

HIRE PURCHASE BILL

EXPLANATORY NOTE

THIS Bill makes extensive changes in the law relating to hire purchase and is much wider in its scope than the Hire Purchase Agreements Act 1939. That Act is repealed and its provisions are, where necessary, incorporated in this Bill. Such of the new provisions as implement, or relate to, recommendations of the Tariff and Development Board in its Report on Instalment Credit Trading in New Zealand are indicated in the notes on the individual clauses of the Bill. References are also made in this explanatory note to a comparative survey of Commonwealth and American law written by R. M. Goode and Jacob S. Ziegel and published in 1965 under the title *Hire-Purchase and Conditional Sale*. This survey is hereinafter referred to in this explanatory note as "Goode and Ziegel".

References to New Zealand and overseas legislation appear as footnotes to the clauses of the Bill.

Clause 1 relates to the Short Title and commencement of the Bill, which is to come into force on 1 April 1971.

Clause 2: Subclause (1) defines terms used in the Bill.

The definitions of the terms "cash price", "dealer", "total amount payable", and "total cost of credit" are new. These definitions are taken from or based on the Australian legislation.

The definition of "contract of guarantee" is new. The definition has the effect of assimilating a contract of indemnity to a contract of guarantee for the purposes of the Bill.

The definitions of the terms "Court", "disposed of", "holding company", and "subsidiary" are new.

The definition of "hire purchase agreement" has been altered. The most important alteration excludes from the definition any agreement made otherwise than at retail.

Subclause (2) is new to this Act. The subclause is taken from the Hire Purchase and Credit Sales Stabilisation Regulations 1957. The subclause is designed to cover the case where what is in effect a hire purchase agreement results from two or more agreements, none of which by itself constitutes a hire purchase agreement, by requiring those agreements to be treated as a single agreement for the purposes of the Act.

Clause 3 provides that the Act shall bind the Crown.

Formation, Contents, and Variation of Hire Purchase Agreements

Clause 4: Subclause (1) provides that, subject to the exercise of any power of the Court under *subclause (3)*, the vendor under a hire purchase agreement cannot enforce certain rights unless the requirements of *clause 5* of the Bill are complied with.

Subclause (2) provides that the vendor commits an offence and forfeits any right to the total cost of credit if he recovers the goods from the purchaser in contravention of *subparagraph (iii) of paragraph (a) of subclause (1)*.

Subclause (3) gives the Court a discretion to dispense with any of the requirements of *clause 5* or *clause 8* or to authorise the recovery of the goods from the purchaser if it is satisfied in a particular case, having regard to any prejudice caused to the purchaser, that it is just and equitable to dispense with the requirement or to grant that authority.

Clause 5: subclause (1) specifies eight requirements in respect of hire purchase agreements, namely—

- (a) Every such agreement shall be in writing; and
- (b) Every such agreement shall be signed personally by the purchaser; and
- (c) Every such agreement shall contain a description of the goods to which the agreement relates; and
- (d) Every such agreement shall specify—
 - (i) The number of instalments to be paid under the agreement by the purchaser; and
 - (ii) The amount of each of those instalments; and
 - (iii) The person to whom and the place at which the payments of those instalments are to be made; and
 - (iv) The date, or the mode of determining the date, on which each instalment is payable; and
 - (v) The full name and address of the vendor; and
- (e) Every such agreement shall set out on its first page the financial details of the transaction in a form which is substantially the same as the form set out in Part I of the First Schedule to this Bill; and
- (f) Every such agreement shall have endorsed on it an explanatory note telling the purchaser of his rights; and
- (g) At the time when the agreement is executed by the purchaser it shall comply in every respect with the provisions of *paragraph (a)* and of *paragraphs (c) to (f)* of this subclause; and
- (h) A copy of the agreement shall be given to the purchaser immediately after he signs the agreement.

This subclause is based on the Australian legislation and implements in part a recommendation of the Tariff and Development Board as to the disclosure of disbursements. See paragraphs 164–167 of the Board's report. See also Goode and Ziegel, pp. 53 to 60.

Paragraph (e) of subclause (1) implements in part paragraph 220 of the Board's report. The provision *has not* been limited to cases where the total amount required to be paid by instalments exceeds \$4,000.

Paragraph (h) of subclause (1) implements a recommendation of the Board. See paragraphs 221–223 of the Board's report.

Subclause (2) provides that the Minister of Justice may from time to time, by notice in the *Gazette*, prescribe requirements that may be observed, in such cases and subject to such conditions as may be specified in the notice, instead of the requirements of *paragraph (d) or paragraph (e) of subclause (1)* of this clause.

Clause 6 provides for the disclosure of the "true" interest rate in hire purchase agreements. The rate is to be correct within 1 percent and is to be calculated in accordance with tables or methods approved or prescribed by regulations made under the Act. This clause is to come into force on a date to be appointed. The clause will not apply where the cash price of the goods does not exceed \$50 or such larger sum as is from time to time prescribed by the Governor-General by Order in Council. This clause *was not* recommended by the Tariff and Development Board. See paragraphs 168–175 of the Board's report. See also Goode and Ziegel, pp. 56 to 60.

Clause 7 requires every hire purchase agreement (other than one under which the cash price of the goods exceeds \$10,000) to contain a statement concerning rebates for early completion of the agreement. The subclause is related to a recommendation of the Tariff and Development Board. See paragraphs 237–240 of the Board's report.

Subclause (2) provides by way of penalty that if a hire purchase agreement does not contain the required statement the purchaser is to be entitled to double the statutory rebates calculated in accordance with *clause 20*.

Clause 8 is new. It provides for the variation of hire purchase agreements.

Terms and Representations

Clauses 9 to 14 are related to paragraph 111 of the Tariff and Development Board's report and to the recommendations which appear on pages 51 and 52 of that report. No attempt is made in this Bill to implement the recommendation that the "same conditions and warranties be implied by law in respect of cash, credit, and instalment credit transactions whatever their legal form".

Clause 9 is new. It implies in every hire purchase agreement—

- (a) A term (a condition) as to title:
- (b) A term (a condition) as to the freedom of the goods from encumbrances:
- (c) A term (a warranty) as to the enjoyment of quiet possession of the goods.

Clause 10 is new. *Subclause (1)* implies in every hire purchase agreement a term (a condition) that the goods shall be of merchantable quality. However, the condition is not to be implied in the circumstances set out in *paragraphs (a) to (c) of subclause (1)*.

Subclause (2) defines "merchantable quality" for the purposes of the clause. The definition is based on the definition of that term recommended by the Law Commission and the Scottish Law Commission in paragraph 43 of the report of the Law Commission and the Scottish Law Commission entitled "Exemption Clauses in Contracts First Report: Amendments to the Sale of Goods Act 1893 (Law Com. No. 24)".

Clause 11 is new. *Subclause (1)* provides that where the purchaser under any hire purchase agreement, expressly or by implication, makes known to the

vendor or to the dealer or to any servant or agent of the vendor or the dealer, the particular purpose for which the goods are required, there shall be implied in the hire purchase agreement a term (a condition) that the goods are reasonably fit for that purpose, whether or not that is a purpose for which such goods are normally bought. However, this condition will not be implied if the circumstances show that the purchaser does not rely, or that it is unreasonable for him to rely, on the vendor's skill or judgment. See subsection (3) of the proposed new section 14 of the Sale of Goods Act 1893 (U.K.) set out on page 54 of the report of the Law Commission and the Scottish Law Commission entitled "Exemption Clauses in Contracts First Report: Amendments to the Sale of Goods Act 1893 (Law Com. No. 24)".

Subclause (2) provides that where the vendor suffers damage through breach of the term implied by *subclause (1)* of this clause and that damage resulted from the fact that the particular purpose for which the goods were required was made known to a dealer or his agent or servant, the vendor is entitled to be indemnified by the dealer. There will, however, be no right of indemnity if the dealer was authorised by the vendor to state or imply that the goods were reasonably fit for the particular purpose.

Clause 12 is new. *Subclause (1)* provides that in every hire purchase agreement where the goods are disposed of by reference to a sample, there shall be implied in the agreement—

- (a) A term (a condition) that the bulk will correspond with the sample in quality; and
- (b) A term (a condition) that the purchaser will have a reasonable opportunity of comparing the bulk with the sample.

Subclause (2) provides that in every hire purchase agreement where the goods are disposed of by description there shall be implied a term (a condition) that the goods will correspond with the description. If the goods are sold by reference to a sample as well as by description, it shall not be sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

These terms cannot be excluded.

Clause 13 is new. It deals with the damages that a purchaser may recover for breach of a term implied in a hire purchase agreement by this Act. In the case of a person to whom the rights of the vendor have been assigned (otherwise than by operation of law) the damages are, in certain circumstances, limited to an amount not exceeding the amount owing by the purchaser to the vendor under the agreement at the date of the assignment.

Clause 14. Subclause (1) excludes certain terms that would otherwise be implied in hire purchase agreements by the Sale of Goods Act 1908 or by the rules of the common law.

Subclause (2) provides that, except as provided in *subclause (1)*, nothing in the Act is to limit or affect in any way any other enactment or rule of law whereby any term is to be implied in any hire purchase agreement.

Clause 15 is a new provision which deals with the liability of vendors and other persons in respect of statements made by them in the course of negotiations leading to the entering into of a hire purchase agreement. *Subclause (1)* provides—

- (a) That representations, warranties, or statements made by the dealer or any person acting on behalf of the vendor or dealer in the course of negotiations leading to the entering into of a hire purchase agreement shall confer on the purchaser, as against the vendor, subject to *subclause (3)*, the same rights as he would have had if they had been made by the vendor personally:
- (b) That the purchaser shall have against the person who makes the representation, warranty, or statement and any person on whose behalf such person was acting in making it the same rights against them or any of them personally as the purchaser would have had if the purchaser had entered into the hire purchase agreement with the person who made the representation, warranty, or statement or the person on whose behalf that person was acting (as the case may be) as a result of the negotiations.

Subclause (2) of the new section is designed to enable oral representations and warranties made to a purchaser to be taken into consideration.

Subclause (3) limits, in certain circumstances, the damages that a purchaser may recover through the operation of the foregoing provisions of this clause from a person to whom the rights of the vendor have been assigned (otherwise than by operation of law) to an amount not exceeding the amount owing by the purchaser to the vendor at the date of the assignment.

Subclause (4) provides that where a vendor suffers damage through the operation of this section he shall have a right to be indemnified against that damage by the person who made the representation, warranty, or statement and by any person on whose behalf the representation, warranty, or statement was made, where it was made without the express or implied authority of the vendor.

Subclause (5) is designed to ensure that the vendor does not become liable for damages for deceit under this section by reason of any representation, warranty, or statement made by or on behalf of the dealer without the knowledge or the express or implied authority of the vendor.

Statutory Rights of Purchasers

Clause 16 is an expanded version of an existing provision. The clause entitles the purchaser under a hire purchase agreement and his guarantor to obtain from the vendor, but not more frequently than once a month, a copy of the agreement and a statement of the purchaser's financial position under the agreement on payment of the sum of 50c. If the vendor makes default under the clause he commits an offence against the Act and will not be entitled to enforce the agreement until he has served the copy of the agreement and the statement and so remedied his default.

Clause 17 enables a purchaser to assign absolutely his interest under a hire purchase agreement. The consent of the vendor is necessary but this consent may not be unreasonably withheld. This clause implements a recommendation of the Tariff and Development Board. See paragraphs 241 to 243 of the Board's report.

The clause (except *subclause (5)* and *subclause (6)*) is based on the provisions of the Australian legislation. See also Goode and Ziegel, p. 143.

Clause 18 deals with the method and effect of an assignment under *clause 17*.

Clause 19 sets out the purchaser's right to complete a hire purchase agreement early. The clause is not to apply where the cash price of the goods exceeds \$10,000.

Clause 20 provides for rebates for early completion. The clause is not to apply where the cash price of the goods exceeds \$10,000. The rebates allowed are to be not less than the aggregate of the statutory rebates mentioned in the clause. The statutory rebate in respect of the total cost of credit is to be calculated in accordance with the formula set out in *subclause (3)*. This formula is based on the "rule of 78". This clause is related to a recommendation of the Tariff and Development Board. See paragraphs 237-240 of the Board's report. See also Goode and Ziegel, pp. 103-104.

Clause 21 is new. *Subclause (1)* provides that a hire purchase agreement is terminated by the return to the vendor of the goods comprised in the agreement if they are returned by the purchaser for the purpose of terminating the agreement and the vendor agrees to the termination of the agreement.

Subclause (2) is designed to ensure that the purchaser under an agreement so terminated will be in the same position as if the goods had been repossessed by the vendor, and not in a worse position as he could be at present.

Repossessions

Clause 22 requires that, except as provided in *clause 21* of this Bill and subject to an exception where the vendor has reasonable grounds to believe that the goods comprised in the agreement will be destroyed, damaged, disassembled, removed, or concealed contrary to the provisions of the agreement, the vendor may not repossess those goods unless—

- (a) The purchaser is in default under the agreement; and
- (b) The vendor has served on the purchaser a notice specifying the default complained of and, if the default is capable of remedy, requiring the purchaser to remedy the default within a period of not less than 10 days; and
- (c) The purchaser has failed within that period to remedy the default that is capable of being remedied.

Subclause (2) gives the purchaser the right to apply to a Magistrate's Court for relief against the repossession of the goods. This subclause is subject to the safeguards contained in *subclause (3)*.

The clause is related to a recommendation of the Tariff and Development Board. See paragraphs 224-229 of the Board's report. But the clause differs from the Board's recommendation and the corresponding Australian legislation in that it is not limited to a failure to pay instalments. It requires the notice to be given in respect of any default under the agreement which will bring a power to repossess the goods into play.

If the vendor repossesses goods in contravention of the provision he will commit an offence. It will also be an offence to wilfully and forcibly obstruct a vendor or an agent of a vendor who is lawfully repossessing goods.

Clause 23 is designed to ensure that where the purchaser confers on the vendor the right to enter any premises, whether for the purpose of taking possession of the goods or for any other purpose in connection with the goods, the right is not exercised in an unreasonable manner or at an unreasonable time.

Clause 24 sets out the duties of the vendor following repossession. The clause, except *subclauses (2), (4), and (5)*, is based on the corresponding Australian provision.

Clause 25 sets out the purchaser's rights and immunities when goods are repossessed. The clause, except *paragraph (c) of subclause (3)*, is based on the corresponding Australian provision.

Clause 26 sets out the procedure to be adopted by the purchaser if he wishes to recover certain amounts from the vendor after the goods have been repossessed. The clause is based on the corresponding Australian provision.

Clause 27 deals with the manner in which the purchaser may regain possession of the goods. The clause is based on the corresponding Australian provision.

Clause 28 is also based on the Australian legislation. The clause provides that in any legal proceedings in relation to a hire purchase agreement, after the vendor has taken possession of the goods, the Court before which such proceedings are brought may vary or discharge any judgment or order against the purchaser for recovery of money so far as is necessary to give effect to the provisions of *clause 25*.

Guarantors

Clause 29, which contains certain provisions as to guarantors, re-enacts, with one minor amendment, section 7 of the Hire Purchase Agreements Act 1939.

Miscellaneous Provisions

Clause 30, which deals with re-opening of hire purchase transactions, re-enacts, with some modifications, section 8 of the Hire Purchase Agreements Act 1939.

Clause 31 is new. It provides that in any proceedings in any Court in relation to a hire purchase agreement it shall be a question of fact whether any person was the agent of the purchaser and the Court shall not be precluded from inquiring into and determining that question by any provision in the agreement or any other document.

Clause 32: Subclause (1) sets out the stipulations which a vendor may insist on with regard to the insurance of goods comprised in a hire purchase agreement. Any such insurance must be in the names of the vendor and the purchaser.

Paragraph (a) of subclause (2) makes it an offence for the vendor to require any such goods to be insured otherwise than in accordance with *subclause (1)* of this clause.

Paragraph (b) of subclause (2) makes it an offence for a vendor to require a purchaser to insure, or keep insured, goods against risks and subject to terms, conditions, and exceptions that the vendor does not require if he arranges the insurance.

Subclause (3) is designed to ensure that the purchaser receives the benefit of any no-claim rebate allowed by the insurer.

This clause is based on the Australian legislation and *subclauses (1) and (2)* implement recommendations of the Tariff and Development Board. See paragraphs 261-266 of the Board's report.

Clause 33 provides that advertisements for the disposal of goods on hire purchase which states the deposit payable in respect of the goods must state also the cash price of the goods. This clause is related to a recommendation

of the Tariff and Development Board but this clause is, in general, much more limited than the provision recommended by the Board. It also differs from the provision recommended by the Board in that motor vehicles are not excluded from the clause. See paragraphs 244–252 of the Board's report.

Clause 34 is designed to limit the effect of provisions in hire purchase agreements which require the goods comprised in the agreement to be repaired or maintained only by the vendor or any other person or by a person nominated by the vendor or any other person. The clause is related to a recommendation of the Tariff and Development Board. See paragraphs 253–260 of the Board's report.

Clause 35, which deals with liens for work done on goods comprised in a hire purchase agreement, re-enacts section 10 of the Hire Purchase Agreements Act 1939.

Clause 36, which makes it an offence to dispose of goods comprised in a hire purchase agreement, re-enacts, with some modifications, section 11 of the Hire Purchase Agreements Act 1939. The maximum fine for the offence has been increased from \$100 to \$500 but the maximum period of imprisonment which may be imposed remains unchanged at 3 months.

Clause 37 gives the Court the power to extend times prescribed by the Act.

Clause 38, which deals with the service of notices, re-enacts with some modifications section 12 of the Hire Purchase Agreements Act 1939.

Clause 39 defines the jurisdiction of Magistrates' Courts in respect of proceedings under the Act.

Clause 40 prescribes a fine not exceeding \$500 as the general penalty for offences against the Act.

Clause 41: Subclause (1) provides that every offence against the Act or regulations made under the Act is punishable on summary conviction. *Subclause (2)* provides that the period of limitation in respect of any such offence shall be 2 years.

Clause 42 authorises the making of regulations for the purposes of the Act.

Clause 43 provides that the provisions of the Act shall have effect notwithstanding any provision to the contrary in any agreement.

Clause 44 is designed to ensure that the fact that a contract has been entered into in contravention of any of the provisions of this Act or that an act which contravenes any of those provisions has been committed in the course of the performance of any contract shall not make the contract illegal.

Clause 45 makes consequential amendments to the Insolvency Act 1967 and the Chattels Transfer Amendment Act 1937.

Clause 46: Subclause (1) repeals the Hire Purchase Agreements Act 1939. *Subclause (2)* provides that that Act will continue to apply to and in relation to hire purchase agreements entered into before the commencement of the new Act. *Subclause (3)* provides that the new Act shall not apply to and in relation to hire purchase agreements entered into before the commencement of the new Act.

Hon. Mr Riddiford

HIRE PURCHASE

ANALYSIS

Title	
1. Short Title and commencement	
2. Interpretation	
3. Act to bind the Crown	
Formation, Contents, and Variation of Hire Purchase Agreements	
4. Enforcement conditional on compliance with certain requirements	
5. Requirements as to agreements	
6. Disclosure of true interest rate	
7. Statement as to rebates for early completion	
8. Variation of hire purchase agreements	
Terms and Representations	
9. Implied terms as to title	
10. Implied term as to quality	
11. Implied term as to fitness	
12. Disposal of goods by sample or description	
13. Damages	
14. Other implied terms	
15. Liability of vendor and dealer for representations	
Statutory Rights of Purchasers	
16. Purchaser and guarantor to be entitled to copy of agreement and statement of his present position	
17. Absolute assignment of rights under hire purchase agreements	
18. Method and effect of assignment	
19. Purchaser may pay unpaid balance at any time	
20. Statutory rebates	
21. Voluntary return of goods	
	Repossessions
	22. Notice of default to be given to purchaser before goods are repossessed
	23. Exercise of right of entry
	24. Duties of vendor following repossession
	25. Purchaser's rights and immunities when goods repossessed
	26. Purchaser to give notice to vendor
	27. Purchaser may regain possession of goods in certain circumstances
	28. Court may vary existing judgments or orders when goods are repossessed
	Guarantors
	29. Provisions as to guarantors
	Miscellaneous Provisions
	30. Reopening of hire purchase transactions
	31. Agent of purchaser
	32. Insurance
	33. Information to be included in advertisements of goods as available on hire purchase
	34. Repairs
	35. Lien for work done on goods under hire purchase agreement
	36. Fraudulent sale or disposal of goods by purchaser
	37. Power of Court to extend times
	38. Service of notices
	39. Jurisdiction of Magistrates' Courts
	40. General penalty
	41. Offences to be punishable on summary conviction
	42. Regulations
	43. No contracting out
	44. Application of law relating to illegal contracts
	45. Consequential amendments
	46. Repeals and application Schedules

A BILL INTITULED

An Act to reform the law relating to hire purchase

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

5

1. Short Title and commencement—(1) This Act may be cited as the Hire Purchase Act 1970.

(2) This Act shall come into force on the 1st day of April 1971.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Cash price”, in relation to goods comprised in a hire purchase agreement, means the price at which at the time of the signing of the agreement the purchaser might have purchased the goods for cash from the vendor:

“Contract of guarantee”, in relation to a hire purchase agreement, means a deed or contract whereby any person guarantees the performance of the purchaser’s obligations under the hire purchase agreement or indemnifies the vendor against any loss which he may incur in respect of that agreement; but does not include any such deed or contract under which the only obligor is—

(a) The vendor; or

(b) A person who executes the deed or enters into the contract in the course of a business carried on by him;

and “guarantor” shall be construed accordingly:

“Court” means the Supreme Court or a Magistrate’s Court that has jurisdiction under section 39 of this Act:

“Dealer” means a person, not being the purchaser or his agent or the vendor or his servant,—

(a) Who assigns or procures the assignment to the vendor of goods for the purpose of enabling the vendor to enter into a hire purchase agreement in respect of those goods or goods of that kind with the purchaser; or

(b) By whom or on whose behalf the transaction leading to a hire purchase agreement with the vendor was arranged:

“Disposed of” means let, hired, or agreed to be sold:

“Goods” includes all chattels personal other than money or things in action:

5 “Hire purchase agreement” means an agreement whereby goods are let or hired with an option to purchase and an agreement for the purchase of goods by instalment payments (whether the agreement describes the payments as rent or hire or otherwise) under which the person who agrees to purchase the goods is given possession of them before the total amount payable has been paid; but does not include any agreement—

15 (a) Under which the property in the goods comprised in the agreement passes absolutely, to the person who agrees to purchase them, at the time of the agreement or upon or at any time before delivery of the goods; or

(b) Made otherwise than at retail:

20 “Holding company” has the same meaning as in section 158 of the Companies Act 1955:

20 “Purchaser” means the person to whom goods are disposed of under a hire purchase agreement, and, if the rights of that person are assigned or are transferred by operation of law, includes the person for the time being entitled to those rights:

25 “Subsidiary” has the same meaning as in section 158 of the Companies Act 1955:

30 “Total amount payable” means the total amount to be paid or provided whether by way of cash or other consideration by or on behalf of the purchaser under a hire purchase agreement; but does not include amounts payable only as a result of defaults by the purchaser:

35 “Total cost of credit”, in relation to a hire purchase agreement, means the total amount payable less—

(a) The cash price of the goods; and

40 (b) Any amount included in the total amount payable to cover the expenses of delivering the goods or any of them to the order of the purchaser, if that amount is separately specified in the agreement and described as “freight”; and

(c) Any amount included in the total amount payable to cover fees or insurance payable pursuant to the provisions of any enactment, if that amount is separately specified in the agreement; and

(d) Any amount included in the total amount payable for insurance (other than insurance taken out pursuant to the provisions of any enactment) in respect of the goods in the agreement, if that amount is separately specified in the agreement and described as "insurance"; and 5

(e) Any amount included in the total amount payable for maintenance or repair of the goods, if that amount is separately specified in the agreement and described as "maintenance"; and 10

(f) Any amount included in the total amount payable for installation of the goods, if that amount is separately specified in the agreement and described as "installation":

"Vendor" means the person disposing of goods under a hire purchase agreement, and, if the rights of that person are assigned or are transferred by operation of law, includes the person for the time being entitled to those rights. 15

(2) Where, by virtue of two or more agreements, none of which by itself constitutes a hire purchase agreement, there is a transaction which is in substance or effect a hire purchase agreement, the agreements shall be treated for the purposes of this Act as a single agreement made at the time when the last of those agreements was made. 20 25

Cf. 1939, No. 14, s. 2 (1); Hire-Purchase Act, 1960-1965, ss. 2, 3 (2) (e) (New South Wales); Hire-Purchase Act 1965, ss. 1 (2), 58 (1) (U.K.); S.R. 1957/170, reg. 2 (2)

3. Act to bind the Crown—This Act shall bind the Crown. 30

Formation, Contents, and Variation of Hire Purchase Agreements

4. Enforcement conditional on compliance with certain requirements—(1) Where goods are disposed of under a hire purchase agreement and the requirements of section 5 of this Act are not complied with, then (subject to the exercise of any power of the Court under subsection (3) of this section)— 35

(a) The vendor shall not be entitled—

(i) To obtain judgment against the purchaser or the guarantor for any amount payable under the agreement; or 40

- (ii) To enforce any contract of guarantee relating to that agreement; or
 - (iii) To enforce any right to recover the goods from the purchaser; and
- 5 (b) The holder of any security given by the purchaser in respect of money payable under the agreement, or given by a guarantor in respect of money payable under a contract of guarantee relating to the agreement, shall not be entitled to enforce that
- 10 security against the purchaser or against the guarantor, as the case may be.
- (2) Every vendor who acts in contravention of subparagraph (iii) of paragraph (a) of subsection (1) of this section commits an offence against this Act; and in any such case
- 15 and whether the vendor is prosecuted for that offence or not,—
- (a) The liability of the purchaser for the total cost of credit shall be extinguished; and
 - (b) The vendor shall repay any money already paid to
- 20 him by any person on account of or in satisfaction of the total cost of credit for which the purchaser was liable under the agreement.
- (3) If in any proceedings before any Court or on application made for the purpose the Court is satisfied that it would be just and equitable, having regard to any prejudice caused
- 25 to the purchaser or to the guarantor,—
- (a) To dispense with any of the requirements specified in section 5 or section 8 of this Act; or
 - (b) To authorise the vendor to recover the goods from the
- 30 purchaser,—
- the Court may, notwithstanding that there has been a failure to comply with any of those requirements, dispense with that requirement for the purposes of those proceedings or any specified proceedings, or grant that authority, as the case may require, subject to such conditions as it thinks fit to
- 35 impose.

Cf. Hire-Purchase Act 1965, ss. 5, 10 (U.K.)

- 5. Requirements as to agreements—**(1) The requirements of this section, in relation to a hire purchase agreement, are that—
- 40 (a) The agreement shall be in writing; and
 - (b) Where the purchaser is an individual the agreement shall be signed personally by him and where the purchaser is a corporation the agreement shall be under the seal of the corporation or signed on behalf

- of the corporation by a person acting under its authority, express or implied; and
- (c) The agreement shall contain a description of the goods to which the agreement relates; and
- (d) The agreement shall specify— 5
- (i) The number of instalments to be paid under the agreement by the purchaser; and
 - (ii) The amount of each of those instalments; and
 - (iii) The person to whom and the place at which the payments of those instalments are to be made; 10 and
 - (iv) The date, or the mode of determining the date, on which each instalment is payable; and
 - (v) The full name and address of the vendor; and
- (e) The agreement shall set out on its first page the 15 financial details of the transaction in a form which is substantially the same as the form set out in Part I of the First Schedule to this Act; and
- (f) The agreement shall have endorsed on it a statement in the form set out in Part II of the First Schedule 20 to this Act; and
- (g) At the time when the agreement is executed by the purchaser in accordance with paragraph (b) of this subsection it shall comply in every respect with the provisions of paragraph (a) and of paragraphs (c) 25 to (f) of this subsection; and
- (h) A copy of the agreement shall be given to the purchaser immediately after he executes the agreement, whether or not it is at that time a binding contract.
- (2) Notwithstanding the provisions of subsection (1) of 30 this section and of section 6 of this Act, but without limiting subsection (2) of that section, the Minister of Justice may from time to time, by notice in the *Gazette*, prescribe requirements that may be observed, in such cases and subject to such conditions as may be specified in the notice, instead of the 35 requirements of paragraph (d) or paragraph (e) (as modified by section 6 of this Act) of subsection (1) of this section.

Cf. Hire-Purchase Act, 1960–1965, ss. 3 (2), 4 (New South Wales)

6. Disclosure of true interest rate—(1) The financial details 40 mentioned in paragraph (e) of section 5 of this Act shall show the percentage (correct to within 1 percent) that

the total cost of credit bears to the amount financed expressed as an annual rate applied to the unpaid balance of the obligation from time to time, calculated in accordance with tables or methods approved or prescribed by regulations made under this Act.

(2) It shall not be necessary to show the percentage mentioned in subsection (1) of this section where the cash price of the goods does not exceed \$50 or such larger sum as is from time to time prescribed by the Governor-General by Order in Council for the purposes of this subsection.

(3) This section shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Order in Council.

Cf. Consumer Protection Act 1966, s. 21 (Ontario)

15 **7. Statement as to rebates for early completion—**(1) Except where the purchaser is not entitled to statutory rebates by reason of paragraph (b) of subsection (5) of section 20 of this Act, every hire purchase agreement shall contain one of the following statements, namely—

20 “Early completion of this agreement will entitle the purchaser to rebates greater than the statutory rebates, as follows: [*There shall follow a statement of the particulars.*.]”

25 “Early completion of this agreement will entitle the purchaser to statutory rebates in accordance with section 20 of the Hire Purchase Act 1970.”

(2) Early completion of any hire purchase agreement which does not meet the requirements of subsection (1) of this section will entitle the purchaser to double the statutory rebates calculated in accordance with section 20 of this Act.

30 **8. Variation of hire purchase agreements—**(1) The parties to any hire purchase agreement may agree from time to time to vary that agreement but, subject to subsection (3) of section 4 of this Act and to subsections (2) and (3) of this section, no such agreement and no hire purchase agreement
35 that purports to be varied by any such variation shall be enforceable unless a note or memorandum in writing of the variation is executed by the purchaser in accordance with paragraph (b) of section 5 of this Act, and unless a copy thereof is given to the purchaser immediately after he

executes it and, subject as aforesaid, no such variation or hire purchase agreement and no security given by the purchaser or by any guarantor in respect of any such variation or hire purchase agreement shall be enforceable if it is proved that the variation was not executed by the purchaser in accordance with the said paragraph (b) before the variation was implemented or before the security was given, as the case may be. 5

(2) The vendor may from time to time by notice in writing served on the purchaser change the person to whom or the place at which the payments of the instalments due under the agreement are to be made. 10

(3) Where the purchaser has made default in the payment of any money under a hire purchase agreement it shall not be necessary to comply with subsection (1) of this section in respect of any variation whereby— 15

(a) The lender agrees to forbear from exercising all or any of his remedies in respect of the purchaser's default for a specified period or until a demand is made for payment or so long as the purchaser continues to make specified payments; and 20

(b) The purchaser agrees to observe the conditions of the hire purchase agreement as varied by the variation— if neither the amount of money owing nor the amount of any of the instalments is increased; and any such variation shall be valid and enforceable. 25

(4) The note or memorandum given for the purposes of subsection (1) of this section shall contain all the terms of the variation and shall, in particular, show:

(a) The date on which the variation is made; and
 (b) The amount of money then owing under the hire purchase agreement, whether or not it is increased or reduced by the variation; and 30

(c) If the date of payment of any instalment is changed or if the amount of any of the instalments is increased or reduced by the variation, the particulars concerning instalments mentioned in subparagraphs (i) to (iv) of paragraph (d) of section 5 of this Act. 35

Terms and Representations

9. Implied terms as to title—In every hire purchase agreement there shall be implied— 40

(a) A term (a condition) that the vendor will have the right to sell the goods at the time when the property is to pass:

- 5 (b) A term (a condition) that the goods will be free from any charge or encumbrance in favour of any third party (other than a charge or encumbrance disclosed to the purchaser in writing by the vendor or the dealer before or at the time the agreement is entered into or a charge or encumbrance created by or with the express consent of the purchaser) at the time when the property is to pass:
- 10 (c) A term (a warranty) that the purchaser shall enjoy quiet possession of the goods except so far as it may be disturbed by the owner of any charge or encumbrance so disclosed or known.

Cf. Hire-Purchase Act, 1960-1965, s. 5 (1) (New South Wales)

- 15 10. Implied term as to quality—(1) There shall also be implied in every hire purchase agreement a term (a condition) that at the time when the goods are delivered to the purchaser they shall be, or where they were so delivered before the agreement was entered into they were at the time
- 20 of delivery, of merchantable quality; but such a term shall not be implied—

- (a) As regards defects which are specified in the agreement if the vendor proves that the defects were specifically drawn to the purchaser's attention and accepted by him before the agreement was entered into; or
- 25 (b) If the purchaser examined the goods or a sample of them before the agreement was entered into, as regards defects which the examination ought to have revealed; or
- 30 (c) If the goods are secondhand goods and—
- (i) The agreement contains a conspicuous statement signed by the purchaser in the following terms "I understand that the goods to which this agreement relates are secondhand goods and that [*Insert name of vendor*] does not promise that they are fit for use or for any particular purpose"; and
- 35 (ii) The vendor proves that the statement was signed by the purchaser before the purchaser signed the agreement.

- 40 (2) For the purposes of this section goods of any kind are of merchantable quality if they are as fit for the purpose or purposes for which goods of that kind are commonly bought

as it is reasonable to expect having regard to their price, any description applied to them, and all the other circumstances.

Cf. Hire-Purchase Act of 1959, s. 5 (2) (Queensland);
Hire-Purchase Act 1965, ss. 17 (2)–(3), 18 (1)–(3)
(U.K.)

5

11. Implied term as to fitness—(1) Where the purchaser under any hire purchase agreement, expressly or by implication, makes known to the vendor or to the dealer or to any servant or agent of the vendor or the dealer the particular purpose for which the goods are required, there shall be implied in the hire purchase agreement a term (a condition) that at the time when the goods are delivered to the purchaser, or where they were so delivered before the agreement was entered into they were at the time of delivery, reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly bought, except where—

(a) Paragraph (c) of subsection (1) of section 10 of this Act is complied with; or

(b) The circumstances otherwise show that the purchaser does not rely, or that it is unreasonable for him to rely, on the vendor's skill or judgment.

(2) Without prejudice to any other rights and remedies to which a vendor may be entitled, where the purchaser has made known expressly or by implication to the dealer or to any agent or servant of the dealer the particular purpose for which the goods are required, the vendor is entitled to be indemnified by the dealer against any damage suffered by the vendor through the operation of the provisions of subsection (1) of this section unless the dealer was authorised by the vendor to state or imply that the goods were reasonably fit for the particular purpose.

Cf. Hire-Purchase Act of 1959, s. 5 (3)–(4) (Queensland); Hire-Purchase Act 1965, ss. 17 (4), 18 (4)
(U.K.)

35

12. Disposal of goods by sample or description—(1) In every hire purchase agreement where the goods are disposed of by reference to a sample, there shall be implied in the agreement—

(a) A term (a condition) that the bulk will correspond with the sample in quality; and

40

(b) A term (a condition) that the purchaser will have a reasonable opportunity of comparing the bulk with the sample.

5 (2) In every hire purchase agreement where the goods are disposed of by description there shall be implied in the agreement a term (a condition) that the goods will correspond with the description; and if the goods are disposed of or agreed to be disposed of by reference to a sample as well as by description, it shall not be sufficient that the bulk of the
10 goods corresponds with the sample if the goods do not also correspond with the description.

Cf. Hire-Purchase Act 1965, s. 19 (U.K.)

13. Damages—The damages that a purchaser may recover for breach of a term implied in a hire purchase agreement
15 by this Act shall—

(a) Be assessed, in the absence of evidence to the contrary, on the basis that the purchaser will complete the purchase of the goods or would have completed that purchase if the goods had complied with the term;
20 and

(b) In the case of a person to whom the rights of the vendor have been assigned (otherwise than by operation of law), be limited to an amount not exceeding the amount owing by the purchaser to the vendor under the hire purchase agreement at the date of the
25 assignment.

14. Other implied terms—(1) Sections 14, 15, and 17 and paragraphs (a) and (b) of section 16 of the Sale of Goods Act 1908 shall not apply to hire purchase agreements and
30 no terms corresponding or similar to the terms implied in contracts of sale by those sections and paragraphs shall be implied in hire purchase agreements by the rules of the common law.

(2) Except as provided in subsection (1) of this section,
35 nothing in this Act shall limit or affect in any way any other enactment or rule of law whereby any term is to be implied in any hire purchase agreement.

15. Liability of vendor and dealer for representations—
40 (1) Every representation, warranty, or statement made to the purchaser or prospective purchaser, whether orally or in writing, by the dealer or any person acting on behalf of the vendor or dealer in connection with or in the course of

negotiations leading to the entering into of a hire purchase agreement at any time after the commencement of this Act shall confer on the purchaser—

(a) As against the vendor, subject to subsection (3) of this section, the same rights as the purchaser would have had if the representation, warranty, or statement had been made by the vendor personally: 5

(b) As against the person who made the representation, warranty, or statement and any person on whose behalf such person was acting in making it, the same rights against them or any of them personally as the purchaser would have had if the purchaser had entered into the hire purchase agreement with the person who made the representation, warranty, or statement or the person on whose behalf that person was acting (as the case may be) as a result of the negotiations. 10 15

(2) In any proceedings it shall be a question of fact whether any representation, warranty, or statement was made to the purchaser or prospective purchaser, whether orally or in writing, by the vendor or dealer or any person acting on behalf of the vendor or dealer in connection with or in the course of negotiations leading to the entering into of a hire purchase agreement and whether, if it was made, it constituted a term of the agreement or was relied on by the purchaser; and the Court shall not be precluded from inquiring into and determining those questions by any provision in the agreement or in any other document unless that provision is conspicuous and the vendor proves that the provision was signed by the purchaser before he signed the agreement. 20 25 30

(3) The damages that a purchaser may recover by reason of any representation, warranty, or statement through the operation of the foregoing provisions of this section from a person to whom the rights of the vendor have been assigned (otherwise than by operation of law) shall be limited to an amount not exceeding the amount owing by the purchaser to the vendor under the hire purchase agreement at the date of the assignment. 35

(4) Without prejudice to any other rights or remedies to which a vendor may be entitled, a vendor shall be entitled, where the representation, warranty, or statement was made without his express or implied authority, to be indemnified by the person who made the representation, warranty, or statement, and by any person on whose behalf the representation, warranty, or statement was made, against any damage 40 45

suffered by the vendor through the operation of the foregoing provisions of this section.

(5) Without limiting any other right conferred on the purchaser by this section, no action for damages for deceit shall lie under this section against the vendor in respect of any representation, warranty, or statement made by or on behalf of the dealer without the knowledge or the express or implied authority of the vendor or of a subsidiary or the holding company or a subsidiary of the holding company of the vendor; but the burden of proving that any such representation, warranty, or statement was so made without such knowledge or authority shall lie on the vendor.

Cf. Hire-purchase Act of 1959, s. 6 (Queensland)

Statutory Rights of Purchasers

15 **16. Purchaser and guarantor to be entitled to copy of agreement and statement of his present position—**(1) At any time before the final payment has been made under a hire purchase agreement the vendor shall, within 14 days after he has received a request in writing from the purchaser or any

20 guarantor, and the purchaser or guarantor has tendered to him the sum of 50 cents for expenses, serve on the purchaser or guarantor, as the case may require, a copy of the agreement, together with a statement in writing signed by the vendor or his agent showing—

- 25 (a) The amount paid to the vendor by or on behalf of the purchaser; and
- (b) The amount which has become due under the agreement but remains unpaid; and
- 30 (c) The amount which is to become payable under the agreement;

but a vendor need not comply with such a request if he has served the person making the request with a copy of the agreement and a statement complying with this subsection within the month immediately preceding the receipt of the

35 request.

(2) If the vendor makes default in complying with subsection (1) of this section he may remedy his default by serving on the person who made the request a copy of the agreement and a statement complying with subsection (1)

40 of this section, but until the default is remedied—

- (a) The vendor shall not be entitled to enforce the agreement or any contract of guarantee relating to that agreement:

- (b) The vendor shall not be entitled to enforce any right to recover the goods from the purchaser:
- (c) No security given by the purchaser in respect of money payable under the agreement or given by a guarantor in respect of money payable under a contract of guarantee relating to the agreement, shall be enforceable against the purchaser, or against the guarantor, as the case may be, by the holder of such a security. 5
- (3) Every vendor who— 10
- (a) Makes default in complying with subsection (1) of this section; or
- (b) Acts in contravention of any of the provisions of paragraphs (a) to (c) of subsection (2) of this section— 15
- commits an offence against this Act.

Cf. 1939, No. 14, s. 9; Hire-Purchase Act, 1960–1965, s. 7 (New South Wales); Hire-Purchase Act 1965, s. 21 (U.K.)

- 17. Absolute assignment of rights under hire purchase agreements—** 20
- (1) The right, title, and interest of a purchaser under a hire purchase agreement may be assigned absolutely with the consent of the vendor or, if his consent is unreasonably withheld, with the leave of the Court.
- (2) Except as otherwise provided in this section, no payment or other consideration shall be required by a vendor for his consent to such an assignment, and where a vendor requires any such payment or other consideration for his consent, that consent shall be deemed to be unreasonably withheld. 25
- (3) As a condition of granting his consent the vendor may stipulate that all defaults under the hire purchase agreement shall be made good. 30
- (4) The vendor may require the purchaser and the assignee to pay a reasonable sum in respect of any legal or other expenses incurred by the vendor in connection with any such assignment. 35
- (5) For the purposes of this section, consent shall be deemed to be unreasonably withheld if it is withheld by reason only of the colour, race, or ethnic or national origins of any person. 40

(6) No assignment or other action which is authorised by this section shall constitute a breach of the terms of the agreement or an event entitling the vendor to take possession of the goods.

5 (7) The right, title, and interest of a purchaser under a hire purchase agreement shall be capable of passing by operation of law to the personal representative of the purchaser and if the purchaser is a body corporate the liquidator may exercise the same rights under the agreement
10 as the body corporate, but nothing in this subsection shall relieve any such personal representative or liquidator from compliance with the provisions of the agreement.

(8) Nothing in this section shall limit the rights of parties to a hire purchase agreement to make their own bargain with
15 regard to assignments (other than assignments of the type described in subsection (1) of this section) and, except as provided in subsection (7) of this section, nothing in this section shall apply to the passing by operation of law of the right, title, or interest of any person under a hire purchase
20 agreement.

Cf. Hire-Purchase Act, 1960-1965, s. 9 (New South Wales); 1952, No. 51, s. 110 (1), (1A); 1965, No. 16, s. 3

18. Method and effect of assignment—(1) Every assign-
25 ment of the type described in subsection (1) of section 17 of this Act shall be in writing and shall specify the full name, address, and occupation of the assignee.

(2) A copy of the assignment shall be served on the vendor within 7 days after the date of its execution by the assignor.

30 (3) Upon the absolute assignment of the agreement the assignee shall, unless it is otherwise agreed with the vendor in writing, become personally liable to pay the instalments remaining unpaid and to perform and observe all other terms of the hire purchase agreement during the residue of the
35 term thereof and to indemnify the purchaser in respect of such liabilities.

(4) Notwithstanding the provisions of subsection (3) of this section, the purchaser and any guarantor (including any person mentioned in paragraph (a) or paragraph (b) of the definition of the term "contract of guarantee" in subsection (1) of section 2 of this Act) shall, unless it is otherwise agreed in writing with the vendor, continue to be personally liable under the hire purchase agreement or other instrument of guarantee or indemnity, as the case may be.
40

19. Purchaser may pay unpaid balance at any time—

(1) The purchaser under a hire purchase agreement may complete the purchase of the goods by paying or tendering to the vendor the net balance due to the vendor under the agreement. 5

(2) The right conferred on the purchaser by this section may be exercised by him at any time during the continuance of the agreement:

Provided that where the vendor has taken possession of the goods those rights shall be exercised before or within 10 21 days after the vendor has served a notice in the form set out in the Third Schedule to this Act on the purchaser; and the net balance due shall include—

- (a) The reasonable costs incurred by the vendor of and incidental to his taking possession of the goods; and 15
- (b) Any amount properly expended by the vendor on the storage, repair, and maintenance of the goods.

(3) For the purposes of this section the net balance due is the amount for the time being payable in terms of the hire purchase agreement to enable the purchaser to acquire title 20 to the goods after taking into account, subject to subsection (2) of section 7 of this Act, the rebates allowed by the agreement for early completion or the statutory rebates calculated in accordance with section 20 of this Act, whichever in the aggregate are the greater. 25

(4) This section shall not apply in respect of any hire purchase agreement under which the cash price of the goods exceeds \$10,000 or such larger sum as may from time to time be specified by the Governor-General, by Order in Council, 30 for the purposes of this section.

Cf. Hire-Purchase Act, 1960–1965, s. 11 (New South Wales)

20. Statutory rebates—(1) The statutory rebates are—

- (a) A rebate of the total cost of credit;
- (b) A rebate for insurance if the purchaser requires any 35 contract for insurance in respect of which he has been debited with the premiums under the agreement to be terminated;
- (c) A rebate for maintenance or repairs if the purchaser requires any contract for maintenance or repairs in 40 respect of which he has been charged under the agreement to be terminated.

(2) For the purposes of this section, a rebate of the total cost of credit,—

- 5 (a) Means 90 percent of the amount derived by multiplying the total cost of credit by the sum of all the whole numbers from one to the number which is the number of complete months in the period of the agreement still to go (both inclusive) and by dividing the product so obtained by the sum of all the whole numbers from one to the number which is the total number of complete months in the period of the agreement (both inclusive); or
- 10 (b) Where it is agreed in a hire purchase agreement that the total cost of credit has been calculated on a simple interest basis at a rate specified in the agreement on the amount (not including the total cost of credit) outstanding from month to month, means 90 percent of the amount of interest attributable to the period of complete months still to go under the agreement.

20 (3) For the purposes of this section, a rebate for insurance means the sum of—

- (a) The total amount of premium paid in respect of any annual period not yet commenced; and
- 25 (b) The amount of any rebate allowed by the insurer on any premium for insurance in respect of the current annual period.

(4) For the purposes of this section a rebate for maintenance or repairs means the amount derived by multiplying the amount charged for maintenance or repairs by the number of complete months in the period of the agreement still to go and dividing the product so obtained by the number of complete months in the period of the agreement.

30 (5) The purchaser shall not be entitled to statutory rebates if—

- 35 (a) The aggregate amount of those rebates would be less than \$1; or
- (b) The cash price of the goods comprised in the agreement exceeds \$10,000 or such larger sum as may from time to time be specified by the Governor-General, by Order in Council, for the purposes of this paragraph.

40 Cf. Hire-Purchase Act 1960–1965, s. 2 (1) (New South Wales)

21. Voluntary return of goods—(1) A hire purchase agreement shall be terminated by the return to the vendor of the goods comprised in the agreement if they are returned by the purchaser for the purpose of terminating the agreement and the vendor agrees to the termination of the agreement. 5

(2) Where a hire purchase agreement is terminated pursuant to this section—

(a) The purchaser shall have the same rights, privileges, and liabilities (other than the rights conferred by section 27 of this Act) as he would have had if the goods had been repossessed by the vendor; and 10

(b) The vendor shall be entitled to recover from the purchaser—

(i) The amount (if any) required to be paid in such circumstances under the agreement; or 15

(ii) The amount (if any) which the vendor would have been entitled to recover if he had taken possession of the goods at the date of termination of the agreement—

whichever is the less. 20

Cf. Hire-Purchase Act, 1960–1965, s. 12 (New South Wales)

Repossessions

22. Notice of default to be given to purchaser before goods are repossessed—(1) Subject to subsection (4) of this section and except as provided in section 21 of this Act, a vendor shall not exercise any power of taking possession of goods comprised in a hire purchase agreement, whether pursuant to the agreement or his title, unless— 25

(a) The purchaser is in default under the agreement; and 30

(b) The vendor has served on the purchaser a notice in writing in the form set out in the Second Schedule to this Act specifying the default complained of and, if the default is capable of remedy, requiring the purchaser to remedy the default within a period 35 to be specified in the notice (being a period of not less than 10 days after the service of the notice on the purchaser); and

(c) The purchaser has failed within the period specified in the notice to remedy the default that is capable of 40 being remedied.

(2) Where a vendor has served a notice under this section or where a vendor has taken possession of the goods comprised in a hire purchase agreement in contravention of the provisions of this section, the purchaser may apply to a
5 Magistrate's Court for relief; and the Court, having regard to—

- (a) The conduct of the parties; and
- (b) The nature of the purchaser's default; and
- (c) Such other matters as it thinks proper—

10 may grant such relief as is reasonable, whether or not the granting of relief involves a variation of the terms of the agreement.

(3) The Court may grant relief on such terms, if any, as to costs, expenses, damages, compensation, penalty, or
15 otherwise as the Court in the circumstances of each case thinks fit:

Provided that where the Court determines that any application under subsection (2) of this section is vexatious in that it has been made without any reasonable ground, it
20 shall order—

- (a) That the purchaser pay to the vendor his full costs (including reasonable costs incurred between solicitor and client), fees, and other reasonable expenses incurred in connection with the application; and
- 25 (b) That subsection (3) of section 24 and paragraph (a) of subsection (1) of section 25 of this Act shall not apply in respect of the goods.

(4) A vendor shall not be required to comply with subsection (1) of this section if he has reasonable grounds to
30 believe that the goods comprised in the hire purchase agreement will be destroyed, damaged, disassembled, removed, or concealed contrary to the provisions of the agreement; but the onus of proving the existence of those grounds shall lie upon the vendor.

35 (5) Every vendor who acts in contravention of the provisions of subsection (1) of this section commits an offence against this Act.

(6) Every person who wilfully and forcibly obstructs or resists a vendor or any agent of a vendor who is lawfully
40 exercising any power of taking possession of goods comprised in a hire purchase agreement commits an offence against this Act.

Cf. Hire-Purchase Act, 1960-1965, s. 13 (1)-(2) (New South Wales)

23. Exercise of right of entry—(1) Where the purchaser confers on the vendor or the agent or servant of the vendor the right to enter any premises, whether for the purpose of taking possession of the goods comprised in the agreement or for any other purpose in connection with those goods, the vendor commits an offence against this Act if the manner or time of the exercise of the right is unreasonable, irrespective of the words used to confer the right. 5

(2) No prosecution for an offence against subsection (1) of this section shall be commenced except with the leave of the Attorney-General. 10

Cf. Hire-Purchase Act, 1960–1965, s. 36 (1) (g) (New South Wales)

24. Duties of vendor following repossession—(1) Within 21 days of the vendor having taken possession of goods which were comprised in a hire purchase agreement he shall serve on the purchaser and every guarantor of the purchaser a notice in writing in the form set out in the Third Schedule to this Act. 15

(2) If the notice mentioned in subsection (1) of this section is not served as required by that subsection: 20

(a) The costs of taking possession of the goods shall be borne by the vendor and he shall not be entitled to recover those costs from the purchaser or the guarantor; and 25

(b) The purchaser may exercise the rights conferred on him by paragraph (a) of subsection (1) of section 25 of this Act at any time before the vendor disposes of the goods.

(3) Except as provided in any order made pursuant to the proviso to subsection (3) of section 22 of this Act, where a vendor has taken possession of any goods he shall not, without the consent in writing of the purchaser obtained after the taking of possession of the goods, sell or dispose of the goods or part with possession of the goods until after the expiration of 21 days from the date of service on the purchaser of a notice in the form set out in the Third Schedule to this Act or, if notice under subparagraph (i) of paragraph (a) of subsection (1) of section 25 of this Act has been given, until the time of payment or tender pursuant to that notice has expired, whichever is the later. 30
35
40

- (4) If the vendor acts in contravention of subsection (3) of this section—
- (a) The liability of the purchaser for the total cost of credit shall be extinguished; and
- 5 (b) The vendor shall repay any money already paid to him by any person on account of or in satisfaction of the total cost of credit for which the purchaser was liable under the agreement.
- (5) Subject to subsection (3) of this section, if the purchaser does not give a notice under paragraph (a) of subsection (1) of section 25 of this Act or if, after such a notice is given, the purchaser does not comply with section 27 of this Act or the person introduced by the purchaser does not complete the purchase of the goods, the vendor shall, after
- 10 the expiration of the relevant periods of time mentioned in those sections, but before the expiration of the period of 3 months that commenced with the day when the vendor took possession of the goods, sell the goods using all reasonable efforts to obtain the best price.
- 15 Cf. 1939, No. 14, ss. 5, 6 (1); Hire-Purchase Act, 1960-1965, ss. 13 (3), (5), 14 (New South Wales)
- 20

25. Purchaser's rights and immunities when goods repossessed—(1) If the vendor takes possession of any goods comprised in a hire purchase agreement—

- 25 (a) The purchaser may, before or within 21 days of the service on him of a notice in the form set out in the Third Schedule to this Act, by giving to the vendor a notice in writing signed by the purchaser or his agent—
- 30 (i) Require the vendor to redeliver to or to the order of the purchaser (subject to compliance by the purchaser with the provisions of section 27 of this Act) the goods which have been repossessed; or
- 35 (ii) Require the vendor to sell the goods to any person introduced by the purchaser who is prepared to purchase the goods for cash at a price not less than the estimated value of the goods set out in the notice in the form set out in the Third Schedule to this Act served upon the purchaser:

- (b) The purchaser may, subject to section 26 of this Act, recover from the vendor—
- (i) If the value of the goods at the time of the vendor so taking possession thereof is less than the net amount payable but the total of that value and the amount paid or provided, whether by cash or other consideration, by or on behalf of the purchaser under the agreement exceeds the net amount payable, the difference between that total and the net amount payable; or
- (ii) If the value of the goods at the time of the vendor so taking possession thereof is equal to or greater than the net amount payable, the total of that value and the amount paid or provided, whether by cash or other consideration, by or on behalf of the vendor under the agreement, less the net amount payable:
- (c) The vendor shall not be entitled to recover any sum (whether under a judgment or order or otherwise) which would together with—
- (i) The value of the goods at the time of the vendor so taking possession thereof; and
- (ii) The amount paid or provided, whether by cash or other consideration, by or on behalf of the purchaser under the agreement— amount to more than the net amount payable in respect of the goods.
- (2) For the purposes of this section the net amount payable shall be the total amount payable less, subject to subsection (5) of section 20 of this Act, the statutory rebates calculated in accordance with that section.
- (3) For the purposes of this section the value of the goods at the time of the vendor taking possession thereof shall be—
- (a) Subject to paragraph (b) and to paragraph (c) of this subsection, the best price which could be reasonably obtained by the vendor after he took possession of the goods having regard to the provisions of paragraph (a) of subsection (1) of this section and of section 24 of this Act:
- (b) If the purchaser has introduced a person who has purchased the goods for cash, the value of the goods at the time of the vendor taking possession shall be the amount paid by that person:

- (c) Where subsection (5) of section 24 of this Act applies and the vendor does not sell the goods before the expiration of the period of 3 months mentioned in that subsection, the value of the goods at the time of the vendor taking possession shall be deemed to be not less than the estimated value of the goods set out in the notice in the form set out in the Third Schedule to this Act served upon the purchaser,—
- 5 less, in all three cases,—
- 10 (i) Subject to paragraph (a) of subsection (2) of section 24 of this Act, the reasonable costs incurred by the vendor of and incidental to his taking possession of the goods; and
- 15 (ii) Any amount properly expended by the vendor on the storage, repair, or maintenance of the goods; and
- (iii) Whether or not the goods have been subsequently sold or disposed of by the vendor, the reasonable expenses of selling or disposing of the goods.
- 20 (4) Where the vendor has sold the goods of which he has taken possession, the onus of proving that the price obtained by him was the best price which could be reasonably obtained by him after he took possession of the goods having regard to the provisions of paragraph (a) of subsection (1) of this section and of section 24 of this Act shall be on the vendor.
- 25 Cf. 1939, No. 14, ss. 3 (1), 4, 6 (2); Hire-Purchase Act, 1960–1965, s. 15 (1)–(3) (New South Wales)

- 26. Purchaser to give notice to vendor—**(1) Except in a case where the vendor has failed to give to the purchaser a notice as required by subsection (1) of section 24 of this Act,
- 30 no amount shall be recoverable by the purchaser under paragraph (b) of subsection (1) of section 25 of this Act unless—
- (a) The purchaser, within 21 days after the vendor has given such a notice, serves on the vendor a notice in writing—
- 35 (i) Setting out the amount claimed under the provisions of that paragraph and the amount which is claimed by the purchaser to be the value of the goods at the time of the vendor taking possession thereof; and
- 40 (ii) Signed by the purchaser or his solicitor or agent; and

(b) Proceedings for the recovery of the amount so claimed under the provisions of that paragraph are commenced not earlier than 7 days and, except where the goods have been sold at the request of the purchaser to a person introduced by the purchaser, not later than 3 months after the giving by the purchaser to the vendor of the notice referred to in paragraph (a) of this subsection. 5

(2) If, before any such proceedings are commenced by the purchaser, the vendor serves an offer in writing on the purchaser to pay an amount in satisfaction of the claim by the purchaser under paragraph (b) of subsection (1) of section 25 of this Act, the vendor in any such proceedings shall be entitled to pay into court the amount so offered and, upon so doing, shall be entitled to the same rights as if that amount had been tendered to the purchaser before the proceedings were commenced: 10 15

Provided that no such right shall be available to the vendor in any proceedings by the purchaser to recover the amount so offered or any lesser amount if the purchaser, before commencing the proceedings, notifies the vendor in writing of the acceptance by the purchaser of the amount so offered. 20

Cf. 1939, No. 14, s. 3 (2)-(3); Hire-Purchase Act, 1960-1965, s. 15 (4)-(5) (New South Wales) 25

27. Purchaser may regain possession of goods in certain circumstances—(1) If, within 7 days after giving notice pursuant to subparagraph (i) of paragraph (a) of subsection (1) of section 25 of this Act, the purchaser—

(a) Pays or tenders to the vendor any amount due by the purchaser under the hire purchase agreement in respect of the period of hiring up to the date of such payment or tender (and for the purposes of this paragraph the hiring shall be deemed to have continued up to such date); and 30 35

(b) Remedies any breach of the agreement or, where he is unable to remedy the breach by reason of the fact that the vendor has taken possession of the goods, pays or tenders to the vendor the costs and expenses reasonably and actually incurred by the vendor in doing any act, matter, or thing necessary to remedy that breach; and 40

- (c) Pays or tenders to the vendor the reasonable costs and expenses of the vendor of and incidental to his taking possession of the goods and of his returning them to the order of the purchaser—
- 5 the vendor shall forthwith return the goods to the purchaser and, subject to subsection (2) of this section, the goods shall be held and received by the purchaser pursuant to the terms of the hire purchase agreement as if the breach had not occurred and the vendor had not taken possession thereof.
- 10 (2) Where the goods are returned to the purchaser pursuant to subsection (1) of this section and any breach has not been remedied, the vendor shall not have any right arising out of that breach to take possession of the goods unless—
- 15 (a) By notice in writing served on the purchaser at the time of the return of the goods he specifies the breach and requires it to be remedied; and
- (b) The purchaser fails to remedy the breach within a period to be specified in the notice (being a period of not less than 14 days after the service of the
- 20 notice on the purchaser).

Cf. 1939, No. 14, s. 6 (2)–(4); Hire-Purchase Act, 1960–1965, s. 16 (New South Wales)

- 28. Court may vary existing judgments or orders when goods are repossessed**—In any legal proceedings in relation
- 25 to a hire purchase agreement, after the vendor has taken possession of the goods, the Court before which such proceedings are brought may vary or discharge any judgment or order of any Court (whether a Magistrate's Court or not) against the purchaser for recovery of money so far as is
- 30 necessary to give effect to the provisions of section 25 of this Act.

Cf. Hire-Purchase Act, 1960–1965, s. 17 (New South Wales)

Guarantors

- 35 **29. Provisions as to guarantors**—(1) Except as provided in this Act, a guarantor shall not by reason of the operation of this Act be discharged from liability under his guarantee.
- (2) The liability of a guarantor shall continue, notwithstanding that the vendor, pursuant to the provisions of a hire
- 40 purchase agreement, takes possession of the* goods comprised

therein (and whether or not the goods are redelivered to the purchaser pursuant to this Act), but nothing in this subsection shall operate to preserve the liability of a guarantor where the vendor and the purchaser enter into a new agreement in respect of the goods comprised in any hire purchase agreement. 5

(3) No guarantor shall be liable to any further or other extent than the purchaser the performance of whose obligations he guarantees, but nothing in this Act shall affect any agreement by the guarantor binding him to the performance of any obligation which is not one of the obligations imposed on the purchaser under the hire purchase agreement in respect of which the guarantee is given. 10

(4) Where a vendor takes possession of any goods comprised in a hire purchase agreement any guarantor who has paid any money to the vendor in accordance with his guarantee shall have the like right in like manner to recover that money as he would have had if he were the purchaser of the goods, but for the purpose of calculating the amount received by the vendor all money paid and the value of any other consideration provided by the purchaser shall be deemed to have been paid by the guarantor: 20

Provided that no money shall be recovered by the guarantor in excess of the money actually paid by him:

Provided also that for the purpose of calculating the aggregate of the amounts which two or more guarantors are entitled to recover under the provisions of this subsection the money paid to the vendor by the guarantors shall be deemed to have been paid by one guarantor. 25

Cf. 1939, No. 14, s. 7

30

Miscellaneous Provisions

30. Reopening of hire purchase transactions—(1) In any proceedings taken under this Act, or taken in any Court in respect of any matter arising out of a hire purchase agreement, if it appears to the Court that the interest directly or indirectly charged or included in the amounts payable under the provisions of the agreement is excessive, or that the amounts charged for insurance, maintenance, repairs, expenses, inquiries, premiums, renewals, or any other charges are excessive, or that the transaction is harsh and unconscionable, or that the powers conferred by the agreement have been exercised in a harsh and unconscionable manner, the Court may reopen the transaction and take an account between the parties thereto. 35
40

(2) The Court reopening any transaction under this section may, notwithstanding any statement or settlement of accounts or any agreement purporting to close previous dealings and create a new obligation,—

- 5 (a) Reopen any account already taken between the parties; and
- (b) Relieve the purchaser and any guarantor from payment of any sum in excess of such sum in respect of the cash price, the total cost of credit, and other
10 charges as the Court, having regard to the risk and all the other circumstances, adjudges to be fairly and reasonably payable; and
- (c) Set aside, either wholly or in part, or revise, or alter any agreement made or security given in connection
15 with the transactions; and
- (d) Give judgment for any party for such amount as, having regard to the relief (if any) which the Court thinks fit to grant, is justly due to that party; and
- 20 (e) If it thinks fit give judgment against any party for delivery of the goods, if they are in his possession; and
- (f) Make such other order as justice requires.

(3) Where it appears to the Court that any person other than the vendor has shared in the profits of or has any beneficial interest, prospectively or otherwise, in a transaction
25 which the Court holds to be harsh and unconscionable, the Court may add that person as a party to the case, and may give judgment against that person for such amount as it thinks fit or for the delivery of the goods if they are in his
30 possession, and the Court may make such other order in respect of that person as it thinks fit.

(4) In any proceedings under this section the Court shall have and may exercise any of the powers conferred on it by subsections (1) to (3) of this section notwithstanding that
35 the time for the payment of any of the amounts payable under the agreement may not have arrived.

(5) A purchaser or guarantor under a hire purchase agreement is not entitled to institute proceedings under this section—

- (a) In any case where the vendor has taken possession of the goods comprised in the agreement, after the expiration of a period of 6 months from the time when the vendor serves the notice in the form set out in the Third Schedule to this Act; or 5
- (b) In any other case, after the expiration of a period of 6 months from the time when the transaction is closed.

Cf. 1939, No. 14, s. 8; Hire-Purchase Act, 1960-1965, s. 32 (New South Wales) 10

31. Agent of the purchaser—In any proceedings in any Court in relation to a hire purchase agreement it shall be a question of fact whether any person was the agent of the purchaser and the Court shall not be precluded from inquiring into and determining that question by any provision in the agreement or any other document. 15

Cf. Hire-Purchase Act, 1960-1965, s. 36 (e) (New South Wales)

32. Insurance—(1) A vendor may require any goods comprised in a hire purchase agreement to be insured, and at all times during the period of the agreement kept insured, in some insurance office in New Zealand (other than one which is owned or controlled by the vendor or the dealer or which is a subsidiary or the holding company or a subsidiary of the holding company of the vendor or the dealer) nominated or approved by the vendor in the names of the vendor and the purchaser against any risk that the vendor thinks fit at the expense of the purchaser. 20 25

(2) Every vendor commits an offence against this Act who—

- (a) Requires any goods comprised in a hire purchase agreement to be insured or kept insured otherwise than in accordance with subsection (1) of this section; or 30
- (b) Requires a purchaser to insure, or keep insured, any goods comprised in a hire purchase agreement against risks or subject to terms, conditions, and exceptions that the vendor does not require if he arranges the insurance. 35

(3) Where in respect of the insurance of goods comprised in a hire purchase agreement, the insurer allows a no-claim rebate or a rebate of a similar nature, the purchaser under the 40

agreement is entitled to the benefit of the rebate, and any person who knowingly pays or allows any such rebate to the vendor under the agreement commits an offence against this Act.

- 5 Cf. Hire-Purchase Act, 1960-1965, s. 20 (New South Wales)

33. Information to be included in advertisements of goods as available on hire purchase—(1) Where an advertisement of any goods as being available for disposal on hire purchase is displayed or issued or broadcast containing an amount, that is expressed to be the deposit payable in respect of those goods, the advertisement shall contain, in respect of those goods, a sum which shall be, and which shall be expressed to be, the cash price of those goods.

15 (2) Subject to the provisions of this section, any person who displays or issues an advertisement in contravention of subsection (1) of this section or causes an advertisement to be displayed or issued in contravention of that subsection, commits an offence against this Act.

20 (3) It is a defence to a charge under this section if the person charged proves—

(a) That the matters contained in the advertisement did not relate to anything done in the course of a business carried on by him; and

25 (b) That the matters so contained were not (wholly or in part) devised or selected by him or by any other person under his direction or control.

(4) In this section the word "broadcast" has the same meaning as in the Broadcasting Act 1961.

- 30 Cf. Advertisements (Hire-Purchase) Act 1967, ss. 1 (2), 6 (1)-(2) U.K.

34. Repairs—(1) Where a hire purchase agreement includes a term which requires the goods comprised in the agreement to be repaired or maintained only by the vendor or any other person or by a person nominated or approved by the vendor or any other person or which otherwise restricts the right of the purchaser to have the goods repaired or maintained by himself or by the person of his choice, the repair or maintenance of the goods by a person other than a person specified or approved by or pursuant to the agreement shall not constitute a breach of any such term if—

(a) It is not practicable in the circumstances to have the repairs or maintenance carried out by the person specified or approved by or pursuant to the agreement; or

(b) The repairs or maintenance are carried out in a proper and workmanlike manner. 5

(2) The repair or maintenance of the goods by a person other than the person specified or approved by or pursuant to the agreement shall in every case, unless the agreement otherwise provides, absolve the vendor from any obligation to repair or maintain the goods at no cost or at a reduced cost to the purchaser. 10

35. Lien for work done on goods under hire purchase agreement—Where a worker does work upon any goods comprised in a hire purchase agreement in such circumstances that if the goods were the property of the purchaser the worker would be entitled to a lien thereon for the amount or value of the work, he shall be entitled to a lien accordingly notwithstanding that the goods are not the property of the purchaser: 15

Provided that the lien shall not be valid and enforceable against the vendor if the hire purchase agreement contains a provision prohibiting the creation of a lien by the purchaser and the worker before commencing the work has actual notice of that provision. 20

Cf. 1939, No. 14, s. 10

25

36. Fraudulent sale or disposal of goods by purchaser—Every person who, with intent to defraud the vendor, disposes of or sells any goods comprised in a hire purchase agreement, or removes or attempts to remove those goods, or does any other act in relation to those goods commits an offence against this Act and is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$500 or to both. 30

Cf. 1939, No. 14, s. 11

37. Power of Court to extend times—The time prescribed by subsection (5) of section 24 of this Act for the sale of goods or any time prescribed by this Act for the service or giving of any notice or other document or for the commencement of any proceedings may, on an application made to the Court (either 35

before or after the expiration of that time but after notice to the other party to the hire purchase agreement) be extended by that Court for such further period, and upon such conditions, as the Court thinks fit.

- 5 Cf. Hire-Purchase Act, 1960-1965, s. 46 (New South Wales)

38. Service of notices—(1) Any notice or other document required or authorised by this Act to be served on any person shall be in writing and shall be sufficiently served if it is
10 delivered to that person or if it is left at his usual or last known place of abode or business or at an address specified for that purpose in the hire purchase agreement, or if it is posted in a letter addressed to him by name at that place of abode or business or address.

15 (2) If the person is absent from New Zealand, the notice or other document may be served as aforesaid on his agent in New Zealand. If the person is deceased, it may be served as aforesaid on his personal representatives.

20 (3) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representatives, the notice or other document shall be served in such manner as may be directed by an order of the Court.

25 (4) If any such notice or other document is sent to any person by registered letter it shall be deemed to have been delivered to him on the fourth day after the day on which it was posted, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted.

30 (5) Notwithstanding anything in the foregoing provisions of this section, the Court may in any case make an order directing the manner in which any notice or other document is to be served, or dispensing with the service thereof.

(6) This section does not apply to notices or other documents served in any proceedings in any Court.

- 35 Cf. 1939, No. 14, s. 12; 1940, No. 18, s. 13

39. Jurisdiction of Magistrates' Courts—A Magistrate's Court shall have jurisdiction to exercise any of the powers conferred by any of the provisions of this Act in any case where—

- 40 (a) The occasion for the exercise of the power arises in the course of any civil proceedings properly before the Court; or

- (b) The cash price of the goods comprised in the hire purchase agreement is not more than \$2,000; or
- (c) The parties agree, in accordance with section 37 of the Magistrates' Courts Act 1947, that a Magistrate's Court shall have jurisdiction to hear and determine the application. 5

40. General penalty—Every person who commits an offence against this Act for which no penalty is provided elsewhere than by this section is liable to a fine not exceeding \$500.

41. Offences to be punishable on summary conviction— 10
 (1) Every offence against this Act or against any regulations made under this Act shall be punishable on summary conviction.

(2) Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information in respect of any offence against this Act or against any regulation made under this Act may be laid at any time within 2 years after the time when the matter of the information arose. 15

42. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all 20 or any of the following purposes:

- (a) Approving or prescribing for the purposes of section 6 of this Act tables or methods which may be used for the calculation of the percentage required by that section to be shown: 25
- (b) Securing that hire purchase agreements, forms, notices, and other documents and copies of hire purchase agreements supplied pursuant to this Act are easily legible:
- (c) Prescribing offences in respect of the contravention of 30 or non-compliance with any regulations made under this Act, and the amount of the fines which may be imposed in respect of such offences, which fines shall be an amount not exceeding \$200:
- (d) Prescribing for such matters as are contemplated by 35 or necessary for giving full effect to this Act and for its due administration.

(2) Any regulations made under paragraph (b) of sub-section (1) of this section—

- (a) May include requirements with regard to the type, 40 size, colour or disposition of lettering, quality or

colour of paper, which may be used for hire purchase agreements, forms, notices, and other documents; and

- 5 (b) May specify which parts of the contents of hire purchase agreements, forms, notices, and other documents are permitted to consist of handwriting or a reproduction of handwriting, and may prescribe different requirements in relation to so much of the contents of a hire purchase agreement, form, notice, or other document as is permitted to consist, and
10 consists, of handwriting and in relation to the remainder of the contents of a hire purchase agreement, form, notice, or other document; and
- 15 (c) May except from any of the requirements of the regulation any marginal notes or other subsidiary parts of a hire purchase agreement, form, notice, or other document.

Cf. Hire-Purchase Act 1965, s. 32 (U.K.)

20 **43. No contracting out**—(1) The provisions of this Act shall have effect notwithstanding any provision to the contrary in any agreement.

(2) Section 56 of the Sale of Goods Act 1908 shall be read subject to the provisions of this section.

Cf. 1939, No. 14, s. 13

25 **44. Application of law relating to illegal contracts**—The fact that a contract has been entered into in contravention of any of the provisions of this Act or that an act which contravenes any of the provisions of this Act has been committed in the course of the performance of any contract shall
30 not—

- (a) Make that contract illegal; or
(b) Except as expressly provided in this Act, make that contract or any provision of that contract unenforceable or of no effect.

35 **45. Consequential amendments**—(1) The Insolvency Act 1967 is hereby amended by repealing section 91, and substituting the following section:

40 **“91. Goods on hire purchase**—(1) In this section the terms “cash price”, “goods”, “hire purchase agreement”, “purchaser”, “total amount payable”, and “vendor” have the meanings specified in subsection (1) of section 2 of the Hire Purchase Act 1970.

“(2) Where the purchaser of any goods comprised in a hire purchase agreement is adjudged bankrupt—

“(a) If the vendor has taken possession of the goods within 21 days before the adjudication and he has not before the adjudication, sold or disposed of the goods, the vendor shall not sell or dispose of the goods, or part with possession thereof, until after the expiration of 1 month from the date on which the vendor serves on the Assignee the statement required to be served on purchasers under subsection (1) of section 24 of the Hire Purchase Act 1970: 5 10

“(b) If at the time of the adjudication of the purchaser the vendor has not taken possession of the goods, he shall (notwithstanding any provision in the hire purchase agreement to the contrary) not take possession thereof until after the expiration of 1 month from the date on which the vendor serves on the Assignee notice of his intention to do so, which notice shall specify the total amount payable under the agreement, the cash price of the goods, and the total amount of the money paid and the value of any other consideration provided by the purchaser and any other person on behalf of the purchaser. 15 20 25

“(3) The Assignee may, at any time before the expiration of 1 month from the date of the service on him of any notice pursuant to subsection (2) of this section, on payment or tender to the vendor of the net balance due to the vendor under the agreement, take possession of the goods to which the notice relates as if they were the property of the purchaser and were not comprised in a hire purchase agreement. 30

“(4) If a vendor has, either before or after the adjudication of the purchaser, taken possession of any goods comprised in a hire purchase agreement and the Assignee has not exercised, in relation to the goods, the powers conferred on him by subsection (3) of this section, the vendor may prove in the bankruptcy for the amount which (having regard to the provisions of section 25 of the Hire Purchase Act 1970) he might have recovered from the purchaser, and in any such event he shall lodge with his proof of debt the notice men- 35 40

tioned in subsection (1) of section 24 of the Hire Purchase Act 1970 and the Assignee shall have the rights conferred on purchasers by sections 25, 26, and 30 of the Hire Purchase Act 1970.

5 “(5) If at the time of the adjudication of the purchaser of any goods comprised in a hire purchase agreement the vendor has not taken possession of the goods, or has taken possession thereof and not sold or disposed of or parted with possession of them, the vendor may assign the goods to the Assignee, and
10 in that event the vendor shall be entitled to prove for the net balance due to him under the agreement.”

(2) The Chattels Transfer Amendment Act 1937 is hereby amended by repealing section 3.

46. Repeals and application—(1) The following enactments
15 are hereby repealed, namely—

(a) The Hire Purchase Agreements Act 1939:

(b) Section 13 of the Statutes Amendment Act 1940.

(2) Notwithstanding the repeal of the enactments mentioned in subsection (1) of this section, those enactments
20 continue to apply to and in relation to hire purchase agreements entered into before the commencement of this Act.

(3) This Act shall not apply to or in relation to hire purchase agreements entered into before the commencement of this Act.

Hire Purchase

SCHEDULES

FIRST SCHEDULE

PART I

Sections 5 (e), 6FINANCIAL DETAILS TO BE SHOWN ON THE FIRST PAGE OF EVERY HIRE
PURCHASE AGREEMENT

Cash price	.....	.....	.....	\$.....
Disbursements (common to cash or terms transactions)—					
(a) Freight	.....	.....	.....	\$.....
(b) Insurance	.....	.....	.....	\$.....
(c) Maintenance	.....	.....	.....	\$.....
(d) Installation	.....	.....	.....	\$.....
(e) Statutory charges	.....	.....	.....	\$.....
(f) Other (specify)	.....	.....	.....	\$.....
Total Gross Cost	.....	.....	.....		\$..... (A)
Less deposit—					
(a) Cash	.....	.....	.....	\$.....
(b) Trade-in allowance	.....	.....	.....	\$.....
					\$..... (B)
Amount Financed, (A) – (B):					\$..... (C)
Charges (pertaining solely to terms transactions)—					
(a) Finance charge for	.....	.....	.....
months	.....	.....	.....	\$.....
(b) Booking fee	.....	.....	.....	\$.....
(c) Servicing charges	.....	.....	.....	\$.....
(d) Other (specify)	.....	.....	.....	\$.....
					\$..... (D)
*Total Cost of Credit, (D), represents a charge on (C) calculated on the reducing balance and expressed as a percentage per annum as%					
Balance Payable: (C) + (D):	.....	.....	.....	\$.....	\$..... (E)
Total Cost of Transaction, (A) + (D):					\$..... (F)
Additional Cost Over Cash Transaction (D)	.....	.....	.....		\$..... (D)

*This item to be shown, where applicable, after section 6 of the Hire Purchase Act 1970 comes into force.

FIRST SCHEDULE—continued

PART II

Section 5 (f)

ADVICE TO PURCHASERS

UNDER the provisions of the Hire Purchase Act 1970—

- (a) The vendor must supply you with a copy of this agreement free of charge:
- (b) In addition to the free copy you are entitled to a copy of the agreement and a statement of the amount that you owe if you make a written request to the vendor for them and pay him the sum of 50 cents. You may not request a copy or a statement more than once a month:
- (c) With the written consent of the vendor you can assign your rights under the hire purchase agreement and he may not unreasonably refuse his consent. For details of the procedure of assignment see Hire Purchase Act 1970, sections 17 and 18:
- (d) You have the right to complete the agreement at any time and if you do you will be entitled to a rebate of some of the charges payable under the agreement. For details see Hire Purchase Act 1970, section 19 (3).

NOTE

- (1) If you get behind with your payments, you should ask the vendor for further time in which to pay:
- (2) If you think that the vendor is being unreasonable in refusing you further time in which to pay or if you think that he is being unreasonable or harsh in any other way, you should see a solicitor immediately.

SECOND SCHEDULE

Section 22 (1) (b)

HIRE PURCHASE ACT 1970

Notice of Intention to Repossess

To [Insert name and address of purchaser]

TAKE notice that the vendor of* sold to you under an agreement dated the day of 19..... intends to re-take possession of the goods after the expiration of † days from the service of this notice by reason of your breaches of the agreement, namely: [Specify the defaults complained of]

FURTHER take notice that you are required within that period of † days—

- (a) To pay the arrears of instalments which now amount to \$....., made up as follows: [There shall be inserted a statement showing how the arrears are made up.]
- (b) To remedy other breaches of the agreement by [There shall follow a statement of the actions which the purchaser must take to remedy the breaches of the agreement which are capable of being remedied.]

Dated this day of 19 .. ,

.....
[Vendor's signature]

*Insert description of goods.

†Insert number of days not being less than ten.

Sections 19 (2), 24 (1), THIRD SCHEDULE
(3), 25 (1) (a) (i),
(ii), 30 (5) (a)

HIRE PURCHASE ACT 1970

ADVICE to Purchasers

Now that the goods you hired have been repossessed you will be entitled to get them back—

- (a) If, within 21 days, you re-instate the agreement by paying the arrears and remedy the following breaches of the agreement (or pay the vendor's expenses in remedying them)—

[Insert particulars]

The vendor's estimate of the amount you must pay to re-instate the agreement is—

Arrears of instalments .....	.....	.....	.....	.....	\$.....
Costs of storage, repair or maintenance .....	.....	.....	.....	.....	\$.....
Cost of repossession .....	.....	.....	.....	.....	\$.....
Cost of re-delivery .....	.....	.....	.....	.....	\$.....
Total .....	.....	.....	.....	.....	\$.....

OR

- (b) If, within 21 days, you give notice of your intention to finalise the agreement by paying the balance due under the agreement and costs of the repossession—

The vendor's estimate of the amount required to finalise the agreement is—

Total amount payable under the agreement .....	.....	.....	.....	.....	\$.....
Less deposit and instalments paid .....	.....	.....	.....	.....	\$.....
Balance due under agreement .....	.....	.....	.....	.....	\$.....
Less statutory rebates .....	.....	.....	.....	.....	\$.....
Add costs of repossession .....	.....	.....	.....	.....	\$.....
Storage, repair or maintenance .....	.....	.....	.....	.....	\$.....
Total .....	.....	.....	.....	.....	\$.....

IF YOU DON'T RE-INSTATE OR FINALISE THE AGREEMENT you will be liable for the vendor's loss unless the value of the goods repossessed is sufficient to cover your liability. If the value of the goods is more than sufficient to cover your liability you will be entitled to a refund.

The vendor's estimate of the value of the goods re-possessed is

entitled to a refund

*On the basis of that estimate you are of \$.....
 liable to pay the vendor \$.....

NOTE.—You may give a written notice to the vendor requiring the vendor to sell the goods to any cash buyer you can introduce who is willing to pay the vendor's estimate of the value, i.e.†

*Strike out whichever inapplicable.

†Insert vendor's estimate of value.

THIRD SCHEDULE—*continued*

DO NOT DELAY

Action to enforce your rights should be taken at once. You will lose your rights TWENTY-ONE DAYS after the service or posting of this notice if you do not take action.

If you think you have any rights under the *Hire Purchase Act 1970* you should seek advice at once.

NOTE—*Where this notice is sent to a guarantor it shall be endorsed as follows—*

This notice is sent to you as guarantor of

As guarantor you have certain rights under the *Hire Purchase Act 1970*, and you should seek advice at once.