this area were from developing countries. These responses were supported by examples of the kinds of benefits that could be expected from such a tool. These, and the detailed comments given in relation to other questions, have been invaluable in deciding the detail of this new work item proposal.

Some of the comments related to problems with goods and services sold online may be of value to any future ISO work dealing with consumers' needs in business to consumer transactions taking place through the Internet.

A guideline standard on warranties could provide a best practice guide to manufacturers/retailers to follow thus providing them with a competitive advantage in the marketplace and, at the same time, give consumers some form of redress when things go wrong.

The economic importance of product warranties is *to provide insurance against unsatisfactory product performance*. A product or service should meet a level of quality and performance that would be reasonable to expect, given their price and description.

Traditionally, warranties provide less than full insurance by manufacturers against unsatisfactory product performance and this serves as risk-sharing between consumers and producers, particularly where no statutory warranties exist.

Manufacturers, for example, give implied warranties to retailers, who, in turn, give the same warranties to consumers. In this way, all parties connected with the sale of a product are given protection. In addition, manufacturers often give express warranties directly to consumers as an incentive to buy their products. Warranties help to improve the quality of products found in the marketplace. All warranties whether issued by retailers or producers can never give less than the statutory legislation where these exist. In some countries they are not allowed to be called warranties unless they go substantially beyond the statutory laws.

Warranties must state exactly what is covered and what is not covered, the timeframe of coverage and what constitutes a breach of the terms. In addition warranties must state what both the seller and consumer must do in the event that something goes wrong with the product. Terms and conditions and the small print in service agreements may also be considered as statements of warranties.

Potential benefits

For **consumers** benefits will include:

- Some degree of comfort for redress if and when things go wrong;
- Confidence that the product that they are buying will be backed by the producer/seller if the goods or services do not perform as expected;
- A common reference for designing clear and explicit warranties, operating adequately to reduce product failure, reducing the extent to which consumers share the risk.;
- Improvements to boost product quality;
- Giving retailers and consumers more confidence in the product.

For **suppliers** benefits will include:

- a competitive advantage in that consumers will purchase goods that have a warranty that conforms to an international standard;

For regulators, there will be benefits in allowing market mechanisms to work rather than having to use expensive intervention mechanisms.

4 Relevant documents to be considered

A Consumer Guide to Warranties and Product Liability, By Jean Lukaz MIH, Ghana Standards Board (GSB)/ The Consumer Partnership, Ghana (The COP) Member

General Conditions for Guarantee Certificate, The Egyptian Organization for Standardization and Quality (EOS),

Consumer detriment: Assessing the frequency and impact of consumer problems with goods and services, April 2008,. UK Office of Fair Trading

ISO 10393, *Guidance standard on consumer product recall and corrective action: Code of good practice.*

ISO 26000, *Guidance on social responsibility*

5 Relationship of project to activities of other international bodies

Report on OECD member countries' approaches to consumer contracts.

DRAFT GUIDELINE STANDARD ON WARRANTIES

Introduction

A warranty is a contractual promise by the seller [to a consumer] regarding the quality, character, or suitability of the goods it has sold.

The economic importance of product warranties is *to provide insurance against unsatisfactory product performance*. A product or service should meet a level of quality and performance that would be reasonable to expect, given its price and description.

Traditionally, warranties provide less than full insurance by manufacturers against unsatisfactory product performance and this serves as risk-sharing between consumers and producers.

Manufacturers, for example, give warranties to retailers, who, in turn, give the same warranties to consumers. In this way, all parties connected with the sale of a product are given protection. In addition, manufacturers often give express warranties directly to consumers as an incentive to buy their products. Warranties help to improve the quality of products found in the marketplace.

Warranties must state exactly what is covered and what is not covered, the timeframe of coverage and what constitutes a breach of the terms. In addition warranties must state what both the seller and consumer must do in the event that something went wrong with the product. Terms and conditions and the small print in service agreements may also be considered as statements of guarantee.

Scope

While many developed countries have provided access to statutory warranties for consumers, this standard specifies the form and the content of written warranties that a manufacturer or seller can use to address basic consumer concerns with goods and services and be used as a competitive tool in the marketplace.

Definitions

Statutory warranties

A promise, arising by operation of law, that something that is sold will meet stated legal criteria such as merchantable and fit for the purpose for which it is sold.

Voluntary warranties

An assurance by the seller of property that the goods or property are as represented or will be as promised.

Extended warranties

An extended warranty, sometimes called a service agreement, a service contract, or a maintenance agreement, is a prolonged warranty offered to consumers.

Merchantable quality

Goods must meet a level of quality and performance that would be reasonable to expect, given their price and description. They should also be free from defects that were not obvious at the time of purchase.

Other definitions to be added by drafting committee.

Characteristics of warranties

Businesses must be accountable for the impacts of their decisions and activities on consumers and must always incorporate the interests of stakeholders [including consumers] whilst being in compliance with applicable laws and adhering to international norms of behaviour.

Warranties may insure both the consumer and manufacturer or seller from [un]known defects but they may not exclude the latter from liability resulting from adverse effects of defective products on consumers. The nature and content of warranties should take into consideration the following characteristics:

Infringement of statutory rights

A warranty should never restrict a consumer's statutory rights to redress, nor limit the supplier's statutory liability.

Breach of warranty

A warranty should plainly outline what constitutes a breach of the terms. In addition warranties must state what both the seller and consumer must do in the event that something went wrong with the product.

Terms and conditions

The terms of a warranty must be simply and clearly written, conspicuously disclose all important provisions, and may be available for inspection at the point of sale before the product is purchased, whereby both the seller and consumer append their seal and signature respectively as having accepted the conditions set therein.

Duration of warranty

The duration of the warranty must be clearly specified, and the starting date should be the date of original purchase (not manufacture), except in the case of perishable products where a sell-by/use-by date may be specified.

Pre-conditions for registration: Personal details, initial fees

A warranty should not require a consumer to register in order to secure coverage, nor should the consumer be required to pay a fee (as opposed to an extended warranty where registration and fees may be applicable). However, it should indicate what evidence is needed (e.g. invoice, receipt) as proof of ownership and date of purchase in the event of a claim.

Language

The terms of the warranty must be written in the language of where the product is sold.

Explanation of terms

Consideration should be given on ways that the seller can explain terms e.g. to illiterate consumers.

Recurrent defects

A product that falls into a cycle of warranty repair for the same defect must be fully replaced or refunded upon agreement with the consumer.

Claims and repair center

The warranty should indicate where and how the consumer should register any claim (e.g. with the retailer, local agent or manufacturer) including contact information such as a phone or website of the manufacturer.

Cost of repair

There should be no charge to the customer for processing a warranty claim, beyond the cost incurred by the consumer in delivering a defective product to a local (i.e. in the consumer's country) service point. Alternatively, the manufacturer could ship replacement parts to absorb the cost of receiving defective items.

Exclusions

Conditions of warranty, such as permitting the use only of the manufacturer's own branded consumables (e.g. paper, toner) are likely to be hotly debated, and are illegal in some countries. Blanket exclusions are unreasonable, but it may be acceptable to allow exclusions where it can be shown that the failure in question resulted directly from the use of inappropriate or defective consumables, such as putting diesel into a petrol-driven vehicle.

Unconscionable disclaimers

Warranties must not contain unconscionable terms and conditions in which the only choice for the consumer is between 'adhering' to the terms dictated by the seller, or not buying at all and must be universally rendered unacceptable as they are in breach of both express and implied warranties. Examples are clauses such as 'goods are sold on as is basis', 'monies paid are not refundable' and 'goods sold are not returnable'. If a consumer suffers from personal injury from using the product purchased, any warranty disclaimer pre-existing should be automatically rendered unconscionable. Goods may be sold on an "as is" basis " where the seller is selling goods that are not in the normal course of their business.

Warranty certificate

Verbal warranties must be unacceptable and should be formalized by the issuance of a printed and signed warranty certificate by the manufacturer or seller to the consumer in which there is a commitment that the products or goods shall perform satisfactorily and otherwise detail the terms and conditions of remedies in the event there should be a defect resulting from use of the product during the stipulated period of the warranty.

Categories of warranties

Product warranties

In all contracts for the sale of goods, consumers are protected by the inclusion of a number of statutory conditions and statutory warranties. The statutory conditions usually require that:

- 1) *Goods must be of merchantable quality* – they must meet a level of quality and performance that would be reasonable to expect, given their price and description. They should also be free from defects that were not obvious at the time of purchase;
- 2) *Goods must be fit for their intended purpose* – they should be suitable for any particular purpose the buyer made known to the seller;
- 3) *The goods must match the description given* to the consumer, or the sample shown;
- 4) A consumer must receive clear title to the goods – that is, the seller must be entitled to sell the goods.

Most of the laws in various cross-border jurisdictions contain common clauses of implied warranties on *merchantable quality of goods sold, their fitness for a particular purpose and goods matching the description or sample given.*

The common test for merchantability is whether the goods are fit for the ordinary purpose for which such goods are used.

For goods to be merchantable they must

- 1) Conform closely enough to the description in the contract without objection to others in the trade;
- 2) Be fit for the ordinary purposes for which such goods are used;
- 3) Be adequately contained, packaged, and labelled as the agreement may require;
- 4) Be of the same kind, quality, and quantity within each unit (case, package, carton);
- 5) Conform to the promises or statements of fact made on the container or label, if any.

Since most laws on sale of goods refer to the fact that goods must be of merchantable quality, the issue arises as to the nature of the parties to a contract for the sale of goods. In some jurisdictions, higher standards are required from merchants than non-merchants. Consumers, thus, tend to place more reliance on professional sellers and that professionals are generally more knowledgeable and better able to protect themselves than non-professionals.

In this case, the professional sellers are *merchants*: business people who regularly deal in the kinds of goods being sold, or purport to have some special knowledge about the goods, or who employed an agent in the sale who fits either of the two descriptions. In this case, if a consumer buys a used car from a used-car dealer, the dealer is a merchant for the purposes of his contract. But if he buys a refrigerator from a used-car dealer, the dealer is probably not considered to be a merchant for the purposes of that sale but will still be bound by the fitness for purpose clause.

Service warranties

All contracts for the sale of services also contain a number of statutory warranties, which require that:

- 1) *Services must be of merchantable quality and must be carried out with due care and skill* – they must meet a level of quality and performance that would be reasonable to expect from an expert, given their price and description. They should also be free from consequent defects that were not existent prior to the service delivery;
- 2) *Fitness for Purpose*- The service and any materials supplied in connection with the service must be reasonably fit for the purpose for which the consumer made known to the seller and for which they are supplied;
- 3) *The service delivered must match the description given by the consumer and the solution prescribed by the service provider or expert.*