Changes to Legislation: as of 3 November 2026, this Act is up to date with all changes known to be in force.

Number 28 *of* 1991

LIABILITY FOR DEFECTIVE PRODUCTS ACT 1991

REVISED

Updated to 28 May 2019

This Revised Act is an administrative consolidation of the *Liability for Defective Products Act 1991*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Greyhound Racing Act 2019* (15/2019), enacted 28 May 2019, and all statutory instruments up to and including *European Communities (Sheep Identification) (Amendment) Regulations 2019* (S.I. No. 243 of 2019), made 28 May 2019, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.

Number 28 *of* 1991

LIABILITY FOR DEFECTIVE PRODUCTS ACT 1991

REVISED

Updated to 28 May 2019

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Liability for damage caused by defective products.
3. Limitation of damages.
4. Proof of damage and defect.
5. Defective product.
6. Defences.
7. Limitation of actions.
8. Joint and several liability.
9. Reduction of liability.
10. Prohibition on exclusion from liability.
11. Other rights of action not precluded.
12. Application of Courts Act, 1988.
13. Application of this Act.
14. Short title and commencement.

SCHEDULE

ACTS REFERRED TO

Civil Liability Act, 1961	1961, No. 41
Courts Act, 1988	1988, No. 14
Statute of Limitations, 1957	1957, No. 6
Statute of Limitations (Amendment) Act, 1991	1991, No. 18
Succession Act, 1965	1965, No. 27

Number 28 *of* 1991

LIABILITY FOR DEFECTIVE PRODUCTS ACT 1991

REVISED

Updated to 28 May 2019

AN ACT TO ENABLE EFFECT TO BE GIVEN TO THE PROVISIONS OF DIRECTIVE NO. 85/374/EEC OF 25 JULY 1985 OF THE COUNCIL OF THE EUROPEAN COMMUNITIES ON THE APPROXIMATION OF THE LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES CONCERNING LIABILITY FOR DEFECTIVE PRODUCTS. [4*th December*, 1991]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Editorial Notes:

E1 Functions under Act transferred to Competition and Consumer Protection Commission (31.10.2014) by *Competition and Consumer Protection Act 2014* (29/2014), ss. 2, 10 and 39, S.I. No. 366 of 2014.

E2 Previous affecting provision: enforcement of Act provided for (1.05.2007) by *Consumer Protection Act 2007* (19/2007), ss. 2, 8, 37 and sch. 1 pt. 1, S.I. No. 178 of 2007; functions transferred as per E-note above.

Interpretation.

1.—(1) In this Act, except where the context otherwise requires—

F1**[**"the Council Directive" means Council Directive No. 85/374/EEC of 25 July 1985[(1)] (as amended by Directive No. 1999/34/EC of the European Parliament and of the Council of 10 May 1999[(2)]) the texts of which in the English language are set out for convenience of reference in the Schedule to this Act;**]**

"damage" means—

(*a*) death or personal injury, or

(*b*) loss of, damage to, or destruction of, any item of property other than the defective product itself:

Provided that the item of property—

(i) is of a type ordinarily intended for private use or consumption, and

(ii) was used by the injured person mainly for his own private use or consumption;

"initial processing" means, in relation to primary agricultural products, any processing of an industrial nature of those products which could cause a defect therein;

[(1)] O.J. No. L210 of 7.8.1985, p.29
[(2)] O.J. No. L141 of 4.6.1999, p.20, and

"injured person" means a person who has suffered damage caused wholly or partly by a defect in a product or, if he has died, his personal representative (within the meaning of section 3 of the Succession Act, 1965) or dependants (within the meaning of section 47 (1) of the Civil Liability Act, 1961);

"Member State" means a Member State of the European Communities;

"the Minister" means the Minister for Industry and Commerce;

"personal injury" includes any disease and any impairment of a person's physical or mental condition;

"primary agricultural products" means the products of the soil, of stock-farming and of fisheries and game, excluding such products and game which have undergone initial processing;

"producer" shall be construed in accordance with *section 2* of this Act;

F1**[**"product" means all movables, including primary agricultural products which have not undergone initial processing, and includes—

(*a*) movables even though incorporated into another product or into an immovable, whether by virtue of being a component part or raw material or otherwise, and

(*b*) electricity where damage is caused as a result of a failure in the process of generation of electricty,**]**

(2) A word or expression that is used in this Act and is also used in the Council Directive has, unless the contrary intention appears, the meaning in this Act that it has in the Council Directive.

(3) In construing a provision of this Act, a court shall give it a construction that will give effect to the Council Directive, and for this purpose a court shall have regard to the provisions of the Council Directive, including its preamble.

(4) In this Act a reference to any other enactment shall be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

Annotations

Amendments:

F1 Substituted (4.12.2000) by *European Communities (Liability For Defective Products) Regulations 2000* (S.I. No. 401 of 2000), reg. 2.

Liability for damage caused by defective products.

2.—(1) The producer shall be liable in damages in tort for damage caused wholly or partly by a defect in his product.

(2) In this Act, "producer" means—

(*a*) the manufacturer or producer of a finished product, or

(*b*) the manufacturer or producer of any raw material or the manufacturer or producer of a component part of a product, or

(*c*) in the case of the products of the soil, of stock-farming and of fisheries and game, which have undergone initial processing, the person who carried out such processing, or

(*d*) any person who, by putting his name, trade mark or other distinguishing feature on the product or using his name or any such mark or feature in relation to the product, has held himself out to be the producer of the product, or

(*e*) any person who has imported the product into a Member State from a place outside the European Communities inorder, in the course of any business of his, to supply it to another, or

(*f*) any person who is liable as producer of the product pursuant to *subsection (3)* of this section.

(3) Without prejudice to *subsection (1)* of this section, where damage is caused wholly or partly by a defect in a product, any person who supplied the product (whether to the person who suffered the damage, to the producer of any product in which the product is comprised or to any other person) shall, where the producer of the product cannot by taking reasonable steps be identified, be liable, as the producer, for the damage if—

(*a*) the injured person requests the supplier to identify any person (whether still in existence or not) to whom *paragraph (a), (b), (c), (d)* or *(e)* of *subsection (2)* of this section applies in relation to the product,

(*b*) that request is made within a reasonable time after the damage occurs and at a time when it is not reasonably practicable for the injured person to identify all those persons, and

(*c*) the supplier fails, within a reasonable time after receiving the request, either to comply with the request or to identify the person who supplied the product to him.

Limitation of damages.

3.—(1) Where, but for this section, damages not exceeding £350 in respect of loss of or damage to, or destruction of, any item of property other than the defective product itself would fall to be awarded by virtue of this Act, no damages shall be awarded, and where, but for this section, damages exceeding that amount would fall to be awarded, only that excess shall be awarded.

(2) The Minister may by order vary with effect from a date specified in the order, being a date subsequent to the making of the order, the amount specified in *subsection (1)* of this section but such variation shall not apply to proceedings pending in any court at that date.

(3) The Minister may by order amend or revoke an order made under this section.

Proof of damage and defect.

4.—The onus shall be on the injured person concerned to prove the damage, the defect and the causal relationship between the defect and damage.

Defective product.

5.—(1) For the purposes of this Act a product is defective if it fails to provide the safety which a person is entitled to expect, taking all circumstances into account, including—

(*a*) the presentation of the product,

(*b*) the use to which it could reasonably be expected that the product would be put, and

(*c*) the time when the product was put into circulation.

(2) A product shall not be considered defective for the sole reason that a better product is subsequently put into circulation.

Defences.

6.—A producer shall not be liable under this Act if he proves—

(*a*) that he did not put the product into circulation, or

(*b*) that, having regard to the circumstances, it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation by him or that that defect came into being afterwards, or

(*c*) that the product was neither manufactured by him for sale or any form of distribution for an economic purpose nor manufactured or distributed by him in the course of his business, or

(*d*) that the defect concerned is due to compliance by the product with any requirement imposed by or under any enactment or any requirement of the law of the European Communities, or

(*e*) that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered, or

(*f*) in the case of the manufacturer of a component or the producer of a raw material, that the defect is attributable entirely to the design of the product in which the component has been fitted or the raw material has been incorporated or to the instructions given by the manufacturer of the product.

Limitation of actions.

7.—(1) An action for the recovery of damages under this Act shall not be brought after the expiration of three years from the date on which the cause of action accrued or the date (if later) on which the plaintiff became aware, or should reasonably have become aware, of the damage, the defect and the identity of the producer.

(2) (*a*) A right of action under this Act shall be extinguished upon the expiration of the period of ten years from the date on which the producer put into circulation the actual product which caused the damage unless the injured person has in the meantime instituted proceedings against the producer.

(*b*) *Paragraph (a)* of this subsection shall have effect whether or not the right of action accrued or time began to run during the period referred to in *subsection (1)* of this section.

(3) Sections 9 and 48 (6) of the Civil Liability Act, 1961, shall not apply to an action for the recovery of damages under this Act.

(4) The Statutes of Limitation, 1957 and 1991, shall apply to an action under this Act subject to the provisions of this section.

(5) For the purposes of *subsection (4)*—

(*a*) *subsection (1)* of this section shall be deemed to be a provision of the Statute of Limitations (Amendment) Act, 1991, of the kind referred to in section 2 (1) of that Act,

(*b*) "injury" where it occurs in that Act except in section 2 (1) *(b)* thereof includes damage to property, and "person injured" and, "injured" shall be construed accordingly, and

(*c*) the reference in *subsection (1)* of this section to the date when the plaintiff became aware, or should reasonably have become aware, of the damage, the defect and the identity of the producer shall be construed in accordancewith section 2 of that Act, but nothing in this paragraph shall prejudice the application of *section 1 (3)* of this Act.

Joint and several liability.

8.—Where two or more persons are liable by virtue of this Act for the same damage, they shall be liable jointly and severally as concurrent wrongdoers within the meaning of Part III of the Civil Liability Act, 1961.

Reduction of liability.

9.—(1) Without prejudice to Part III of the Civil Liability Act, 1961 concerning the right of contribution, the liability of the producer shall not be reduced when damage is caused both by a defect in a product and by the act or omission of a third party.

(2) Where any damage is caused partly by a defect in a product and partly by the fault of the injured person or of any person for whom the injured person is responsible, the provisions of the Civil Liability Act, 1961, concerning contributory negligence, shall have effect as if the defect were due to the fault of every person liable by virtue of this Act for the damage caused by the defect.

Annotations

Modifications etc. (not altering text):

C1 Application of Act restricted (1.04.2009) by *European Communities (Environmental Liability) Regulations 2008* (S.I. No. 547 of 2008), reg. 18(2).

Joint and several liability

18. ...

(2) Nothing in these Regulations shall be taken to affect the operation of—

(a) section 9(1) of the Liability for Defective Products Act 1991 (No. 28 of 1991), where the imminent threat of environmental damage, or environmental damage, as the case may be is caused both by a defect in a product and by the act or omission of a third party, or

(b) section 9(2) of the Liability for Defective Products Act 1991 where the imminent threat of environmental damage, or environmental damage, as the case may be, is caused partly by a defect in a product and partly by the fault of an injured person (within the meaning of that Act) or of any person for whom the injured person is responsible.

Prohibition on exclusion from liability.

10.—The liability of a producer arising by virtue of this Act to an injured person shall not be limited or excluded by any term of contract, by any notice or by any other provision.

Other rights of action not precluded.

11.—This Act shall not affect any rights which an injured person may have under any enactment or under any rule of law.

Application of Courts Act, 1988.

12.—Section 1 of the Courts Act, 1988, shall apply to an action in the High Court claiming damages under this Act or a question of fact or an issue arising in such an action as if such damages were mentioned in subsection (1) (*a*) of that section.

Application of this Act.

13.—This Act shall not apply to any product put into circulation within the territory of any Member State before the commencement of this Act.

Short title and commencement.

14.—(1) This Act may be cited as the Liability for Defective Products Act, 1991.

(2) This Act shall come into operation on such day as the Minister may appoint by order.

Annotations

Editorial Notes:

E3 Power pursuant to section exercised (16.12.1991) by *Liability for Defective Products Act (Commencement Order) 1991* (S.I. No. 316 of 1991).

2. The Liability for Defective Products Act, 1991 (No. 28 of 1991) shall come into operation on the 16th day of December, 1991.

Section 1.

SCHEDULE

7.8.85 Official Journal of the European Communities No. L 210/29

COUNCIL DIRECTIVE of 25 July 1985
on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products

(85/374/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission[(1)],

Having regard to the opinion of the European Parliament[(2)],

Having regard to the opinion of the Economic and Social Committee[(3)],

Whereas approximation of the laws of the Member States concerning the liability of the producer for damage caused by the defectiveness of his products is necessary because the existing divergences may distort competition and affect the movement of goods within the common market and entail a differing degree of protection of the consumer against damage caused by a defective product to his health or property;

Whereas liability without fault on the part of the producer is the sole means of adequately solving the problem, peculiar to our age of increasing technicality, of a fair apportionment of the risks inherent in modern technological production;

Whereas liability without fault should apply only to movables which have been industrially produced; whereas, as a result, it is appropriate to exclude liability for agricultural products and game, except where they have undergone a processing of an industrial nature which could cause a defect in these products; whereas the liability provided for in this Directive should also apply to movables which are used in the construction of immovables or are installed in immovables;

Whereas protection of the consumer requires that all producers involved in the production process should be made liable, in so far as their finished product, component part or any raw material supplied by them was defective; whereas, for the same reason, liability should extend to importers of products into the Community and to persons who present themselves as producers by affixing their name, trade mark or other distinguishing feature or who supply a product the producer of which cannot be identified;

Whereas, in situations where several persons are liable for the same damage, the protection of the consumer requires that the injured person should be able to claim full compensation for the damage from any one of them;

Whereas, to protect the physical well-being and property of the consumer, the defectiveness of the product should be determined by reference not to its fitness for use but to the lack of the safety which the public at large is entitled to expect; whereas the safety is assessed by excluding any misuse of the product not reasonable under the circumstances;

(1) O.J. No. C241,14.10.1976, p.9 and O.J. No. C271, 26.10.1979, p.3.
(2) O.J. No. C127, 21.5.1979, p.61.
(3) O.J. No. C114, 7.5.1979, p.15.

Whereas a fair apportionment of risk between the injured person and the producer implies that the producer should be able to free himself from liability if he furnishes proof as to the existence of certain exonerating circumstances;

Whereas the protection of the consumer requires that the liability of the producer remains unaffected by acts or omissions of other persons having contributed to cause the damage; whereas, however, the contributory negligence of the injured person may be taken into account to reduce or disallow such liability;

Whereas the protection of the consumer requires compensation for death and personal injury as well as compensation for damage to property; whereas the latter should nevertheless be limited to goods for private use or consumption and be subject to a deduction of a lower threshold of a fixed amount in order to avoid litigation in an excessive number of cases; whereas this Directive should not prejudice compensation for pain and suffering and other non-material damages payable, where appropriate, under the law applicable to the case;

Whereas a uniform period of limitation for the bringing of action for compensation is in the interests both of the injured person and of the producer;

Whereas products age in the course of time, higher safety standards are developed and the state of science and technology progresses; whereas, therefore, it would not be reasonable to make the producer liable for an unlimited period for the defectiveness of his product; whereas, therefore, liability should expire after a reasonable length of time, without prejudice to claims pending at law;

Whereas, to achieve effective protection of consumers, no contractual derogation should be permitted as regards the liability of the producer in relation to the injured person;

Whereas under the legal systems of the Member States an injured party may have a claim for damages based on grounds of contractual liability or on grounds of non-contractual liability other than that provided for in this Directive; in so far as these provisions also serve to attain the objective of effective protection of consumers, they should remain unaffected by this Directive; whereas, in so far as effective protection of consumers in the sector of pharmaceutical products is already also attained in a Member State under a special liability system, claims based on this system should similarly remain possible;

Whereas, to the extent that liability for nuclear injury or damage is already covered in all Member States by adequate special rules, it has been possible to exclude damage of this type from the scope of this Directive;

Whereas, since the exclusion of primary agricultural products and game from the scope of this Directive may be felt, in certain Member States, in view of what is expected for the protection of consumers, to restrict unduly such protection, it should be possible for a Member State to extend liability to such products;

Whereas, for similar reasons, the possibility offered to a producer to free himself from liability if he proves that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of a defect to be discovered may be felt in certain Member States to restrict unduly the protection of the consumer; whereas it should therefore be possible for a Member State to maintain in its legislation or to provide by new legislation that this exonerating circumstance is not admitted; whereas, in the case of new legislation, making use of this derogation should, however, be subject to a Community stand-still procedure, in order to raise, if possible, the level of protection in a uniform manner throughout the Community;

Whereas, taking into account the legal traditions in most of the Member States, it is inappropriate to set any financial ceiling on the producer's liability without fault; whereas, in so far as there are, however, differing traditions, it seems possible to

admit that a Member State may derogate from the principle of unlimited liability by providing a limit for the total liability of the producer for damage resulting from a death or personal injury and caused by identical items with the same defect, provided that this limit is established at a level sufficiently high to guarantee adequate protection of the consumer and the correct functioning of the common market;

Whereas the harmonization resulting from this cannot be total at the present stage, but opens the way towards greater harmonization; whereas it is therefore necessary that the Council receive at regular intervals, reports from the Commission on the application of this Directive, accompanied, as the case may be, by appropriate proposals;

Whereas it is particularly important in this respect that a re-examination be carried out of those parts of the Directive relating to the derogations open to the Member States, at the expiry of a period of sufficient length to gather practical experience on the effects of these derogations on the protection of consumers and on the functioning of the common market,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The producer shall be liable for damage caused by a defect in his product.

Article 2

For the purpose of this Directive 'product' means all movables, with the exception of primary agricultural products and game, even though incorporated into another movable or into an immovable. 'Primary agricultural products' means the products of the soil, of stock-farming and of fisheries, excluding products which have undergone initial processing. 'Product' includes electricity.

Article 3

1. 'Producer' means the manufacturer of a finished product, the producer of any raw material or the manufacturer of a component part and any person who, by putting his name, trade mark or other distinguishing feature on the product presents himself as its producer.

2. Without prejudice to the liability of the producer, any person who imports into the Community a product for sale, hire, leasing or any form of distribution in the course of his business shall be deemed to be a producer within the meaning of this Directive and shall be responsible as a producer.

3. Where the producer of the product cannot be identified, each supplier of the product shall be treated as its producer unless he informs the injured person, within a reasonable time, of the identity of the producer or of the person who supplied him with the product. The same shall apply, in the case of an imported product, if thisproduct does not indicate the identity of the importer referred to in paragraph 2, even if the name of the producer is indicated.

Article 4

The injured person shall be required to prove the damage, the defect and the causal relationship between defect and damage.

Article 5

Where, as a result of the provisions of this Directive, two or more persons are liable for the same damage, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the rights of contribution or recourse.

Article 6

1. A product is defective when it does not provide the safety which a person is entitled to expect, taking all circumstances into account, including:

(*a*) the presentation of the product;

(*b*) the use to which it could reasonably be expected that the product would be put;

(*c*) the time when the product was put into circulation.

2. A product shall not be considered defective for the sole reason that a better product is subsequently put into circulation.

Article 7

The producer shall not be liable as a result of this Directive if he proves:

(*a*) that he did not put the product into circulation; or

(*b*) that, having regard to the circumstances, it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation by him or that this defect came into being afterwards; or

(*c*) that the product was neither manufactured by him for sale or any form of distribution for economic purpose nor manufactured or distributed by him in the course of his business; or

(*d*) that the defect is due to compliance of the product with mandatory regulations issued by the public authorities; or

(*e*) that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered; or

(*f*) in the case of a manufacturer of a component, that the defect is attributable to the design of the product in which thecomponent has been fitted or to the instructions given by the manufacturer of the product.

Article 8

1. Without prejudice to the provisions of national law concerning the right of contribution or recourse, the liability of the producer shall not be reduced when the damage is caused both by a defect in the product and by the act or omission of a third party.

2. The liability of the producer may be reduced or disallowed when, having regard to all the circumstances, the damage is caused both by a defect in the product and by the fault of the injured person or any person for whom the injured person is responsible.

Article 9

For the purpose of Article 1, 'damage' means:

(*a*) damage caused by death or by personal injuries;

(*b*) damage to, or destruction of, any item of property other than the defective product itself, with a lower threshold of 500 ECU, provided that the item of property:

(i) is of a type ordinarily intended for private use or consumption, and

(ii) was used by the injured person mainly for his own private use or consumption.

This Article shall be without prejudice to national provisions relating to non-material damage.

Article 10

1. Member States shall provide in their legislation that a limitation period of three years shall apply to proceedings for the recovery of damages as provided for in this Directive. The limitation period shall begin to run from the day on which the plaintiff became aware, or should reasonably have become aware, of the damage, the defect and the identity of the producer.

2. The laws of Member States regulating suspension or interruption of the limitation period shall not be affected by this Directive.

Article 11

Member States shall provide in their legislation that the rights conferred upon the injured person pursuant to this Directive shall be extinguished upon the expiry of a period of 10 years from the date on which the producer put into circulation the actual product which caused the damage, unless the injured person has in the meantime instituted proceedings against the producer.

Article 12

The liability of the producer arising from this Directive may not,in relation to the injured person, be limited or excluded by a provision limiting his liability or exempting him from liability.

Article 13

This Directive shall not affect any rights which an injured person may have according to the rules of the law of contractual or non-contractual liability or a special liability system existing at the moment when this Directive is notified.

Article 14

This Directive shall not apply to injury or damage arising from nuclear accidents and covered by international conventions ratified by the Member States.

Article 15

1. Each Member State may:

(*a*) by way of derogation from Article 2, provide in its legislation that within the meaning of Article 1 of this Directive 'product' also means primary agricultural products and game;

(*b*) by way of derogation from Article 7 (e), maintain or, subject to the procedure set out in paragraph 2 of this Article, provide in this legislation that the producer shall be liable even if he proves that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of a defect to be discovered.

2. A Member State wishing to introduce the measure specified in paragraph 1 (b) shall communicate the text of the proposed measure to the Commission. The Commission shall inform the other Member States thereof.

The Member State concerned shall hold the proposed measure in abeyance for nine months after the Commission is informed and provided that in the meantime the Commission has not submitted to the Council a proposal amending this Directive on the relevant matter. However, if within three months of receiving the said information, the Commission does not advise the Member State concerned that it intends submitting

such a proposal to the Council, the Member State may take the proposed measure immediately.

If the Commission does submit to the Council such a proposal amending this Directive within the aforementioned nine months, the Member State concerned shall hold the proposed measure in abeyance for a further period of 18 months from the date on which the proposal is submitted.

3. Ten years after the date of notification of this Directive, the Commission shall submit to the Council a report on the effect that rulings by the courts as to the application of Article 7 (e) and of paragraph 1 (b) of this Article have on consumer protection and the functioning of the common market. In the light of this report the Council, acting on a proposal from the Commission and pursuant tothe terms of Article 100 of the Treaty, shall decide whether to repeal Article 7(e).

Article 16

1. Any Member State may provide that a producer's total liability for damage resulting from a death or personal injury and caused by identical items with the same defect shall be limited to an amount which may not be less than 70 million ECU.

2. Ten years after the date of notification of this Directive, the Commission shall submit to the Council a report on the effect on consumer protection and the functioning of the common market of the implementation of the financial limit on liability by those Member States which have used the option provided for in paragraph 1. In the light of this report the Council, acting on a proposal from the Commission and pursuant to the terms of Article 100 of the Treaty, shall decide whether to repeal paragraph 1.

Article 17

This Directive shall not apply to products put into circulation before the date on which the provisions referred to in Article 19 enter into force.

Article 18

1. For the purposes of this Directive, the ECU shall be that defined by Regulation (EEC) No. 3180/78[(1)], as amended by Regulation (EEC) No. 2626/84[(2)]. The equivalent in national currency shall initially be calculated at the rate obtaining on the date of adoption of this Directive.

2. Every five years the Council, acting on a proposal from the Commission, shall examine and, if need be, revise the amounts in this Directive, in the light of economic and monetary trends in the Community.

Article 19

1. Member States shall bring into force, not later than three years from the date of notification of this Directive, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof[(3)].

2. The procedure set out in Article 15 (2) shall apply from the date of notification of this Directive.

Article 20

Member States shall communicate to the Commission the texts of the main provisions of national law which they subsequently adopt in the field governed by this Directive.

(1) O.J. No. L379, 30.12.1978, p.1.
(2) O.J. No. L247, 16.9.1984, p.1.
(3) This Directive was notified to the Member States on 30 July 1985.

Article 21

Every five years the Commission shall present a report to the Council on the application of this Directive and, if necessary, shall submit appropriate proposals to it.

Article 22

This Directive is addressed to the Member States.

Done at Brussels, 25 July, 1985.

For the Council,

The President,

J. POOS.

F2[DIRECTIVE 1999/34/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 10 MAY 1999

amending Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95, thereof,

Having regard to the proposal from the Commission,[(1)]

Having regard to the opinion of the Economic and Social Committee, [(2)]

Acting in accordance with the procedure laid down in Article 251 of the Treaty [(3)]

(1) Whereas product safety and compensation for damage caused by defective products are social imperatives which must be met within the internal market; whereas the Community has responded to those requirements by means of Directive 85/374/EEC[(4)] and Council Directive 92/59/EEC of 29 June 1992 on general product safety[(5)];

(2) Whereas Directive 85/374/EEC established a fair apportionment of the risks inherent in a modern society in which there is a high degree of technicality; whereas that Directive therefore struck a reasonable balance between the interests involved, in particular the protection of consumer health, encouraging innovation and scientific and technological development, guaranteeing undistorted competition and facilitating trade under a harmonised system of civil liability; whereas that Directive has thus helped to raise awareness among traders of the issue of product safety and the importance accorded to it;

(3) Whereas the degree of harmonisation of Member States' laws achieved by Directive 85/374/EEC is not complete in view of the derogations provided for, in particular with regard to its scope, from which unprocessed agricultural products are excluded;

[(1)] OJ C 337, 7.11.1997, p.54.
[(2)] OJ C 95, 30.3.1998, p.69.
[(3)] Opinion of the European Parliament of 5 November 1998 (OJ C 359, 23.11.1998, p.25), Council Common Position of 17 December 1998 (OJ C 49, 22.2.1999, p.1) and Decision of the European Parliament of 23 March 1999 (not yet published in the Official Journal) Council Decision of 29 April 1999.
[(4)] OJ L 210, 7.8.1985, p.29. Directive as amended by the 1994 Act of Accession.
[(5)] OJ L 228, 11.8.1992, p.24"

(4) Whereas the Commission monitors the implementation and effects of Directive 85/374/EEC and in particular its aspects relating to consumer protection and the functioning of the internal market, which have already been the subject of a first report; whereas, in this context, the Commission is required by Article 21 of that Directive to submit a second report on its application;

(5) Whereas including primary agricultural products within the scope of Directive 85/374/EEC would help restore consumer confidence in the safety of agricultural products; whereas such a measure would meet the requirements of a high level of consumer protection;

(6) Whereas the circumstances call for Directive 85/374/EEC to be amended in order to facilitate, for the benefits of consumers, legitimate compensation for damage to health caused by defective agricultural products;

(7) Whereas this Directive has an impact on the functioning of the internal market in so far as trade in agricultural products will no longer be affected by differences between rules on producer liability;

(8) Whereas the principle of liability without fault laid down in Directive 85/374/EEC must be extended to all types of product, including agricultural products as defined by the second sentence of Article 32 of the Treaty and those listed in Annex II to the said Treaty;

(9) Whereas, in accordance with the principle of proportionality, it is necessary and appropriate in order to achieve the fundamental objectives of increased protection for all consumers and the proper functioning of the internal market to include agricultural products within the scope of Directive 85/374/EEC; whereas this Directive is limited to what is necessary to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 85/374/EEC is hereby amended as follows:

1. Article 2 shall be replaced by the following;

"Article 2

For the purpose of this Directive, 'product' means all movables even if incorporated into another movable or into an immovable. 'Product' includes electricity"

2. In Article 15, paragraph 1 (*a*) shall be deleted.

Article 2

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply these measures as from 4 December 2000.

When the Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the provisions of national law which they subsequently adopt in the field governed by this Directive.

Article 3

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 10 May, 1999.

For the European Parliament	*For the Council*
The President	*The President*
J.M. GIL-ROBLES	H.EICHEL**]**

Annotations

Amendments:

F2 Inserted (4.12.2000) by *European Communities (Liability For Defective Products) Regulations 2000* (S.I. No. 401 of 2000), reg. 2(b).

Number 28 *of* 1991

LIABILITY FOR DEFECTIVE PRODUCTS ACT 1991

REVISED

Updated to 28 May 2019

About this Revised Act

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

This Act is not collectively cited with any other Act. However, the following legislation deals with related subject matter:

- *Civil Liability Act 1961* (41/1961)
- *Civil Liability (Amendment) Act 1964* (17/1964)
- *Civil Liability (Amendment) Act 1996* (42/1996)
- *Civil Liability and Courts Act 2004* (31/2004)

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

• *Consumer Protection Act 2007* (19/2007)

All Acts up to and including *Greyhound Racing Act 2019* (15/2019), enacted 28 May 2019, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

• *European Communities (Environmental Liability) Regulations 2008* (S.I. No. 547 of 2008)
• *European Communities (Liability For Defective Products) Regulations 2000* (S.I. No. 401 of 2000)
• *Liability for Defective Products Act 1991 (Commencement) Order 1991* (S.I. No. 316 of 1991)

All statutory instruments up to and including *European Communities (Sheep Identification) (Amendment) Regulations 2019* (S.I. No. 243 of 2019), made 28 May 2019, were considered in the preparation of this revision.