

Hire-Purchase (Scotland) Act 1965

1965 CHAPTER 67

An Act to consolidate certain enactments relating to hire-purchase, credit-sale and conditional sale agreements in Scotland. [5th August 1965]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

AGREEMENTS TO WHICH PARTS II, III AND IV OF ACT APPLY

Meaning of "hire-purchase agreement", "credit-sale agreement" and "condition sale agreement".

1. In this Act (subject to the following provisions of this Part of this Act)—

"hire-purchase agreement" means any contract, in whatsoever terms it may be expressed and whether it be truly one of sale or hire, whereby goods are taken on hire by one person from another person in consideration of periodical payments to be made by the first mentioned person to the other person, with an option to the first mentioned person to become the buyer of the goods;

"credit-sale agreement" means an agreement for the sale of goods under which the purchase price is payable by five or more instalments, not being a conditional sale agreement;

"conditional sale agreement" means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled.

PART I
Limits of value for purposes of Parts II, III and IV.

2.—(1) Subject to the following provisions of this Part of this Act, references in Parts II, III and IV of this Act to hire-purchase agreements and to conditional sale agreements, and references in Part II of this Act to credit-sale agreements, shall be construed in accordance with the following provisions of this section.

(2) References in Parts II, III and IV of this Act to a hire-purchase agreement or a conditional sale agreement shall be construed respectively as references to a hire-purchase agreement (as defined by the preceding section) or a conditional sale agreement (as so defined) under which the hire-purchase price or total purchase price, as the case may be, does not exceed £2,000.

(3) In Part II of this Act, except in any provision to which the next following subsection applies, any reference to a credit-sale agreement shall be construed as a reference to a credit-sale agreement (as defined by the preceding section) under which the total purchase price—

(*a*) exceeds £30, but

(*b*) does not exceed £2,000.

(4) In any provision of Part II of this Act to which this subsection is expressed to apply, any reference to a credit-sale agreement shall be construed as a reference to a credit-sale agreement (as defined by the preceding section) under which the total purchase price does not exceed £2,000.

Power to increase upper limit of value.

3.—(1) If it appears to Her Majesty in Council that the limit specified in subsections (2), (3)(*b*) and (4) of section 2 of this Act (whether as originally enacted or as previously amended under this section) should be raised, or further raised, as the case may be, Her Majesty may by Order in Council direct that section 2 of this Act shall be amended or further amended so as to substitute, for the sum so specified, such larger sum as may be specified in the Order.

(2) No recommendation shall be made to Her Majesty to make an Order in Council under this section unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.

(3) Any Order in Council made under this section may be revoked by a subsequent Order in Council under this section which substitutes a larger sum for the sum specified in the Order which is thereby revoked.

PART I

Exclusion of certain agreements from Parts II, III and IV.

4. Notwithstanding anything in section 2 of this Act, references in Parts II, III and IV of this Act to hire-purchase agreements and to conditional sale agreements, and references in Part II of this Act to credit-sale agreements, do not include any agreement which is made by or on behalf of a body corporate (whether incorporated in the United Kingdom or elsewhere) as the hirer or buyer of the goods to which the agreement relates.

PART II

GENERAL PROVISIONS

Requirements in connection with making agreements

Enforcement conditional on compliance with specified requirements.

5.—(1) Where goods are let under a hire-purchase agreement, or are sold, or agreed to be sold, under a credit-sale agreement or a conditional sale agreement, then (subject to the exercise of any power of the court under section 10 of this Act) the owner or seller shall not be entitled to enforce the agreement unless—

(*a*) the agreement is signed by the hirer or buyer, and by or on behalf of all other parties to the agreement, and

(*b*) the requirements of sections 6 and 7 of this Act, and the requirements of section 8 or (as the case may be) section 9 of this Act, are complied with.

(2) Where by virtue of the preceding subsection the owner or seller is not entitled to enforce an agreement—

(*a*) he shall not be entitled to enforce any contract of guarantee relating to that agreement;

(*b*) no security given by the hirer or buyer 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 hirer or buyer, or against the guarantor, as the case may be, by the holder of such a security; and

(*c*) if it is a hire-purchase agreement or a conditional sale agreement, the owner or seller shall not be entitled to enforce any right to recover the goods from the hirer or buyer.

Requirements as to cash price.

6.—(1) The requirements of this section, in relation to an agreement, are that, before the agreement is made,—

(*a*) the cash price of the goods has been stated in writing to the hirer or buyer by the owner or seller, otherwise than in the agreement, or

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(*b*) if the hirer or buyer has inspected the goods or like goods, then, at the time of his inspection, tickets or labels were attached to or displayed with the goods clearly stating the cash price, either of the goods as a whole or of all the different articles or sets of articles comprised therein, or

(*c*) the hirer or buyer has selected the goods by reference to a catalogue, price list or advertisement which clearly stated the cash price, either of the goods as a whole or of all the different articles or sets of articles comprised therein.

(2) In this Part of this Act " cash price ", in relation to any goods, means the price at which the goods may be purchased by the hirer or buyer for cash.

Requirements as to contents and form of agreements.

7.—(1) The requirements of this section, in relation to an agreement, are that—

(*a*) the agreement contains a statement of the hire-purchase price or total purchase price, as the case may be, and of the cash price of the goods to which the agreement relates, and of the amount of each instalment by which the hire-purchase price or total purchase price is to be paid, and of the date, or the mode of determining the date, on which each instalment is payable;

(*b*) the agreement contains a list of the goods to which the agreement relates sufficient to identify them;

(*c*) the agreement, at the time when it is signed by the hirer or buyer, complies with the requirements of any regulations made under subsection (2) of this section;

(*d*) the agreement complies with the requirements of any regulations made under section 32 of this Act; and

(*e*) if it is a hire-purchase agreement or a conditional sale agreement, it contains a notice, which is at least as prominent as the rest of the contents of the agreement, in the terms set out in Schedule 1 or (as the case may be) Schedule 2 to this Act.

(2) The Board of Trade may by regulations provide that, in any document which, on being signed as mentioned in section 5(1)(*a*) of this Act, constitutes a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement, the signature of the hirer or buyer shall be inserted in a space marked in such manner, and accompanied in the document by such words, as may be specified in the regulations; and the regulations may include provision as to the location of those

words in relation to the space in which the signature is inserted, and may prescribe such other requirements (whether as to type, size, colour or disposition of lettering or otherwise) as the Board may consider appropriate for securing that the words come to the attention of the hirer or buyer at the time when he is about to sign the document. PART II

Requirements as to copies where hirer or buyer signs at appropriate trade premises.

8.—(1) The requirements of this section, in relation to an agreement which is signed by the hirer or buyer at appropriate trade premises, are that copies are delivered or sent to the hirer or buyer in accordance with the following provisions of this section.

(2) If either—

(*a*) the agreement is signed by or on behalf of all other parties immediately after it is signed by the hirer or buyer, and a copy of the agreement is there and then delivered to him, or

(*b*) the agreement having been signed by or on behalf of all other parties before it is signed by the hirer or buyer, a copy of the agreement is delivered to him immediately after he signs the agreement,

and (in either case) the copy so delivered complies with the requirements of any regulations made under section 32 of this Act, the delivery of that copy shall be taken to have fulfilled the requirements of this section in relation to that agreement.

(3) If, in a case not falling within paragraph (*a*) or paragraph (*b*) of the last preceding subsection,—

(*a*) either—

(i) the relevant document was presented, and not sent, to the hirer or buyer for his signature, and immediately after he signed it there was delivered to him a copy of that document in the form in which it then was, or

(ii) the relevant document was sent to the hirer for his signature, and at the time when it was sent there was also sent to him a copy of that document in the form in which it then was, and

(*b*) in either case, a copy of the agreement is delivered or sent to the hirer or buyer within seven days of the making of the agreement,

then, if each copy delivered or sent to the hirer or buyer as mentioned in paragraph (*a*) or paragraph (*b*) of this subsection complies with the requirements of any regulations made under

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section 32 of this Act, the delivery or sending of those copies shall be taken to have fulfilled the requirements of this section in relation to that agreement.

(4) In this and the next following section "the relevant document" means the document which, on being signed by the hirer or buyer and by or on behalf of all other parties to the agreement, became the hire-purchase agreement, credit-sale agreement or conditional sale agreement, as the case may be.

Requirements as to copies where hirer or buyer signs elsewhere than at appropriate trade premises.

9.—(1) The requirements of this section, in relation to an agreement which is signed by the hirer or buyer at a place other than appropriate trade premises, are that copies are delivered or sent to the hirer or buyer in accordance with the following provisions of this section.

(2) A copy of the relevant document (in this Part of this Act referred to as "the first statutory copy") must be delivered or sent to the hirer or buyer as follows, that is to say—

(*a*) if the relevant document is presented, and not sent, to the hirer or buyer for his signature, a copy of that document, in the form in which it then is, must be delivered to him immediately after he signs it;

(*b*) if the relevant document is sent to the hirer or buyer for his signature, a copy of that document, in the form in which it then is, must be sent to him at the time when that document is sent,

(3) Within seven days of the making of the agreement, a copy of the agreement (in this Part of this Act referred to as "the second statutory copy") must be sent by post to the hirer or buyer.

(4) The first statutory copy and the second statutory copy must each contain such a statement of the rights of the hirer or buyer under section 11 of this Act, and of matters relating to or consequential upon the exercise of those rights, as may be prescribed by regulations made by the Board of Trade; and that statement must be so contained in such position, and must comply with such other requirements (whether as to type, size, colour or disposition of lettering or otherwise) as may be so prescribed.

(5) Any statement which, in accordance with regulations made under the last preceding subsection, is contained either in the first statutory copy or in the second statutory copy must specify the name of a person to whom, and an address to which, notice of cancellation may be sent; and (without

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prejudice to any other respect in which, in accordance with section 53(3) of this Act, the regulations may make different provision as between the first statutory copy and the second statutory copy, or as between copies delivered and copies sent) different names and addresses may be so specified in the first statutory copy and the second statutory copy of the same document.

(6) The first statutory copy and the second statutory copy must each comply with the requirements of any regulations made under section 32 of this Act.

Power of court to dispense with requirements of sections 6 to 9.

10.—(1) Subject to the following provisions of this section, if in any action the court is satisfied that a failure to comply with any of the requirements specified in sections 6 to 9 of this Act has not prejudiced the hirer or buyer, and that it would be just and equitable to dispense with the requirement, the court may, subject to any conditions that it thinks fit to impose, dispense with that requirement for the purposes of the action.

(2) The power conferred by the preceding subsection shall not be exercisable in relation to the requirement specified in section 9(3) of this Act except where the second statutory copy has been sent to the hirer or buyer but not within the period of seven days of the making of the agreement.

(3) The power conferred by subsection (1) of this section shall not be exercisable in relation to the requirement imposed by section 9(4) of this Act.

(4) For the avoidance of doubt it is hereby declared that in subsection (1) of this section the reference to the requirements specified in sections 6 to 9 of this Act includes the requirements of any regulations made under section 32 of this Act, in so far as any such requirements relate to hire-purchase agreements, credit-sale agreements and conditional sale agreements, or to copies delivered or sent as mentioned in section 8 or section 9 of this Act.

Right of cancellation

Notice of cancellation.

11.—(1) The provisions of this section shall have effect where a person (in this section referred to as " the prospective hirer or buyer ") signs a document (in this section referred to as " the relevant document ") which—

(*a*) constitutes a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement, or

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(*b*) would constitute such an agreement if executed by or on behalf of another person as owner or seller of the goods to which it relates,

and (in either case) the relevant document is signed by the prospective hirer or buyer at a place other than appropriate trade premises.

(2) At any time after he has signed the relevant document and before the end of the period of four days beginning with the day on which he receives the second statutory copy, the prospective hirer or buyer may serve a notice under this section (in this Act referred to as a "notice of cancellation")—

(*a*) on the owner or seller, or

(*b*) on any person who (whether by virtue of section 12(3) of this Act or otherwise) is the agent of the owner or seller for the purpose of receiving such a notice.

(3) A notice of cancellation served as mentioned in the last preceding subsection shall have effect if, however expressed, it indicates the intention of the prospective hirer or buyer to withdraw from the transaction to which the relevant document relates.

(4) Where the prospective hirer or buyer serves a notice of cancellation, then—

(*a*) if, at the time when that notice is served, the relevant document constitutes a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement, the service of the notice shall operate so as to rescind that agreement;

(*b*) in any other case, the service of the notice shall operate as a withdrawal of any offer to enter into such an agreement which is contained in, or implied by, the relevant document, and as notice to the owner or seller that any such offer is withdrawn.

(5) In this section "owner or seller", in relation to the relevant document, means the person who, at the time when the document is signed by the prospective hirer or buyer, is specified in the document as the person who is to let the goods on hire to him or to sell the goods to him, as the case may be:

Provided that, if no person is so specified at that time, any person by whom, or on whose behalf, the document is executed at any subsequent time, and who is then specified in the document as the person letting or selling the goods, shall for the purposes of this section be deemed to be, and at all material times to have been, the owner or seller in relation to that document.

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(6) In sections 12 to 15 of this Act " the prospective hirer or buyer ", " the relevant document " and " owner or seller " have the same meanings as in this section.

Service of notice of cancellation.

12.—(1) For the purposes of section 11 of this Act a notice of cancellation—

(*a*) shall be deemed to be served on the owner or seller if it is sent by post addressed to a person specified in a statement contained either in the first statutory copy or in the second statutory copy of the relevant document as being a person to whom such a notice may be sent, and is addressed to that person at an address so specified, and

(*b*) where the preceding paragraph applies, shall be deemed to be served on the owner or seller at the time when it is posted.

(2) The preceding subsection shall have effect without prejudice to the service of a notice of cancellation (whether by post or otherwise) in any way in which the notice could be served apart from that subsection, whether the notice is served on the owner or seller or on a person who (whether by virtue of the next following subsection or otherwise) is the agent of the owner or seller for the purpose of receiving such a notice.

(3) Any person who conducted any antecedent negotiations, but is not the owner or seller, shall be deemed to be the agent of the owner or seller for the purpose of receiving any notice of cancellation served by the prospective hirer or buyer.

(4) A notice of cancellation which is sent by post to a person at his proper address, otherwise than in accordance with subsection (1) of this section, shall be deemed to be served on him at the time when it is posted.

(5) So much of section 26 of the Interpretation Act 1889 as relates to the time when service is deemed to have been effected shall not apply to a notice of cancellation. 1889 c. 63.

Re-delivery, and interim care, of goods comprised in notice of cancellation.

13.—(1) The provisions of this section shall have effect where a notice of cancellation is served, and at any time, whether before or after the service of that notice, any of the goods to which the relevant document relates are in the possession of the prospective hirer or buyer, having come into his possession in consequence, or in anticipation, of his signing that document.

(2) The prospective hirer or buyer shall not be under any obligation (whether arising by contract or otherwise) to deliver the goods except at his own premises and in pursuance of a request in writing signed by or on behalf of the person entitled to possession of the goods and served on the prospective hirer or buyer either before, or at the time when, the goods are

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collected from his premises; and any such obligation shall be subject to any lien, or other right to retain the goods, which he may have under section 14(2) or section 15(3) of this Act.

(3) If the prospective hirer or buyer—

(*a*) delivers the goods (whether at his own premises or elsewhere) to an authorised person, or to a person designated for the purpose by an authorised person, or

(*b*) sends the goods at his own expense to an authorised person,

he shall be taken to have done so with the consent of that authorised person and (if that person is not for the time being entitled to possession of the goods) with the consent of the person who is so entitled, and shall be discharged from any obligation (whether arising by contract or otherwise) to retain the goods or to deliver them to any person so entitled.

(4) Subject to the following provisions of this section, the prospective hirer or buyer shall be under an obligation to take reasonable care of the goods until the end of the period of twenty-one days beginning with the date of service of the notice of cancellation.

(5) Where the prospective hirer or buyer delivers the goods as mentioned in paragraph (*a*) of subsection (3) of this section, his obligation to take care of the goods shall thereupon cease; and if he sends the goods to an authorised person as mentioned in paragraph (*b*) of that subsection, he shall be under an obligation to take reasonable care to see that they are received by that person and are not damaged in transit to him, but in other respects his obligation to take care of the goods shall cease on his sending the goods to that person.

(6) Where, at any time during the period of twenty-one days mentioned in subsection (4) of this section, the prospective hirer or buyer receives such a request as is mentioned in subsection (2) of this section, and unreasonably refuses or unreasonably fails to comply with it, his obligation to take reasonable care of the goods shall continue until he delivers or sends the goods as mentioned in paragraph (*a*) or paragraph (*b*) of subsection (3) of this section.

(7) Any obligation under subsections (4) to (6) of this section shall be owed to the person for the time being entitled to possession of the goods, and any breach of that obligation shall be actionable, at the instance of that person, as a breach of statutory duty.

(8) Except as provided by subsections (4) to (7) of this section, the prospective hirer or buyer shall not be under any obligation (whether arising by contract or otherwise) to take

care of the goods by reason of their having come into his possession as mentioned in subsection (1) of this section.

(9) In this section "authorised person" means a person falling within any one or more of the following descriptions, that is to say—

(*a*) the person who conducted any antecedent negotiations in pursuance of which the prospective hirer or buyer signed the relevant document;

(*b*) the person for the time being entitled to possession of the goods;

(*c*) the owner or seller;

(*d*) any person who is specified, as mentioned in section 12(1)(*a*) of this Act, as a person to whom a notice of cancellation may be sent,

and any reference to the premises of the prospective hirer or buyer is a reference to the premises which in the relevant document are specified as his address.

Further consequences of notice of cancellation.

14.—(1) Where a notice of cancellation operates so as to rescind a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement,—

(*a*) that agreement, and any contract of guarantee relating thereto, shall be deemed never to have had effect, and

(*b*) any security given by the prospective hirer or buyer in respect of money payable under the agreement, or given by a guarantor in respect of money payable under such a contract of guarantee, shall be deemed never to have been enforceable.

(2) On the service of a notice of cancellation, any sum which—

(*a*) has been paid by the prospective hirer or buyer in respect of the goods to which the relevant document relates, whether it has been paid before the signature of the document or in pursuance of any provision contained in that document, and

(*b*) is comprised (or would, if the document constituted a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement, be comprised), in the hire-purchase price or total purchase price or (if it is not or would not be so comprised) has in pursuance of any antecedent negotiations been paid to, or for the benefit of, the owner or seller, or has in pursuance of any such negotiations been paid to, or for the benefit of, any person (other than the owner or seller) who conducted those negotiations,

shall be recoverable by the prospective hirer or buyer from the person to whom it has been paid; and, if the prospective

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hirer or buyer is in possession of those goods, he shall have a lien on them for any sum which he is entitled to recover by virtue of this subsection.

(3) Any obligation to pay any sum which, if it had been paid before the service of a notice of cancellation, would have been recoverable by the prospective hirer or buyer under the last preceding subsection, shall be extinguished on the service of such a notice.

Effect of notice of cancellation where goods given in part-exchange.

15.—(1) The provisions of this section shall have effect where a notice of cancellation is served, and, in pursuance of any antecedent negotiations conducted by him, a person (in this section referred to as " the dealer ") has agreed to take goods in part-exchange and those goods have been delivered to the dealer.

(2) Unless, before the end of the period of ten days beginning with the date of service of the notice of cancellation, the goods in question are delivered to the prospective hirer or buyer, and are then in a condition which is substantially as good as when they were delivered to the dealer, the prospective hirer or buyer shall be entitled to recover from the dealer a sum equal to the part-exchange allowance.

(3) During the period of ten days referred to in the last preceding subsection the prospective hirer or buyer, if he is in possession of the goods to which the relevant document relates, shall be entitled to retain possession of them until either—

(*a*) the goods agreed to be taken in part-exchange are delivered to him in such a condition as is mentioned in that subsection, or

(*b*) a sum equal to the part-exchange allowance is paid to him;

and if, immediately before the end of that period, he continues by virtue of this subsection to be entitled to retain possession of the goods to which the relevant document relates, he shall have a lien on those goods for any sum which he is entitled to recover by virtue of the last preceding subsection.

(4) Where the prospective hirer or buyer recovers from the dealer a sum equal to the part-exchange allowance, then, if the title of the prospective hirer or buyer to the goods agreed to be taken in part-exchange has not vested in the dealer, that title shall so vest on the recovery of that sum.

(5) For the purposes of this section—

(*a*) the dealer shall be taken to have agreed to take goods in part-exchange if, in pursuance of the antecedent

negotiations, he has either purchased or agreed to purchase those goods or has accepted or agreed to accept them as part of the consideration for the transaction to which the relevant document relates, and

(*b*) the part-exchange allowance shall be taken to be the sum which, in the antecedent negotiations, was agreed to be allowed in respect of the goods referred to in the preceding paragraph, or, if no such sum was agreed, the part-exchange allowance shall be taken to be such sum as in all the circumstances it would have been reasonable to allow in respect of those goods if no notice of cancellation had been served.

Representations and stipulations

Dealer to be agent of owner or seller in respect of certain representations.

16.—(1) Where a person (in this section referred to as "the owner or seller") lets goods under a hire-purchase agreement, or sells or agrees to sell goods under a credit-sale agreement or a conditional sale agreement, any representations with respect to the goods to which the agreement relates which were made, either orally or in writing, to the hirer or buyer by a person other than the owner or seller in the course of any antecedent negotiations conducted by that other person shall be deemed to have been made by him as agent of the owner or seller.

(2) Nothing in this section shall exonerate any person from any liability (whether criminal or civil) to which he would be subject apart from this section.

(3) Section 2(4) of this Act applies to this section.

(4) In this section "representations" includes any statement or undertaking, whether constituting a stipulation or not, and references to making representations shall be construed accordingly.

Implied stipulations.

17.—(1) In every hire-purchase agreement and in every conditional sale agreement there shall be implied—

(*a*) a stipulation on the part of the owner or seller that he shall have a right to sell the goods at the time when the property is to pass;

(*b*) a stipulation that the hirer or buyer shall have and enjoy quiet possession of the goods;

(*c*) a stipulation that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass.

(2) Subject to the next following subsection, and to section 18 of this Act, in every hire-purchase agreement and in every

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conditional sale agreement there shall be implied a stipulation that the goods shall be of merchantable quality.

(3) Where the hirer or buyer has examined the goods or a sample of them, the stipulation referred to in subsection (2) of this section shall not be implied by virtue of that subsection in respect of defects which the examination ought to have revealed.

(4) Where the hirer under a hire-purchase agreement, or the buyer under a conditional sale agreement, whether expressly or by implication,—

(*a*) has made known to the owner or seller, or to a servant or agent of the owner or seller, the particular purpose for which the goods are required, or

(*b*) in the course of any antecedent negotiations has made that purpose known to any other person by whom those negotiations were conducted, or to a servant or agent of such a person,

there shall, subject to the provisions of section 18 of this Act, be implied a stipulation that the goods shall be reasonably fit for that purpose.

(5) In relation to every hire-purchase agreement and every conditional sale agreement the stipulations referred to in subsections (1)(*a*), (2) and (4) of this section shall be deemed to be material to the agreement.

(6) Nothing in this or the next following section shall prejudice the operation of any other enactment or rule of law whereby any stipulation is to be implied in any hire-purchase agreement or conditional sale agreement.

Provisions as to exclusions of implied stipulations.

18.—(1) Where under a hire-purchase agreement or a conditional sale agreement goods are let or agreed to be sold as second-hand goods, and—

(*a*) the agreement contains a statement to that effect, and a provision that the stipulation referred to in section 17(2) of this Act is excluded in relation to those goods, and

(*b*) it is proved that before the agreement was made the provision in the agreement so excluding that stipulation was brought to the notice of the hirer or buyer and its effect made clear to him,

that stipulation shall not be implied in the agreement in relation to those goods.

(2) Where under a hire-purchase agreement or a conditional sale agreement goods are let or agreed to be sold as being

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subject to defects specified in the agreement (whether referred to in the agreement as defects or by any other description to the like effect), and—

(*a*) the agreement contains a provision that the stipulation referred to in section 17(2) of this Act is excluded in relation to those goods in respect of those defects, and

(*b*) it is proved that before the agreement was made those defects, and the provision in the agreement so excluding that stipulation, were brought to the notice of the hirer or buyer and the effect of that provision was made clear to him,

that stipulation shall not be implied in the agreement in respect of those defects.

(3) The stipulations specified in subsection (1) of section 17 of this Act, and, except as provided by subsection (3) of that section and by subsections (1) and (2) of this section, the stipulation specified in subsection (2) of that section, shall be implied notwithstanding any agreement to the contrary.

(4) The owner or seller shall not be entitled to rely on any provision in a hire-purchase agreement or conditional sale agreement excluding or modifying the stipulation referred to in section 17(4) of this Act unless he proves that before the agreement was made that provision was brought to the notice of the hirer or buyer and its effect was made clear to him.

Further implied stipulations in special cases.

19.—(1) Where goods are let under a hire-purchase agreement, or are agreed to be sold under a conditional sale agreement, and the goods are so let or agreed to be sold by reference to a sample, there shall be implied in the agreement—

(*a*) a stipulation that the bulk will correspond with the sample in quality, and

(*b*) a stipulation that the hirer or buyer will have a reasonable opportunity of comparing the bulk with the sample.

(2) Where goods are let under a hire-purchase agreement, or are agreed to be sold under a conditional sale agreement, and are so let or agreed to be sold by description, there shall be implied in the agreement a stipulation that the goods will correspond with the description; and if the goods are let or agreed to be sold under the agreement 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.

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(3) In this section " stipulation " means a stipulation which is material to the agreement.

Special provision as to conditional sale agreements.

20. A conditional sale agreement shall be treated as not being a contract of sale for the purposes of sections 12 to 15 of the Sale of Goods Act 1893 (which imply certain stipulations in contracts of sale).

1894 c. 71 (56 & 57 Vict.).

Duties to supply information and documents

Owner or seller to supply information and copy to hirer or buyer.

21.—(1) At any time before the final payment has been made under a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement, any person entitled to enforce the agreement against the hirer or buyer shall, within four days after he has received a request in writing from the hirer or buyer, and the hirer or buyer has tendered to him the sum of 2s. 6d. for expenses, supply to the hirer or buyer a copy of the agreement, together with a statement signed by that person or his agent showing—

(*a*) the amount paid by or on behalf of the hirer or buyer;

(*b*) the amount which has become due under the agreement but remains unpaid, and the date on which each unpaid instalment became due, and the amount of each such instalment; and

(*c*) the amount which is to become payable under the agreement, and the date, or the mode of determining the date, on which each future instalment is to become payable, and the amount of each such instalment.

(2) In the event of a failure without reasonable cause to comply with the preceding subsection, then, while the default continues—

(*a*) no person shall be entitled to enforce the agreement against the hirer or buyer or to enforce any contract of guarantee relating to the agreement, and, in the case of a hire-purchase agreement or a conditional sale agreement, the owner or seller shall not be entitled to enforce any right to recover the goods from the hirer or buyer, and

(*b*) no security given by the hirer or buyer 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 hirer or buyer or the guarantor by any holder thereof,

and, if the default continues for a period of one month, the person in default shall be liable on summary conviction to a fine not exceeding £25.

(3) If a copy supplied to a hirer or buyer in pursuance of a request made by him under this section does not comply with such requirements of any regulations made under section 32 of this Act as relate thereto, the last preceding subsection shall apply as if that copy had not been supplied to him.

(4) In relation to a credit-sale agreement under which the total purchase price does not exceed £30, subsection (1) of this section shall apply with the substitution, for the words "a copy of the agreement", of the words "a copy of any note or memorandum of the agreement".

(5) Section 2(4) of this Act applies to this section.

Requirements relating to contracts of guarantee.

22.—(1) A contract of guarantee relating to a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement, and any security given by a guarantor in respect of money payable under such a contract, shall (subject to the following provisions of this section) not be enforceable unless the contract of guarantee is signed before two witnesses by the guarantor and, within seven days of the making of the contract of guarantee or the making of the hire-purchase agreement, credit-sale agreement or conditional sale agreement, whichever is the later, there is delivered or sent to the guarantor—

(*a*) a copy of the hire-purchase agreement, credit-sale agreement or conditional sale agreement, and

(*b*) a copy of the contract of guarantee.

(2) Subject to the next following subsection, such a contract of guarantee, and any such security, shall also not be enforceable unless—

(*a*) each copy delivered or sent as mentioned in the preceding subsection, and

(*b*) the contract of guarantee,

complies with the requirements of any regulations made under section 32 of this Act, in so far as any such requirements relate thereto.

(3) If in any action the court is satisfied that a failure to comply with any requirement imposed by subsection (1) of this section, or with any such requirement as is mentioned in the last preceding subsection, has not prejudiced the guarantor, and that it would be just and equitable to dispense with that requirement, the court may, subject to any conditions that it thinks fit to impose, dispense with that requirement for the purposes of the action.

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Further documents to be supplied to guarantor.

23.—(1) Where a contract of guarantee relating to a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement is for the time being in force, and the final payment under that agreement has not been made, any person entitled to enforce the contract of guarantee against the guarantor shall, within four days after he has received a request in writing from the guarantor, and the guarantor has tendered to him the sum of 2s. 6d. for expenses, supply to the guarantor the documents specified in the next following subsection.

(2) The documents referred to in the preceding subsection are—

(*a*) a copy of the hire-purchase agreement, credit-sale agreement or conditional sale agreement, or in the case of a credit-sale agreement under which the total purchase price does not exceed £30, a copy of any note or memorandum of the agreement; and

(*b*) a copy of the contract of guarantee; and

(*c*) a statement signed by, or by the agent of, the person to whom the request in writing referred to in the preceding subsection is made, showing the matters specified in paragraphs (*a*) to (*c*) of section 21(1) of this Act.

(3) In the event of a failure without reasonable cause to comply with subsection (1) of this section, then, while the default continues,—

(*a*) no person shall be entitled to enforce the contract of guarantee against the guarantor, and

(*b*) no security given by the guarantor in respect of money payable under that contract shall be enforceable against the guarantor by any holder of that security,

and, if the default continues for a period of one month, the person in default shall be liable on summary conviction to a fine not exceeding £25.

(4) If a copy supplied to a guarantor in pursuance of a request made by him under this section does not comply with such requirements of any regulations made under section 32 of this Act as relate thereto, the last preceding subsection shall apply as if that copy had not been supplied to him.

(5) Section 2(4) of this Act applies to this section.

Hirer or buyer to give information to owner or seller.

24.—(1) Where by virtue of a hire-purchase agreement or a conditional sale agreement a hirer or buyer is under a duty to keep the goods comprised in the agreement in his possession or control, the hirer or buyer shall, on receipt of a request in

writing from the owner or seller, inform the owner or seller where the goods are at the time when the information is given, or, if it is sent by post, at the time of posting. PART II

(2) If a hirer or buyer fails without reasonable cause to give that information within fourteen days of the receipt of the notice, he shall be liable on summary conviction to a fine not exceeding £25.

Defaults in payment

25.—(1) The provisions of this section shall have effect where goods are let under a hire-purchase agreement, or are agreed to be sold under a conditional sale agreement, and that agreement, or any other agreement, contains a provision (however expressed, and whether limited to defaults in payment or not) whereby, apart from this section, on the occurrence of, or at a time to be ascertained by reference to, a default in the payment of one or more instalments or other sums payable by the hirer or buyer, such of the consequences mentioned in the next following subsection as are specified in that provision (in this section referred to as " the specified consequences ") would follow. Notice of default.

(2) The consequences referred to in the preceding subsection are that the hire-purchase agreement or conditional sale agreement shall terminate, or shall be terminable, or that the owner or seller shall have a right to recover possession of the goods.

(3) If default is made in the payment of one or more sums to which that provision (in this subsection referred to as " the relevant provision ") applies, the specified consequences shall not follow by reason of that default unless the owner or seller serves on the hirer or buyer, by post or otherwise, a notice (in this Act referred to as a " notice of default ") stating the amount which has become due, but remains unpaid, in respect of sums to which the relevant provision applies, and requiring the amount so stated to be paid within such period (not being less than seven days beginning with the date of service of the notice) as may be specified in the notice.

(4) Where a notice of default is served, the specified consequences shall not follow before the end of the period specified in the notice by reason of any default to which the notice relates; and, if before the end of that period the amount specified in the notice is paid or tendered by or on behalf of the hirer or buyer or any guarantor, the specified consequences shall not follow thereafter by reason of any such default.

(5) In a case where the specified consequences are that the hire-purchase agreement or conditional sale agreement may be terminated by notice given by the owner or seller, a notice of

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default may include a notice terminating the hire-purchase agreement or conditional sale agreement at or after the end of the period specified therein in accordance with subsection (3) of this section, subject to a condition that the termination is not to take effect if before the end of that period the amount specified in the notice of default is paid or tendered as mentioned in the last preceding subsection.

Supplementary provisions as to notices of default.

26.—(1) Without prejudice to the service of a notice of default in any way in which such a notice could be served apart from this subsection, a notice of default shall be deemed to be served on the hirer under a hire-purchase agreement, or on the buyer under a conditional sale agreement, if—

(*a*) it is addressed to the person last known to the owner or seller as the hirer or buyer under the agreement, and is delivered at, or sent by post to, the last known address of that person, or

(*b*) in a case where that person has died, the notice (if not served in accordance with the preceding paragraph) is addressed to that person's executor (whether by that or any similar description, and whether for the time being there is an executor or not) and is delivered at, or sent by post to, the address which was the last known address of the deceased person.

(2) Where the person who, immediately before his death, was the hirer under a hire-purchase agreement, or the buyer under a conditional sale agreement, has died, and his rights under the agreement have not yet passed to an executor, the last preceding section shall have effect as if the deceased person had not died, and any reference in that section to default in the payment of a sum payable by the hirer or buyer shall be construed accordingly.

Right of hirer or buyer to terminate agreement

Right to terminate agreement.

27.—(1) At any time before the final payment under a hire-purchase agreement or conditional sale agreement falls due, the hirer or buyer shall (subject to the next following subsection) be entitled to terminate the agreement by giving notice of termination in writing to any person entitled or authorised to receive the sums payable under the agreement.

(2) In the case of a conditional sale agreement, where the property in the goods, having become vested in the buyer, is transferred to a person who does not become the buyer under the agreement, the buyer shall not thereafter be entitled to terminate the agreement under this section.

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(3) Subject to the last preceding subsection, where a buyer under a conditional sale agreement terminates the agreement under this section after the property in the goods has become vested in him, the property in the goods shall thereupon vest in the person (in this subsection referred to as " the previous owner ") in whom it was vested immediately before it became vested in the buyer:

Provided that if the previous owner has died, or any other event has occurred whereby that property, if vested in him immediately before that event, would thereupon have vested in some other person, the property shall be treated as having devolved as if it had been vested in the previous owner immediately before his death or immediately before that event, as the case may be.

(4) Nothing in this section shall prejudice any right of a hirer or buyer to terminate a hire-purchase agreement or conditional sale agreement otherwise than by virtue of this section.

Liability of hirer or buyer giving notice of termination.

28.—(1) Where the hirer under a hire-purchase agreement, or the buyer under a conditional sale agreement, terminates the agreement by virtue of the last preceding section, then, subject to the following provisions of this section, and without prejudice to any liability which has accrued before the termination, he shall be liable—

(*a*) in the case of a hire-purchase agreement, to pay the amount (if any) by which one-half of the hire-purchase price exceeds the total of the sums paid and the sums due in respect of the hire-purchase price immediately before the termination, or

(*b*) in the case of a conditional sale agreement, to pay the amount (if any) by which one-half of the total purchase price exceeds the total of the sums paid and the sums due in respect of the total purchase price immediately before the termination,

or if (in either case) the agreement specifies a lesser amount, he shall be liable to pay the amount so specified.

(2) If in any action the court is satisfied that a sum less than the amount specified in paragraph (*a*) or paragraph (*b*) of the preceding subsection (as the case may be) would be equal to the loss sustained by the owner or seller in consequence of the termination of the agreement by the hirer or buyer, the court may make an order for the payment of that sum in lieu of that amount.

(3) Where a hire-purchase agreement or conditional sale agreement has been terminated under the last preceding section,

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the hirer or buyer, if he has failed to take reasonable care of the goods, shall be liable to pay damages for the failure.

(4) Where a hirer or buyer, having terminated a hire-purchase agreement or conditional sale agreement under the last preceding section, wrongfully retains possession of the goods, then, in any action brought by the owner or seller to recover possession of the goods from the hirer or buyer, the court, unless it is satisfied that having regard to the circumstances it would not be just and equitable to do so, shall order the goods to be delivered to the owner or seller without giving the hirer or buyer an option to pay the value of the goods.

(5) The preceding provisions of this section shall have effect subject to the provisions of section 51 of this Act.

Avoidance of certain provisions and contracts

General Provisions.

29.—(1) Any provision to which this subsection applies shall be void.

(2) The preceding subsection applies to any provision in any agreement (whether a hire-purchase, credit-sale or conditional sale agreement or not)—

(*a*) whereby an owner or seller, or any person acting on his behalf, is authorised to enter upon any premises for the purpose of taking possession of goods which have been let under a hire-purchase agreement or agreed to be sold under a conditional sale agreement, or is relieved from liability for any such entry, or

(*b*) whereby the right conferred by section 27 of this Act to terminate a hire-purchase agreement or a conditional sale agreement is excluded or restricted, or whereby any liability, in addition to the liability imposed by section 28 of this Act, is imposed on a hirer or buyer by reason of the termination of a hire-purchase agreement or conditional sale agreement under the said section 27, or

(*c*) whereby a hirer or buyer, after the termination in any manner whatsoever of a hire-purchase agreement or conditional sale agreement, is (apart from any liability which has accrued before the termination) subject to a liability to pay an amount which exceeds whichever is the lesser of the two following amounts, that is to say—

(i) the amount mentioned in paragraph (*a*) or (as the case may be) in paragraph (*b*) of section 28(1) of this Act, and

(ii) an amount equal to the loss sustained by the owner or seller in consequence of the termination of the agreement, or

(*d*) whereby any person acting on behalf of an owner or seller in connection with the formation or conclusion of a hire-purchase agreement, credit-sale agreement or conditional sale agreement is treated as, or deemed to be, the agent of the hirer or buyer, or

(*e*) whereby an owner or seller is relieved from liability for the acts or defaults of any person acting on his behalf in connection with the formation or conclusion of a hire-purchase agreement, credit-sale agreement or conditional sale agreement.

(3) There shall also be void any provision in any agreement (whether a hire-purchase, credit-sale or conditional sale agreement or not)—

(*a*) excluding or restricting the operation of any enactment contained in sections 11 to 15 of this Act or the exercise of any right conferred by such an enactment or imposing any liability in consequence of the exercise of such a right, other than or in addition to any liability imposed by such an enactment, or

(*b*) excluding or restricting the operation of any enactment contained in section 16 or section 31 of this Act, or

(*c*) excluding or modifying any stipulation implied by virtue of section 19 of this Act.

(4) Any contract, whether oral or in writing, which apart from this subsection would have effect as a contract to enter into a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement (as distinct from a contract constituting such an agreement) shall be void.

(5) Section 2(4) of this Act applies to subsections (2) and (3) of this section.

Provisions relating to death of hirer or buyer.

30.—(1) The provisions of subsection (2) or (as the case may be) subsection (3) of this section shall have effect where goods are let under a hire-purchase agreement, or are agreed to be sold under a conditional sale agreement, and that agreement, or any other agreement, provides that, on the occurrence of, or at a time to be ascertained by reference to, one or more events referred to in the provision in question,—

(*a*) the hire-purchase agreement or conditional sale agreement shall terminate, or shall be terminable, or the owner or seller shall have a right to recover possession of the goods to which the hire-purchase agreement or conditional sale agreement relates, or

(*b*) any sum shall become payable by the hirer or buyer or any guarantor, or any liability of the hirer or buyer or any guarantor shall be increased or accelerated, or

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(*c*) any right of the hirer under the hire-purchase agreement or of the buyer under the conditional sale agreement shall cease to be exercisable, or shall be, or shall become liable to be, restricted or postponed.

(2) If the only event specified as mentioned in the preceding subsection is the death of the hirer or buyer, so much of the agreement as makes any such provision as is mentioned in that subsection shall be void.

(3) If two or more events are so specified, and one of them is the death of the hirer or buyer, so much of the agreement as makes any such provision shall have effect as if any reference to the death of the hirer or buyer were omitted.

(4) Without prejudice to the preceding provisions of this section, where—

(*a*) goods are let under a hire-purchase agreement, or are agreed to be sold under a conditional sale agreement, and

(*b*) that agreement, or any other agreement, contains any provision (whether expressed as a provision that the hire-purchase agreement or conditional sale agreement shall be personal to the hirer or buyer or otherwise) which, if the hire-purchase agreement or conditional sale agreement is in force immediately before the death of the hirer or buyer, would apart from this subsection have the effect of terminating the last-mentioned agreement on the death of the hirer or buyer or otherwise preventing the benefit of that agreement from being transmitted on his death,

that provision shall be void in so far as it would have that effect.

Supplementary provisions

Agency for purpose of receiving notices.

31.—(1) Where a person has made an offer to enter into a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement, in a case not falling within section 11(1) of this Act, and wishes to withdraw that offer before it is accepted, any person who conducted any antecedent negotiations shall be deemed to be the agent of any other person concerned for the purpose of receiving notice that the offer is withdrawn.

(2) Where the hirer or buyer under a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement claims to have a right to rescind the agreement, any person who conducted any antecedent negotiations shall be deemed

to be the agent of the owner or seller for the purpose of receiving any notice rescinding the agreement which is served by the hirer or buyer.

(3) In subsection (1) of this section "other person concerned", in relation to an offer, means any person who would be in a position to accept the offer if it were not withdrawn; and in the last preceding subsection "rescind" does not include—

(*a*) the service of a notice of cancellation, or

(*b*) the termination of an agreement under section 27 of this Act, or by the exercise of a right or power in that behalf expressly conferred by the agreement.

(4) The preceding provisions of this section shall have effect without prejudice to the operation of section 12(3) of this Act.

(5) Section 2(4) of this Act applies to this section.

Legibility of documents.

32.—(1) The Board of Trade may make regulations prescribing such requirements (whether as to type, size, colour or disposition of lettering, quality or colour of paper, or otherwise) as the Board may consider appropriate for securing that documents to which this section applies are easily legible.

(2) Subject to the next following subsection, the documents to which this section applies are documents of any of the following descriptions, that is to say—

(*a*) any hire-purchase agreement, credit-sale agreement or conditional sale agreement;

(*b*) any such copy as is mentioned in subsection (2) or subsection (3) of section 8 or in subsection (2) or subsection (3) of section 9 of this Act;

(*c*) any copy supplied to a hirer or buyer in pursuance of a request made by him under section 21 of this Act;

(*d*) any contract of guarantee relating to a hire-purchase agreement, credit-sale agreement or conditional sale agreement, and any such copy as is mentioned in paragraph (*a*) or paragraph (*b*) of section 22(1) of this Act;

(*e*) any such copy as is mentioned in paragraph (*a*) or paragraph (*b*) of subsection (2) of section 23 of this Act which is supplied to a guarantor in pursuance of a request made by him under subsection (1) of that section.

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(3) Without prejudice to the operation of section 53(3) of this Act in relation to any regulations made under this section, any such regulations—

(*a*) may specify which parts of the contents of a document to which the regulations apply 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 such a document as is permitted to consist, and consists, of handwriting or a reproduction of handwriting and in relation to the remainder of the contents of such a document; and

(*b*) may except from any of the requirements of the regulations any marginal notes or other subsidiary parts of a document.

(4) In relation to so much of any document falling within paragraph (*a*) or paragraph (*b*) of subsection (2) of this section as consists of—

(*a*) words or other matters prescribed by regulations made under section 7(2) of this Act, or

(*b*) a statement required to be contained therein as prescribed by regulations made under section 9(4) of this Act,

any regulations made under this section shall have effect subject to the provisions of the regulations referred to in paragraph (*a*) or paragraph (*b*) of this subsection, as the case may be.

PART III

RECOVERY OF POSSESSION AND OTHER REMEDIES

Protected goods

Meaning of " protected goods ".

33.—(1) For the purposes of this Part of this Act goods are " protected good " if for the time being the following conditions are fulfilled, that is to say—

(*a*) that the goods have been let under a hire-purchase agreement, or agreed to be sold under a conditional sale agreement;

(*b*) that one-third of the hire-purchase price or total purchase price has been paid (whether in pursuance of an order of court or otherwise) or tendered by or on behalf of the hirer or buyer or a guarantor; and

(*c*) that the hirer or buyer has not terminated the hire-purchase agreement or conditional sale agreement by virtue of any right vested in him.

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(2) In this Part of this Act "the agreement", in relation to any protected goods, means the hire-purchase agreement or conditional sale agreement in respect of which those conditions are fulfilled.

Restriction on right to recover possession of protected goods.

34.—(1) The owner (where the agreement is a hire-purchase agreement) or the seller (where it is a conditional sale agreement) shall not enforce any right to recover possession of protected goods from the hirer or buyer otherwise than by action.

(2) If the owner or seller recovers possession of protected goods in contravention of the preceding subsection, the agreement, if not previously terminated, shall terminate, and—

(*a*) the hirer or buyer shall be released from all liability under the agreement, and shall be entitled to recover from the owner or seller all sums paid by the hirer or buyer under the agreement or under any security given by him in respect thereof, and

(*b*) any guarantor shall be entitled to recover from the owner or seller all sums paid by him under the contract of guarantee or under any security given by him in respect thereof.

(3) Nothing in this section shall be taken to confer on an owner or seller any right to recover, otherwise than by action, possession of any goods let under a hire-purchase agreement or agreed to be sold under a conditional sale agreement where one-third of the hire-purchase price or total purchase price, as the case may be, has not been paid or tendered as mentioned in section 33(1)(*b*) of this Act.

Action by owner for possession

Action by owner to recover possession of protected goods from hirer.

35.—(1) This section applies to any action brought by the owner to enforce a right to recover possession of protected goods from the hirer, where the owner has not previously, in contravention of section 34(1) of this Act, recovered possession of part of the goods let under the agreement.

(2) Subject to such exceptions as may be provided for by rules of court, all the parties to the agreement, and any guarantor, shall be made parties to the action.

(3) Pending the hearing of the action, the court shall, in addition to any other powers, have power, on the application of the owner, to make such orders as the court thinks just for the purpose of protecting the goods from damage or depreciation, including orders restricting or prohibiting the use of the goods or giving directions as to their custody.

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(4) Subject to the following provisions of this Part of this Act, on the hearing of the action the court may, without prejudice to any other power,—

(*a*) make an order for the specific delivery of all the goods to the owner, or

(*b*) make an order for the specific delivery of all the goods to the owner and postpone the operation of the order on condition that the hirer or any guarantor pays the unpaid balance of the hire-purchase price at such times and in such amounts as the court, having regard to the means of the hirer and of any guarantor, thinks just, and subject to the fulfilment by the hirer or a guarantor of such other conditions as the court thinks just, or

(*c*) make an order for the specific delivery of a part of the goods to the owner and for the transfer to the hirer of the owner's title to the remainder of the goods.

(5) In this Part of this Act any reference to an order for the specific delivery of goods to the owner is a reference to an order for the delivery of those goods to the owner without giving the hirer an option to pay their value.

(6) In the following provisions of this Part of this Act " postponed " means postponed in pursuance of subsection (4)(*b*) of this section, and any reference to postponement shall be construed accordingly.

Circumstances in which postponed order may be made.

36.—(1) The operation of an order for the specific delivery of goods to the owner shall not be postponed unless the hirer satisfies the court that the goods are in his possession or control at the time when the order is made.

(2) If in an action to which the last preceding section applies an offer as to conditions for the postponement of the operation of an order is made by the hirer, and accepted by the owner, in accordance with rules of court, the court (subject to the next following subsection) may thereupon make the order, and postpone its operation, in accordance with the offer without hearing evidence as to any of the matters mentioned in subsection (4)(*b*) of the last preceding section and in subsection (1) of this section.

(3) Where a guarantor is a party to the action, an order shall not be made in pursuance of the last preceding subsection before the date fixed for the hearing of the action.

Restriction on orders transferring owner's title.

37.—(1) The court shall not exercise any power under this Part of this Act to make an order for the transfer to the hirer of the owner's title to part of the goods to which the agreement relates unless the court is satisfied that the amount which the

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hirer has paid in respect of the hire-purchase price exceeds the price of that part of the goods by at least one-third of the unpaid balance of the hire-purchase price.

(2) In this section " price ", in relation to any part of the goods to which the agreement relates, means such part of the hire-purchase price as is assigned to that part of the goods by the agreement, or, if no such assignment is so made, it means such part of the hire-purchase price as the court may determine.

Effect of postponed order.

38.—(1) While the operation of an order for the specific delivery of goods to the owner is postponed, the hirer shall, subject to the following provisions of this section, be deemed to be a custodier of the goods under and on the terms of the agreement.

(2) No further sum shall be or become payable by the hirer or a guarantor on account of the unpaid balance of the hire-purchase price, except in accordance with the terms of the order.

(3) The court may make such further modification of the terms of the agreement, and of any contract of guarantee relating thereto, as the court considers necessary having regard to the variation of the terms of payment.

(4) If, while the operation of the order is postponed, the hirer or a guarantor fails to comply with any condition of the postponement, or with any term of the agreement as varied by the court, or wrongfully disposes of the goods, the owner shall not take any civil proceedings against the hirer or guarantor otherwise than by making an application to the court by which the order was made:

Provided that, in the case of a breach of a condition relating to the payment of the unpaid balance of the hire-purchase price, it shall not be necessary for the owner to apply to the court for leave to execute diligence on the order unless the court has so directed.

(5) When the unpaid balance of the hire-purchase price has been paid in accordance with the terms of the order, the owner's title to the goods shall vest in the hirer.

Further powers of court in relation to postponed order.

39.—(1) At any time while the operation of an order for the specific delivery of goods to the owner is postponed, the court—

(*a*) may vary the conditions of the postponement, and make such further modification of the agreement, and of any contract of guarantee relating thereto, as the court considers necessary having regard to the variation of the conditions of the postponement, or

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(*b*) may revoke the postponement, or

(*c*) subject to section 37 of this Act, may make an order for the specific delivery of a part of the goods to the owner and for the transfer to the hirer of the owner's title to the remainder of the goods.

(2) The powers of the court under paragraph (*a*) or paragraph (*c*) of the preceding subsection may be exercised, notwithstanding that any condition of the postponement has not been complied with, at any time before the goods are delivered to the owner in accordance with a warrant issued in pursuance of the order.

(3) Where a warrant has been issued in pursuance of the order, then—

(*a*) if the court varies the conditions of the postponement under paragraph (*a*) of subsection (1) of this section, the court shall suspend the warrant on the like conditions;

(*b*) if the court makes an order under paragraph (*c*) of that subsection, the court shall cancel the warrant so far as it provides for the delivery of that part of the goods in respect of which the owner's title is to be transferred to the hirer.

(4) At any time before the delivery of goods to the owner in accordance with a warrant issued in pursuance of the order, the warrant may, so far as it provides for the delivery of the goods, be discharged by the payment to the owner by the hirer or any guarantor of the whole of the unpaid balance of the hire-purchase price; and in any such case the owner's title to the goods shall vest in the hirer.

Supplementary provisions relating to ss. 35 to 39.

40.—(1) If, before the hearing of an action to which section 35 of this Act applies, the owner has recovered possession of a part of the goods, any reference in section 35(4) of this Act to all the goods shall be construed as a reference to all the goods of which the owner has not recovered possession.

(2) If, in any case falling within the preceding subsection, the parties have not agreed upon an adjustment of the hire-purchase price in respect of the goods recovered by the owner, the court may, for the purposes of the relevant provisions, make such reduction of the unpaid balance of the hire-purchase price as the court thinks just.

(3) Where the owner has brought an action to which section 35 of this Act applies, and damages have been awarded against him in the action, the court may treat the hirer as having paid in respect of the hire-purchase price (in addition to the actual amount paid) the amount of the damages, or such part of them as the court thinks fit; and thereupon those damages shall accordingly be remitted, either in whole or in part.

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(4) Where the agreement validly provides for the payment by the hirer, on or after the termination of the agreement, of such sum as, when added to the sums paid and the sums due in respect of the hire-purchase price before the termination, is equal to a fixed amount, and—

(*a*) the hirer or a guarantor has paid or has been ordered to pay such a sum, and

(*b*) the owner subsequently seeks to recover possession of the goods in an action to which section 35 of this Act applies,

the court may treat that sum as a sum which has been, or is to be, paid in respect of the hire-purchase price.

(5) In subsection (2) of this section " the relevant provisions ", in relation to an action means such of the following provisions of this Act, that is to say, sections 35(4)(*b*), 37(1), 38 and 39(4), as are applicable to the action.

Money claims by owner

Restriction on separate action.

41. After the owner has begun an action to which section 35 of this Act applies, he shall not take any step to enforce payment of any sum due under the agreement, or under any contract of guarantee relating to the agreement, except by claiming the sum in that action.

Powers of court on non-compliance with order for specific delivery of goods.

42.—(1) Where the owner has brought an action to enforce a right to recover possession of protected goods from the hirer, and—

(*a*) the court has made an order in that action under section 35(4) or section 39(1)(*c*) of this Act (in this section referred to as " the previous order "), and

(*b*) the previous order has not been complied with, or, in a case where the operation of that order was postponed, the hirer or any guarantor has failed to comply with any condition of the postponement, or with any term of the agreement as varied by the court, or has wrongfully disposed of the goods, and

(*c*) the owner has not recovered possession of all the goods which under the previous order were directed to be delivered to him,

the owner may make an application under this section.

(2) Any application under this section shall be made to the court by which the previous order was made, and (whether the operation of the previous order was postponed or not) shall be made in the action in which that order was made.

PART III

(3) On any such application the court shall have power, if in the circumstances it considers it just to do so,—

(*a*) to revoke the previous order, and

(*b*) to make an order for the payment of a sum determined in accordance with subsection (4) of this section.

(4) Subject to any reduction under subsection (6) of this section, the sum referred to in paragraph (*b*) of the last preceding subsection shall be a sum equal to the balance of the price of the unrecovered goods which remains outstanding at the date when the order under that paragraph is made.

(5) The power to make an order under subsection (3)(*b*) of this section shall be exercisable against any person who, at the time when the order is made, is (apart from the previous order) liable to pay any sum which has then accrued due under the agreement; and on the making of such an order the owner's title to the unrecovered goods shall vest in the person against whom the order is made.

(6) Where the court makes an order under subsection (3)(*b*) of this section, the court shall deduct from the balance referred to in subsection (4) of this section such amount as the court thinks just, having regard to the extent to which the order requires any part of that balance to be paid at a date earlier than the date on which it would have become payable in accordance with the agreement.

(7) Where an order is made under subsection (3)(*b*) of this section after the issue of a warrant in pursuance of the previous order, the court shall cancel the warrant.

(8) In this section—

(*a*) "the unrecovered goods" means those goods which, under the previous order, were directed to be delivered to the owner but of which he has not recovered possession at the time when the court makes the order under subsection (3)(*b*) of this section; and

(*b*) "price" has the meaning assigned to it by section 37(2) of this Act, and any reference to the balance of the price of any goods remaining outstanding shall be construed accordingly.

Claim under minimum payment provision.

43.—(1) The provisions of this section shall have effect where a hire-purchase agreement validly provides for the payment by the hirer on or after the termination of the agreement of such sum as, when added to the sums paid and the sums due in respect of the hire-purchase price before the termination, is equal to a fixed amount.

PART III

(2) If, in an action to which section 35 of this Act applies,—

(*a*) a claim is made in respect of a sum for which the agreement provides as mentioned in the preceding subsection, and

(*b*) the court makes an order for the specific delivery of a part of the goods to the owner and the transfer to the hirer of the owner's title to the remainder of the goods,

the claim in respect of that sum shall be disallowed.

(3) If in any such action—

(*a*) a claim is made in respect of a sum for which the agreement provides as mentioned in subsection (1) of this section, and

(*b*) the court makes an order for the specific delivery of the goods to the owner, and postpones the operation of that order,

then, except as provided by the next following section, the court shall not entertain the claim in respect of that sum unless and until the postponement is revoked, and shall then deal with the claim as if the agreement had just been terminated.

Money claim after order for specific delivery of goods.

44.—(1) Where the owner has brought an action to which section 35 of this Act applies, and the court has made an order under paragraph (*a*) or paragraph (*b*) of subsection (4) of that section (in this section referred to as " the previous order "), then if—

(*a*) the owner (whether the operation of the previous order was postponed or not) has recovered possession of all the goods, or

(*b*) where the operation of the previous order was postponed, the court revokes the postponement,

the owner may make, or (if the claim in question has already been made in that action) may proceed with, any claim to which this section applies.

(2) This section applies to any claim—

(*a*) for the payment of one or more instalments which had accrued due under the agreement before the action was brought, or

(*b*) for the payment of any sum for which the agreement makes provision as mentioned in section 43(1) of this Act and which had become payable before the action was brought.

(3) Where in pursuance of subsection (1) of this section the owner proposes to make or proceed with a claim as therein

PART III

mentioned, that claim shall (whether the operation of the previous order was postponed or not) be made or proceeded with in the action in which the previous order was made, and, if the owner has recovered possession of all the goods, may, notwithstanding anything in section 43(3) of this Act, be so made or proceeded with at any time after he has recovered possession of them.

(4) In determining a claim to which this section applies the court may treat any sum paid in pursuance of an order under section 35(4)(*b*) of this Act as a payment made (wholly or partly) in respect of any instalment or sum to which the claim relates.

Action for possession, and money claims, by seller under conditional sale agreement

Application of ss. 35 to 44 to conditional sale agreements.

45.—(1) The provisions of sections 35 to 44 of this Act shall have effect in relation to protected goods where the agreement is a conditional sale agreement, subject to the modifications specified in the following provisions of this section.

(2) Subject to the next following subsection, those provisions shall apply as if—

(*a*) any reference to the hirer were a reference to the buyer;

(*b*) any reference to the owner were a reference to the seller;

(*c*) any reference to the hire-purchase price were a reference to the total purchase price; and;

(*d*) any reference to a hire-purchase agreement, or to goods let under the agreement, were a reference to a conditional sale agreement, or to goods agreed to be sold under the agreement, as the case may be.

(3) For section 38(1) of this Act there shall be substituted the following subsection:—

"(1) While the operation of an order for the specific delivery of goods to the seller is postponed, the buyer shall, subject to the following provisions of this section, be deemed to be in possession of the goods under and on the terms of the agreement, other than any term providing for the property in the goods to vest in the buyer at any time before the payment of the whole of the total purchase price."

Supplementary provisions

Recovery of possession, and money claims, after death of hirer or buyer.

46.—(1) The provisions of Schedule 3 to this Act shall have effect in the circumstances specified in that Schedule.

(2) In sections 34(2) and 35(1) of this Act the references to contravention of section 34(1) of this Act shall be construed in accordance with paragraph 5 of that Schedule.

PART III

Successive agreements.

47.—(1) The provisions of this section shall have effect where—

(*a*) goods have been let under a hire-purchase agreement, and, at any time after one-third of the hire-purchase price has been paid or tendered, the owner makes a further hire-purchase agreement with the hirer, or, as seller, makes a conditional sale agreement with the hirer as buyer, or

(*b*) goods have been agreed to be sold under a conditional sale agreement, and, at any time after one-third of the total purchase price has been paid or tendered, the seller makes a further conditional sale agreement with the buyer, or, as owner, makes a hire-purchase agreement with the buyer as hirer,

and (in either case) the subsequent agreement relates to the whole or any part of those goods, with or without other goods.

(2) In any case falling within the preceding subsection, section 33 of this Act shall have effect in relation to the subsequent agreement as if paragraph (*b*) of subsection (1) of that section were omitted, and section 34 of this Act shall have effect in relation to that agreement as if subsection (3) of that section were omitted.

Jurisdiction.

48.—(1) Subject to the following provisions of this section, where goods have been let under a hire-purchase agreement, or have been agreed to be sold under a conditional sale agreement, and the owner or seller brings an action to enforce a right to recover possession of any of the goods from the hirer or buyer, the action shall be brought in the sheriff court for the district in which the hirer or buyer resides or carries on business, or resided or carried on business at the date on which he last made a payment under the hire-purchase agreement or conditional sale agreement.

(2) No action arising out of a hire-purchase agreement, credit-sale agreement or conditional sale agreement which may competently be brought in the small debt court shall be brought otherwise than in that court; but nothing in this section shall affect or prejudice any power vested in the sheriff to remit to the ordinary court roll any such action brought in the small debt court.

(3) In this section "small debt court" means any court held in pursuance of the Small Debt (Scotland) Act 1837 as amended by any subsequent enactment. 1837 c. 41.

PART IV

PROVISIONS RELATED TO PARTS II AND III

Appropriation of payments.

49.—(1) Where a hirer or buyer is liable to make payments in respect of:—

(*a*) two or more hire-purchase agreements, or

(*b*) two or more conditional sale agreements, or

(*c*) one or more hire-purchase agreements and one or more conditional sale agreements,

and he is liable to make those payments to the same owner or seller, he shall be entitled, on making any payment in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements, to appropriate the sum so paid by him in either of the ways mentioned in the next following subsection.

(2) The hirer or buyer may appropriate the sum in question—

(*a*) in or towards the satisfaction of the sum due under any one of the agreements, or

(*b*) in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit.

(3) If the hirer or buyer fails to make any such appropriation, the payment shall by virtue of this subsection be appropriated towards the satisfaction of the sums due under the several agreements respectively in the proportions which those sums bear to one another.

(4) The preceding provisions of this section shall have effect notwithstanding any agreement to the contrary.

Exclusion of conditional sale agreements from certain enactments relating to sale of goods. 1889 c. 45. 1890 c. 40. 1894 c. 71 (56 & 57 Vict.).

50. For the purposes of section 9 of the Factors Act 1889 as extended to Scotland by the Factors (Scotland) Act 1890 and of section 25(2) of the Sale of Goods Act 1893 (under which, notwithstanding that the property in the goods has not been transferred to him, a person who has bought or agreed to buy goods and is in possession of them can confer a good title to the goods) the buyer under a conditional sale agreement shall be deemed not to be a person who has bought or agreed to buy goods.

Installation charges.

51.—(1) Where under a hire-purchase agreement or a conditional sale agreement the owner or seller is required to carry out any installation, and the agreement specifies, as part of the hire-purchase price or total purchase price, the amount to be

paid in respect of the installation (in this section referred to as " the installation charge ")— PART IV

(*a*) any reference in section 28(1) of this Act to one-half of the hire-purchase price or one-half of the total purchase price shall be construed as a reference to the aggregate of the installation charge and one-half of the remainder of the hire-purchase price or total purchase price, as the case may be, and

(*b*) any reference in Part III of this Act to one-third of the hire-purchase price or one-third of the total purchase price shall be construed as a reference to the aggregate of the installation charge and one-third of the remainder of the hire-purchase price or total purchase price, as the case may be.

(2) In this section " installation " means—

(*a*) the installing of any electric line (as defined by the Electric Lighting Act 1882) or any gas or water pipe; 1882 c. 56.

(*b*) the fixing of goods to which the agreement relates to the premises where they are to be used, and the alteration of premises to enable any such goods to be used on them; and

(*c*) where it is reasonably necessary that any such goods should be constructed or erected on the premises where they are to be used, any work carried out for the purpose of constructing or erecting them on those premises.

Payment otherwise than in money.

52. Where the owner (in the case of a hire-purchase agreement) or the seller (in the case of a conditional sale agreement) has agreed that any part of the hire-purchase price or total purchase price may be discharged otherwise than by the payment of money, any such discharge shall be deemed to be a payment of that part of the hire-purchase price or total purchase price for the purposes of sections 21 and 28 of this Act and of Part III of, and Schedule 3 to, this Act.

PART V

SUPPLEMENTARY PROVISIONS

Regulations.

53.—(1) Any power of the Board of Trade to make regulations under this Act shall be exercisable by statutory instrument.

(2) Anything required or authorised by or under this Act to be done by, to or before the Board of Trade may be done by, to or before the President of the Board, any Minister of State with duties concerning the affairs of the Board, any secretary, under-secretary or assistant secretary of the Board or any person authorised in that behalf by the President.

PART V

(3) Where a power to make regulations is exercisable by virtue of this Act, regulations made in the exercise of that power may make different provision in relation to different classes of cases.

(4) Any power (exercisable in accordance with section 57(2) of this Act) to make regulations under this Act before the date of the commencement of this Act shall include power, by any regulations so made, to revoke any regulations made under any of the enactments which, as from that date, are repealed by this Act.

Interpretation.

54.—(1) In this Act, except in so far as the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

"action", "buyer" (except in relation to a conditional sale agreement), "delivery", "goods", "property", "sale" and "seller" (except in relation to a conditional sale agreement) have the meanings assigned to them respectively by the Sale of Goods Act 1893;

1894 c. 71 (56 & 57 Vict.).

"appropriate trade premises", in relation to a document, means premises at which either the owner or seller (as defined by section 11(5) of this Act) normally carries on a business, or goods of the description to which the document relates, or goods of a similar description, are normally offered or exposed for sale in the course of a business carried on at those premises;

"buyer", in relation to a conditional sale agreement, means the person who agrees to purchase goods under the agreement and includes a person to whom the rights or liabilities of that person under the agreement have passed by assignation or by operation of law;

"conditional sale agreement", "credit-sale agreement" and "hire-purchase agreement" have the meanings assigned to them by Part I of this Act;

"contract of guarantee", in relation to a hire-purchase agreement, credit-sale agreement or conditional sale agreement, means a contract, made at the request (express or implied) of the hirer or buyer, either to guarantee the performance of the hirer's or buyer's obligations under the hire-purchase agreement, credit-sale agreement or conditional sale agreement, or to indemnify the owner or seller against any loss which he may incur in respect of that agreement, and "guarantor" shall be construed accordingly;

"hire-purchase price" (subject to subsection (2) of this section) means the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of goods to which the agreement relates,

exclusive of any sum payable as a penalty or as compensation or damages for a breach of the agreement;

"hirer" means the person who takes or has taken goods from an owner under a hire-purchase agreement and includes a person to whom the hirer's rights or liabilities under the agreement have passed by assignation or by operation of law;

"notice of cancellation" has the meaning assigned to it by section 11(2) of this Act;

"owner" means the person who lets or has let goods to a hirer under a hire-purchase agreement and includes a person to whom the owner's property in the goods or any of the owner's rights or liabilities under the agreement has passed by assignation or by operation of law;

"seller", in relation to a conditional sale agreement means the person who agrees to sell goods under the agreement and includes a person (other than the buyer) to whom that person's property in the goods or any of that person's rights or liabilities under the agreement has passed by assignation or by operation of law;

"total purchase price" (subject to subsection (2) of this section) means the total sum payable by the buyer under a credit-sale agreement or a conditional sale agreement, exclusive of any sum payable as a penalty or as compensation or damages for a breach of the agreement.

(2) For the purposes of this Act, any sum payable by the hirer under a hire-purchase agreement, or by the buyer under a conditional sale agreement, by way of a deposit or other initial payment, or credited or to be credited to him under the agreement on account of any such deposit or payment, whether that sum is to be or has been paid to the owner or seller or to any other person or is to be or has been discharged by a payment of money or by the transfer or delivery of goods or by any other means, shall form part of the hire-purchase price or total purchase price, as the case may be.

(3) In this Act "antecedent negotiations" in relation to a hire-purchase agreement, credit-sale agreement or conditional sale agreement, means any negotiations or arrangements with the hirer or buyer whereby he was induced to make the agreement or which otherwise promoted the transaction to which the agreement relates; and any reference in this Act to the person by whom any antecedent negotiations were conducted is a reference to the person by whom the negotiations or arrangements in question were conducted or made in the course of a business carried on by him.

PART V

(4) The last preceding subsection—

(*a*) shall have effect in relation to a document to which section 11 of this Act applies, but which does not constitute a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement, as if references to the agreement and to making the agreement were references respectively to the document and to signing the document and any reference to the hirer or buyer were a reference to the prospective hirer or buyer (within the meaning of that section), and

(*b*) for the purposes of section 31(1) of this Act, shall have effect in relation to any offer to enter into a hire-purchase agreement, credit-sale agreement or conditional sale agreement as if any reference to the agreement were a reference to the offer and any reference to the hirer or buyer were a reference to the person making the offer.

(5) For the purposes of this Act any negotiations conducted, or arrangements or representations made, by a servant or agent, if conducted or made by him in the course of his employment or agency, shall be treated as conducted or made by his employer or principal; and anything received by a servant or agent, if received by him in the course of his employment or agency, shall be treated as received by his employer or principal.

In this subsection " representations " has the same meaning as in section 16 of this Act, and references to making representations shall be construed accordingly.

(6) Any reference in this Act to a document which constitutes a hire-purchase agreement, credit-sale agreement or conditional sale agreement shall be construed as including a reference to a document which together with one or more other documents constitutes such an agreement, and any reference to a document which, if executed by or on behalf of another person, would constitute such an agreement shall be construed accordingly.

(7) Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment, including this Act.

Transitional provisions, consequential amendments and repeals.

55.—(1) This Act (including the repeals effected by this section) shall not have effect in relation to any hire-purchase agreement, credit-sale agreement or conditional sale agreement made before 1st January 1965.

(2) Subject to the preceding subsection, this Act shall have effect in relation to agreements made before, as well as agreements made after, the commencement of this Act.

PART V

(3) The transitional provisions contained in Part I of Schedule 4 to this Act shall have effect; and, on the coming into operation of any Order in Council under section 3 of this Act, the transitional provisions in Part II of that Schedule shall have effect.

(4) The enactments specified in Schedule 5 to this Act shall have effect subject to the amendments specified in that Schedule, being amendments consequential upon the provisions of this Act.

(5) Subject to subsection (1) of this section and to the transitional provisions contained in Part I of Schedule 4 to this Act, the enactments specified in Schedule 6 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

Saving for Interpretation Act 1889, s. 38. 1889 c. 63.

56. The inclusion in this Act of any express saving, transitional provision or amendment shall not be taken as prejudicing the operation of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals).

Commencement.

57.—(1) Subject to the following provisions of this section, this Act shall come into operation on 1st October 1965 (in this section referred to as " the commencement date ").

(2) This section, any provisions of this Act which confer any power to make regulations, or which (as construed in accordance with section 32(3) of the Interpretation Act 1889) confer any power to revoke or vary any regulations, and any provisions of this Act relating to the exercise of any such power, shall come into operation on the passing of this Act; but no regulations shall be made under this Act so as to come into operation before the commencement date.

(3) Any reference in this Act to the commencement of this Act is a reference to the coming into operation of so much of this Act as comes into operation on the commencement date, and any reference to the date of the commencement of this Act is a reference to that date; and if any Act passed after the passing of this Act refers to the commencement of this Act, subsection (2) of this section shall be disregarded for the purpose of construing that reference in accordance with section 36 of the Interpretation Act 1889 (which relates to the meaning of " commencement " with reference to an Act).

(4) The preceding provisions of this section shall have effect without prejudice to the generality of section 37 of the Interpretation Act 1889 (which relates to the exercise of statutory powers between the passing and the commencement of an Act).

Short title and extent.

58.—(1) This Act may be cited as the Hire-Purchase (Scotland) Act 1965.

(2) This Act shall extend to Scotland only.

SCHEDULES

Section 7.

SCHEDULE 1

NOTICE TO BE INCLUDED IN HIRE-PURCHASE AGREEMENT

NOTICE

RIGHT OF HIRER TO TERMINATE AGREEMENT

1. The hirer may put an end to this agreement by giving notice of termination in writing to any person who is entitled to collect or receive the hire-rent.

2. He must then pay any instalments which are in arrear at the time when he gives notice. If, when he has paid those instalments, the total amount which he has paid under the agreement is less than (*here insert the minimum amount which the hirer is required to pay in accordance with the provisions of sections* 28(1) *and* 51 *of this Act*) he must also pay enough to make up that sum, unless the court determines that a smaller sum would be equal to the owner's loss.

3. If the goods have been damaged owing to the hirer having failed to take reasonable care of them, the owner may sue him for the amount of the damage unless that amount can be agreed between the hirer and the owner.

4. The hirer should see whether this agreement contains provisions allowing him to put an end to the agreement on terms more favourable to him than those just mentioned. If it does, he may put an end to the agreement on those terms.

RESTRICTION OF OWNER'S RIGHT TO RECOVER GOODS

5. Unless the hirer has himself put an end to the agreement, the owner of the goods cannot take them back from the hirer without the hirer's consent unless the owner obtains an order of the court.

6. If *[after (*here insert an amount calculated in accordance with the provisions of sections* 33 *and* 51 *of this Act*) has been paid] the owner applies to the court for such an order, the court (under powers conferred by the Hire-Purchase (Scotland) Act 1965) may, if the court thinks it just to do so, allow the hirer to keep either—

(*a*) the whole of the goods, on condition that the hirer pays the balance of the price in the manner ordered by the court; or

(*b*) a fair proportion of the goods having regard to what the hirer has already paid.

* If the agreement is a subsequent agreement to which section 47 of this Act applies, the words in square brackets should be omitted.

SCHEDULE 2

Section 7.

NOTICE TO BE INCLUDED IN CONDITIONAL SALE AGREEMENT

NOTICE

RIGHT OF BUYER TO TERMINATE AGREEMENT

1. The buyer may put an end to this agreement by giving notice of termination in writing to any person who is entitled to collect or receive the instalments of the purchase price.

2. He must then pay any instalments which are in arrear at the time when he gives notice. If, when he has paid those instalments, the total amount which he has paid under the agreement is less than (*here insert the minimum amount which the buyer is required to pay in accordance with the provisions of sections* 28(1) *and* 51 *of this Act*) he must also pay enough to make up that sum, unless the court determines that a smaller sum would be equal to the seller's loss.

3. If the goods have been damaged owing to the buyer having failed to take reasonable care of them, the seller may sue him for the amount of the damage unless that amount can be agreed between the buyer and the seller.

4. The buyer should see whether this agreement contains provisions allowing him to put an end to the agreement on terms more favourable to him than those just mentioned. If it does, he may put an end to the agreement on those terms.

RESTRICTION OF SELLER'S RIGHT TO RECOVER GOODS

5. Unless the buyer has himself put an end to the agreement, the seller of the goods cannot take them back from the buyer without the buyer's consent unless the seller obtains an order of the court.

6. If *[after (*here insert an amount calculated in accordance with the provisions of sections* 33 *and* 51 *of this Act*) has been paid] the seller applies to the court for such an order, the court (under powers conferred by the Hire-Purchase (Scotland) Act 1965) may, if the court thinks it just to do so, allow the buyer to keep either—

(*a*) the whole of the goods, on condition that the buyer pays the balance of the price in the manner ordered by the court; or

(*b*) a fair proportion of the goods having regard to what the buyer has already paid.

* If the agreement is a subsequent agreement to which section 47 of this Act applies, the words in square brackets should be omitted.

Section 46.

SCHEDULE 3

RECOVERY OF POSSESSION, AND MONEY CLAIMS, AFTER DEATH OF HIRER OR BUYER

Circumstances to which this Schedule applies

1. The provisions of this Schedule shall have effect where goods have been let under a hire-purchase agreement, and at any time after the death of a person who, immediately before his death, was the hirer in relation to that agreement (in this Schedule referred to as "the deceased hirer") the following circumstances exist, that is to say—

(*a*) the goods have not been delivered to the owner, and a person (in this Schedule referred to as "the person in possession") who is neither the owner of the goods nor the executor of the deceased hirer is in possession of the goods;

(*b*) no order for the specific delivery of the goods or of any part of them has been made against the deceased hirer under Part III of this Act, or, if such an order has been made, its operation has been postponed and the postponement has not been revoked by the court;

(*c*) no order under Part III of this Act for the specific delivery of the goods or of any part of them has (whether in pursuance of this Schedule or otherwise) been made against any person since the death of the deceased hirer.

2. The provisions of this Schedule shall also have effect where goods have been agreed to be sold under a conditional sale agreement and at any time after the death of a person who, immediately before his death, was the buyer in relation to that agreement (in this Schedule referred to as "the deceased buyer") the following circumstances exist, that is to say—

(*a*) the goods have not been delivered to the seller, and a person (in this Schedule referred to as "the person in possession") who is neither the seller of the goods nor the executor of the deceased buyer is in possession of the goods;

(*b*) no order for the specific delivery of the goods or of any part of them has been made against the deceased buyer under Part III of this Act, or, if such an order has been made, its operation has been postponed and the postponement has not been revoked by the court;

(*c*) no order under Part III of this Act for the specific delivery of the goods or of any part of them has (whether in pursuance of this Schedule or otherwise) been made against any person since the death of the deceased buyer.

3. Expressions to which a meaning is assigned by Part III of this Act have the same meanings in this Schedule as in that Part of this Act.

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Restriction on right to recover possession of protected goods

4.—(1) At any time when the circumstances specified in paragraph 1 or paragraph 2 of this Schedule exist, and the goods are protected goods, the owner (where the agreement is a hire-purchase agreement) or the seller (where it is a conditional sale agreement) shall not enforce any right to recover possession of the goods from the person in possession otherwise than by action.

(2) Nothing in this paragraph shall be taken to confer on an owner or seller any right to recover, otherwise than by action, possession of any goods let under a hire-purchase agreement or agreed to be sold under a conditional sale agreement where one-third of the hire-purchase price or total purchase price, as the case may be, has not been paid or tendered as mentioned in section 33(1)(*b*) of this Act.

5. In sections 34(2) and 35(1) of this Act (including those provisions as applied by section 45 of this Act to conditional sale agreements) any reference to contravention of section 34(1) of this Act shall include a reference to contravention of paragraph 4(1) of this Schedule; and accordingly, if the owner or seller recovers possession of goods in contravention of that paragraph, an executor of the deceased hirer or the deceased buyer, as the case may be, shall (without prejudice to any other right exercisable by him as the hirer or buyer in relation to the agreement) be entitled to recover from the owner or seller all sums paid by the hirer or buyer under the agreement or under any security given by him in respect thereof.

Action for possession, and money claims, by owner

6.—(1) In subsections (2) to (6) of section 35, in sections 36 to 44 and in section 48 of this Act—

(*a*) any reference to an action to which section 35 of this Act applies shall include a reference to any action to which sub-paragraph (2) of this paragraph applies, and

(*b*) any reference to an action to enforce a right to recover possession of protected goods from the hirer shall include a reference to an action to enforce a right to recover possession of protected goods from the person in possession in the circumstances specified in paragraph 1 of this Schedule.

(2) This sub-paragraph applies to any action brought by the owner, in the circumstances specified in paragraph 1 of this Schedule, to enforce a right to recover possession of protected goods from the person in possession, where the owner has not previously, in contravention of section 34(1) of this Act or of paragraph 4(1) of this Schedule, recovered possession of part of the goods let under the agreement.

(3) In any action to which sub-paragraph (2) of this paragraph applies, the court (without prejudice to any other power exercisable by the court) may—

(*a*) on the application of any party to the action, sist the action to enable an executor to be appointed, and, if a person who is not a party to the action is so appointed, to enable that person to be made a party thereto, or

SCH. 3

(*b*) on the application of any person who is not a party to the action, but who satisfies the court that he is the executor, or intends to apply to be appointed executor, of the deceased hirer, sist the action to enable that person to be made a party to the action, and, if he has not been appointed executor, to enable him to be so appointed.

(4) Section 36(1) of this Act shall not apply to any such action.

Action for possession, and money claims, by seller

7.—(1) In subsections (2) to (6) of section 35, in sections 36 to 44 and in section 48 of this Act—

(*a*) any reference to an action to which section 35 of this Act applies shall include a reference to any action to which sub-paragraph (2) of this paragraph applies, and

(*b*) any reference to an action to enforce a right to recover possession of protected goods from the buyer shall include a reference to an action to enforce a right to recover possession of protected goods from the person in possession in the circumstances specified in paragraph 2 of this Schedule.

(2) This sub-paragraph applies to any action brought by the seller, in the circumstances specified in paragraph 2 of this Schedule, to enforce a right to recover possession of protected goods from the person in possession, where the seller has not previously, in contravention of section 34(1) of this Act or of paragraph 4(1) of this Schedule, recovered possession of part of the goods agreed to be sold under the agreement.

(3) In any action to which sub-paragraph (2) of this paragraph applies, the court (without prejudice to any other power exercisable by the court) may—

(*a*) on the application of any party to the action, sist the action to enable an executor to be appointed, and, if a person who is not a party to the action is so appointed, to enable that person to be made a party thereto, or

(*b*) on the application of any person who is not a party to the action, but who satisfies the court that he is the executor, or intends to apply to be appointed executor, of the deceased buyer, sist the action to enable that person to be made a party to the action, and, if he has not been appointed executor, to enable him to be so appointed.

(4) Section 36(1) of this Act shall not apply to any such action.

(5) In the preceding provisions of this paragraph references to any provisions of sections 35 to 44 of this Act are references to those provisions as applied by section 45 of this Act to conditional sale agreements.

Recovery of possession where postponed order previously made against deceased hirer or buyer

8.—(1) Where the circumstances specified in paragraph 1 or paragraph 2 of this Schedule exist, in a case where—

(*a*) an order for the specific delivery of the goods has been made under Part III of this Act in an action against the deceased hirer or the deceased buyer, and

(*b*) the operation of that order has been postponed, SCH. 3

then, notwithstanding anything in paragraph 4(1) of this Schedule, any right of the owner or seller to recover possession of the goods from the person in possession shall be enforceable in that action (and not in an action against that person) and shall be so enforceable by an application for the grant of a warrant to officers of court to search such premises in the occupation of that person as may be specified in the warrant and to take possession of the goods or any of them which may be found in such premises.

Any warrant granted in pursuance of an application under this sub-paragraph shall be deemed to include authority to open, if need be, shut and lockfast places for the purpose of carrying the warrant into lawful execution.

(2) The court may sist any such application in the like circumstances, and for the like purposes, as in accordance with paragraph 6(3) or paragraph 7(3) of this Schedule it could sist an action to which paragraph 6(2) or (as the case may be) paragraph 7(2) of this Schedule applies.

SCHEDULE 4

Section 55.

TRANSITIONAL PROVISIONS

PART I

GENERAL TRANSITIONAL PROVISIONS

1. In so far as any regulation, order, appropriation or request made, payment made or recovered, information given, notice, copy or other document delivered or sent, or other thing done, under an enactment repealed by this Act could have been made, recovered, given, delivered, sent or done under a corresponding provision of this Act, it shall not be invalidated by the repeal effected by section 55(5) of this Act, but shall have effect as if made, recovered, given, delivered, sent or done under that corresponding provision:

Provided that this paragraph shall not apply to any regulations revoked as from the commencement of this Act in the exercise of the powers conferred by section 53(4) of this Act.

2. Where any Act (whether passed before, or in the same Session as, this Act) or any document refers, either expressly or by implication, to an enactment repealed by this Act, the reference shall, except where the context otherwise requires, be construed as, or as including, a reference to the corresponding provision of this Act.

3. Where a period of time specified in an enactment repealed by this Act is current at the commencement of this Act, this Act shall have effect as if the corresponding provision thereof had been in force when that period began to run.

4. Without prejudice to paragraph 1 of this Schedule, any reference in this Act (whether express or implied) to a thing done or required or authorised to be done, or omitted to be done, or to an event which has occurred, under or for the purposes of or by reference to or in contravention of any provisions of this Act shall, except where the context otherwise requires, be construed as including a reference to the corresponding thing done or required or authorised

SCH. 4

to be done, or omitted, or to the corresponding event which occurred, as the case may be, under or for the purposes of or by reference to or in contravention of the corresponding provisions of the enactments repealed by this Act.

5. Nothing in this Act shall affect the enactments repealed thereby in their operation in relation to offences committed before the commencement of this Act.

PART II

TRANSITIONAL PROVISIONS APPLICABLE TO ORDERS IN COUNCIL UNDER SECTION 3

6. Where an Order in Council is made under section 3, the provisions of Parts II, III, and IV of this Act, and of Schedules 1 to 3 of this Act, shall not, except as provided by the following provisions of this Part of this Schedule, have effect in relation to—

(*a*) any hire-purchase agreement or conditional sale agreement made before the operative date which is by virtue of the Order included in references to which section 2(2) applies, but would not be so included apart from the Order, or

(*b*) any credit-sale agreement made before that date which is by virtue of the Order included in references to which section 2(3) or section 2(4) applies, but would not be so included apart from the Order.

7. Notwithstanding anything in the last preceding paragraph, in relation to any hire-purchase agreement or conditional sale agreement made before the operative date which (not being excluded by section 4) is by virtue of the Order included in references to which section 2(2) applies, but would not be so included apart from the Order,—

(*a*) sections 25 and 26 shall apply, except in the case of a default committed before the operative date;

(*b*) section 30 shall apply where the hirer or buyer dies on or after that date;

(*c*) sections 33 and 47 shall apply in relation to any time on or after that date;

(*d*) section 34 shall apply in relation to the recovery of possession of protected goods on or after that date;

(*e*) Part III of this Act (other than sections 33, 34, 46 and 47) shall apply in relation to actions begun on or after that date;

(*f*) section 46 and Schedule 3 to this Act shall apply where the hirer or buyer dies on or after that date;

(*g*) section 49 shall apply so far as it relates to payments made on or after that date;

(*h*) section 51 (except paragraph (*a*) of subsection 1 thereof) shall apply.

8. Any reference in this Part of this Schedule to a numbered section shall be construed as a reference to a section bearing that number in this Act.

9. In this Part of this Schedule "the operative date", in relation to an Order in Council, means the date on which the Order comes into operation.

SCHEDULE 5

Section 55.

ENACTMENTS AMENDED

Enactment	*Amendment*
The Liability for War Damage (Miscellaneous Provisions) Act 1939 (2 & 3 Geo. 6. c. 102).	In section 6, for paragraph (*b*) there shall be substituted the following paragraph:— "(*b*) for paragraph (*a*) of subsection (3) of section 1 of this Act there shall be substituted the following paragraph: '(*a*) a hire-purchase agreement (as defined by section 1 of the Hire-Purchase (Scotland) Act 1965) under which the hire-purchase price does not exceed £100; or' ".
The Law Reform Miscellaneous Provisions) (Scotland) Act 1940 (3 & 4 Geo. 6. c. 42).	In section 4(2), for the words from "whether the purchase" to the end of the subsection there shall be substituted the words "and (*b*) any contract which forms a hire-purchase, credit-sale or conditional sale agreement as defined by section 1 of the Hire-Purchase (Scotland) Act 1965".
The Agriculture (Miscellaneous Provisions) Act 1950 (14 Geo. 6. c. 17).	In section 1(4), for the words from "a reference" to the end of the subsection there shall be substituted the words "'hire-purchase agreement' means a hire-purchase or conditional sale agreement as defined by section 1 of the Hire-Purchase (Scotland) Act 1965".
The Housing (Scotland) Act 1950 (14 Geo. 6. c. 34).	In section 68(2), for the words from "a contract" to the end of the subsection there shall be substituted the words "a hire-purchase or conditional sale agreement as defined by section 1 of the Hire-Purchase (Scotland) Act 1965".
The Rag Flock and Other Filling Materials Act 1951 (14 & 15 Geo. 6. c. 63).	In section 10(7) for the words from "a contract to which" to the end of the subsection there shall be substituted the words "hiring under a hire-purchase agreement as defined by section 1 of the Hire-Purchase (Scotland) Act 1965 or to an agreement to sell under a conditional sale agreement as defined by that section".
The Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (14 & 15 Geo. 6. c. 65).	In section 10(3) for the words from "the expression" to the end of the subsection there shall be substituted the words "the expressions 'hire-purchase agreement',

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Enactment	*Amendment*
The Reserve and Auxiliary Act—*cont.*	'hirer' and 'owner' have the meanings respectively assigned to them by sections 1 and 54(1) of the Hire-Purchase (Scotland) Act 1965 and include references respectively to a conditional sale agreement, a buyer and a seller, all as defined by those sections, and the expression 'let' shall be construed accordingly".
The Clean Air Act 1956 (4 & 5 Eliz. 2. c. 52).	In section 34(1) in the definition of "hire-purchase agreement", for the words from "contract" to the end of the definition there shall be substituted the words "hire-purchase or conditional sale agreement such as is mentioned in subsection (2) of section 2 of the Hire-Purchase (Scotland) Act 1965 (or that subsection as amended by section 3(1) of that Act), and 'letting' shall be construed accordingly".
The Restrictive Trade Practices Act 1956 (4 & 5 Eliz. 2. c. 68).	In section 26(4), for the words from "a contract to which" to the end of the subsection there shall be substituted the words "letting under a hire-purchase agreement as defined by section 1 of the Hire-Purchase (Scotland) Act 1965 or to an agreement to sell under a conditional sale agreement as defined by that section".
The Advertisements (Hire-Purchase) Act 1957 (5 & 6 Eliz. 2. c. 41).	In section 4(1), in the definition of "hire-purchase", for the words from "contract" to the end of the definition there shall be substituted the words "hire-purchase agreement as defined by section 1 of the Hire-Purchase (Scotland) Act 1965".
The Consumer Protection Act 1961 (9 & 10 Eliz. 2. c. 40).	In section 5, in the definition of "credit-sale agreement" for the words from "an agreement to sell" to the end of the definition there shall be substituted the words "a conditional sale agreement such as is mentioned in the next following paragraph"; and in the definition of "hire-purchase agreement" for the words "contract to which the Act of 1932 applies" there shall be substituted the words "hire-purchase or conditional sale

Enactment	*Amendment*	SCH. 5
The Consumer Protection Act 1961 (9 & 10 Eliz. 2. c. 40) — *cont.*	agreement such as is mentioned in subsection (2) of section 2 of the Hire-Purchase (Scotland) Act 1965 (or that subsection as amended by section 3(1) of that Act) ", and for the words " contract as aforesaid and to a purchaser " there shall be substituted the words " conditional sale agreement and to a buyer ".	
The Vehicles (Excise) Act 1962 (10 & 11 Eliz. 2. c. 13).	In section 24(1), in the definition of " hackney carriage ", for the words " section twenty-one of the Hire-Purchase Act 1938 " there shall be substituted the words " section 1 of the Hire-Purchase (Scotland) Act 1965 ".	
The Hire-Purchase Act 1964 (1964 c. 53).	In section 29(1), for the words " section 21(5) of, and paragraph 6 of Schedule 1 to, this Act ", and for the words " section 21(1) of the Hire-Purchase Act 1938 ", there shall in each case be substituted the words " sections 1 and 54(1) of the Hire-Purchase (Scotland) Act 1965 ".	
	In section 29(4), in paragraph (a), for the words " the Hire-Purchase Act 1938 " there shall be substituted the words " the Hire-Purchase (Scotland) Act 1965 " and for " 13(1) " there shall be substituted " 38(1) "; and in paragraph (b), for the words from " in relation to that agreement " to " this Act) " there shall be substituted the words " the buyer in relation to that agreement for the purposes of the Hire-Purchase (Scotland) Act 1965 ", and for the words from " section 13(1) " to " that Schedule) " there shall be substituted the words " the provision substituted for section 38(1) of that Act by section 45(3) thereof ".	

Section 55.

SCHEDULE 6

ENACTMENTS REPEALED

Chapter	Short Title	Extent of Repeal
22 & 23 Geo. 5. c. 38.	The Hire Purchase and Small Debt (Scotland) Act 1932.	In section 11, the words " Hire Purchase and ".
3 & 4 Geo. 6. c. 42.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1940.	Section 4 (3).
9 & 10 Eliz. 2. c. 40.	The Consumer Protection Act 1961.	In section 5, the definition of " Act of 1932 ".
1964 c. 53.	The Hire-Purchase Act 1964.	Part II. Sections 33, 34(2), 35(2), 37(3) and (4). Schedules 1, 2, 5 and 7.