

THE HIRE-PURCHASE ACT

ARRANGEMENT OF SECTIONS

PART I. *Preliminary*

1. Short title.
2. Interpretation.

PART II. *General*

Consumer protection prior to the making of an agreement

3. Regulation of advertisements re hire-purchase or credit sale or conditional sale.
4. Duties of vendors prior to agreement.
5. Requirement that information be furnished regarding cash price.
6. Requirement that agreements contain prescribed information.
7. Requirement that copies of agreement be furnished to purchaser.

Regulation of agreements—

Representations, conditions and warranties

8. Certain representations deemed to be made by an agent of owner or seller.
9. Implied conditions and warranties.
10. Provision as to exclusion of implied conditions and warranties.
11. Further implied conditions in special cases.
12. Special provision as to conditional sale agreements.

Regulation of rights and duties subsequent to agreement

13. Vendor to supply information and copy to purchaser.
14. Requirements relating to contracts of guarantee.
15. Further documents to be supplied to guarantor.
16. Duty of purchaser to give vendor information re location of goods.

HIRE-PURCHASE*Rebate in purchase price and interest on late payment*

17. Rebate on early payment, etc.
18. Right to terminate agreement.
19. Liability of purchaser giving notice of termination.
20. Installation charges.
21. Power of vendor to insure goods if purchaser fails to do so.

Avoidance of certain provisions and contracts

22. General provisions.
23. Provisions relating to death of hirer or buyer.

PART III. Recovery of possession and other remedies

24. Restriction on right to recover possession of goods.
25. Recovery of possession in default of payment and on improper alienation.
26. Power to authorize repossession of goods.
27. Action by vendor to recover possession of goods from purchaser.
28. Effect of postponement of operation of an order for specific delivery of goods to the owner.
29. Powers of the Court to deal with payments arising on determination of vending agreements.
30. Distress for rent and bankruptcy.
31. Purchaser's refusal to surrender goods not to be conversion in certain cases.
32. Evidence of adverse detention of goods.
33. Appropriation of payments.
34. Payment otherwise than in money.

PART IV. Application of this Act to prescribed bills of sale

35. Interpretation of this Part.
36. Exclusion of consumers' bills of sale from the provisions of the Bills of Sale Act.
37. Application of provisions of this Act to consumers' bills of sale.

PART V. Supplementary

38. Regulations.

SCHEDULES

[The inclusion of this page is authorized by L.N. 248/1975]

THE HIRE-PURCHASE ACT

Acts
19 of 1974,
15 of 1979
2nd Sch.

[1st October, 1974.]

PART I. *Preliminary*

1.—(1) This Act may be cited as the Hire-Purchase Act. Short title.

(2) This Act shall not have effect in relation to any hire-purchase agreement, credit sale agreement, consumer's bill of sale or conditional sale agreement made before the 1st October, 1974.

2.—(1) In this Act—

Interpreta-
tion.

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

“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 assignment or by operation of law;

“cash price”, in relation to any goods, means the price in which the goods may be purchased by the purchaser for cash;

“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;

“consumer’s bill of sale” has the meaning assigned to it by section 35;

“contract of guarantee”, in relation to a vending agreement, means a contract, made at the request (express or implied) of the purchaser, either to guarantee the performance of the purchaser’s obligations under the vending agreement, or to indemnify the vendor against any loss which he may incur in respect of that agreement, and “guarantor” shall be construed accordingly;

“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;

“disposal”, in relation to goods, includes—

- (a) the disposal of the ownership of the goods, or of any proprietary interest in them, or of the right to possession of the goods; and
- (b) the disposal of the possession of the goods, whether or not accompanied by any disposal of the ownership of the goods, or of any proprietary interest in them, or of the right to possession of them;

“hire-purchase agreement” (subject to subsection (6)) means an agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee;

“hire-purchase price” (subject to subsection (2)) 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 assignment or by operation of law;

“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 assignment or by operation of law;

“purchaser” means—

(a) in relation to a hire-purchase agreement, the hirer; and

(b) in relation to a conditional sale agreement or a credit sale agreement, the buyer;

“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 assignment or by operation of law;

“spouse” includes—

(a) a single man or widower living with a single woman or widow as man and wife; or

(b) a single woman or widow living with a single man or widower as man and wife;

“total purchase price” (subject to subsection (2)) 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;

“vending agreement” means—

- (a) a conditional sale agreement;
- (b) a credit sale agreement; or
- (c) a hire-purchase agreement;

“vendor” means—

- (a) in relation to a hire-purchase agreement, the owner; and
- (b) in relation to a conditional sale agreement or a credit sale agreement, the seller.

(2) For the purposes of this Act, any sum payable by the purchaser under a vending 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 vendor 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 vending agreement, means any negotiations or arrangements with the purchaser 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.

(4) 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 8, and references to making representations shall be construed accordingly.

(5) Without prejudice to the operation of subsection (6), any reference in this Act to a document which constitutes a vending 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 and shall be construed accordingly.

(6) Where by virtue of two or more agreements, none of which by itself constitutes a hire-purchase agreement as defined by subsection (1), there is a bailment of goods and either the bailee may buy the goods, or the property therein will or may pass to the bailee, the agreements shall be treated, for the purposes of this Act, as a single agreement made at the time when the last of the agreements was made.

PART II. *General*

Consumer protection anterior to the making of an agreement

3.—(1) The advertisement of any goods as being available for disposal by way of hire-purchase or credit sale or conditional sale shall be subject to the regulations set out in the First Schedule.

Regulation
of advertise-
ments re
hire-
purchase or
credit sale
or condi-
tional sale.
First
Schedule.

[The inclusion of this page is authorized by L.N. 248/1975]

(2) Subject to the provisions of this section, any person who displays or issues an advertisement in contravention of the provisions of the First Schedule or causes an advertisement to be displayed or issued in contravention of those provisions, shall be guilty of an offence and liable on summary conviction in a Resident Magistrate's Court—

- (a) if it is his first conviction under this section, to a fine not exceeding one hundred dollars or, in default of payment thereof, to imprisonment for a term not exceeding three months;
- (b) in any other case, to a fine not exceeding two hundred dollars or, in default of payment thereof, to imprisonment for a term not exceeding six months.

(3) Where a person is charged with an offence under this section it shall be a defence to prove—

- (a) that the matters contained in the advertisement did not relate to anything to be done in the course of a business carried on by him; and
- (b) that the matters so contained were not (wholly or in part) devised or selected by him or by any other person under his direction or control.

Duties of
vendors
prior to
agreement.

4.—(1) Subject to subsection (3), a vendor shall not be entitled to enforce a vending agreement unless the requirements prescribed by or pursuant to sections 5, 6 and 7 are complied with.

(2) Where pursuant to subsection (1) a vendor is not entitled to enforce a vending agreement—

- (a) he shall not be entitled to enforce any contract of guarantee relating to that agreement;
- (b) no security given by the purchaser in respect of money payable under the agreement or given by a guarantor in respect of money payable under

a contract of guarantee relating to the agreement shall be enforceable against the purchaser or the guarantor, as the case may be, by the holder of that security; and

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

(3) If in any action the Court is satisfied that a failure to comply with any of the requirements of sections 5, 6 and 7 has not prejudiced the purchaser 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 the requirement for the purposes of the action.

5. The requirements of this section, in relation to a vending agreement, are that, before the agreement is made—

- (a) the cash price of the goods has been stated in writing to the purchaser by the vendor, (or by any person acting on his behalf or conducting antecedent negotiations) otherwise than in the agreement; or
- (b) if the purchaser 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 purchaser 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.

Requirement that information be furnished regarding cash price.

Requirement that agreements contain prescribed information.

6. The requirements of this section, in relation to a vending 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 number of such instalments 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 specifies the address of each party thereto to which all communications and notices to that party may be addressed;
- (d) the agreement complies with any relevant requirements of any regulations under 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 Part A or (as the case may be) Part B of the Second Schedule.

Second Schedule.

Requirement that copies of agreement be furnished to purchaser.

7.—(1) The requirements of this section, in relation to a vending agreement, are that copies are delivered or sent to the purchaser 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 purchaser, 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 purchaser, 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 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 subsection (2)—

(a) either—

- (i) the relevant document was presented to the purchaser 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 purchaser 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, within fourteen days of the making of the agreement, a copy of the agreement is delivered to the purchaser and signed for by him, or is sent to the purchaser by registered post; then, if each copy delivered or sent to the purchaser as mentioned in paragraph (a) or paragraph (b) of this subsection complies with the requirements of any regulations made under 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 section “the relevant document” means the document which, on being signed by the purchaser 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.

Regulation of agreements—

Representations, conditions and warranties

Certain representations deemed to be made by an agent of owner or seller.

8.—(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 on behalf of the owner or seller 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) In this section “representations” includes any statement or undertaking, whether constituting a condition or a warranty or not, and references to making representations shall be construed accordingly.

Implied conditions and warranties.

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

- (a) a condition on the part of the owner or seller that he will have a right to sell the goods at the time when the property is to pass;
- (b) a warranty that the hirer or buyer shall have and enjoy quiet possession of the goods;

- (c) a warranty 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 subsection (3) and to section 10, in every hire-purchase agreement and in every conditional sale agreement there shall be implied a condition that the goods will be of merchantable quality.

(3) Where the hirer or buyer has examined the goods or a sample of them, the condition referred to in subsection (2) 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 10, be implied a condition that the goods will be reasonably fit for that purpose.

(5) Nothing in this section or in section 10 shall prejudice the operation of any other enactment or rule of law whereby any condition or warranty is to be implied in any hire-purchase agreement or conditional sale agreement.

(6) The condition and warranties specified in subsection (1) and (except as provided by subsection (3) of this

section and by subsections (1) and (2) of section 10) the condition specified in subsection (2) of this section, shall be implied notwithstanding any agreement to the contrary.

(7) 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 condition referred to in subsection (4) 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.

Provision
as to
exclusion
of implied
conditions
and war-
ranties.

10.—(1) Where under a hire-purchase agreement or a conditional sale agreement goods are let or agreed to be sold as second-hand goods or “as is” or “as it stands” and—

- (a) the agreement contains a statement to that effect, and a provision that the condition referred to in subsection (2) of section 9 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 condition was brought to the notice of the hirer or buyer and its effect made clear to him,

that condition 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 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 condition referred to in subsection (2) of section 9 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 condition, were brought to the notice of the hirer or buyer and the effect of that provision was made clear to him,

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

11.—(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—

Further implied conditions in special cases.

- (a) a condition that the bulk will correspond with the sample in quality; and
- (b) a condition 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 condition 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.

12.—(1) Paragraph (c) of subsection (1) of section 12 of the Sale of Goods Act (whereby in certain circumstances a breach of a condition in a contract of sale is to be treated only as a breach of warranty) shall not apply to conditional sale agreements.

Special provision as to conditional sale agreements.

(2) A breach of a condition (whether express or implied) to be fulfilled by the seller under a conditional sale agreement shall be treated as a breach of warranty, and not as grounds for rejecting the goods and treating the agreement as repudiated, if (but only if) it would have fallen to be so treated had the condition been contained or implied in a corresponding hire-purchase agreement as a condition to be fulfilled by the owner.

(3) A conditional sale agreement shall be treated as not being a contract of sale for the purposes of sections 13 to 16 (inclusive) of the Sale of Goods Act (which imply certain conditions and warranties in contracts of sale).

(4) In this section "corresponding hire-purchase agreement" means a hire-purchase agreement relating to the same goods as the conditional sale agreement and made between the same parties and at the same time and in the same circumstances and, as nearly as may be, in the same terms as the conditional sale agreement.

Regulation of rights and duties subsequent to agreement

Vendor to supply information and copy to purchaser.

13.—(1) At any time before the final payment has been made under a vending agreement, any person entitled to enforce the agreement against the purchaser shall, within fourteen days after he has received a request by registered mail from the purchaser, and the purchaser has tendered to him the sum of twenty-five cents for expenses, supply to the purchaser 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 purchaser;
- (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 to comply with subsection (1), then, while the default continues—

- (a) no person shall be entitled to enforce the agreement against the purchaser 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 purchaser in respect of money payable under the agreement, or given by a guarantor in respect of money payable under a contract of guarantee relating to the agreement, shall be enforceable against the purchaser or the guarantor by any holder thereof,

and, if the default continues for a period of one month without reasonable cause, the person in default shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding fifty dollars.

(3) If a copy supplied to a purchaser in pursuance of a request made by him under this section does not comply with such requirements of any regulations made under this Act as relate thereto, subsection (2) shall apply as if that copy had not been supplied to him.

14.—(1) A contract of guarantee relating to a vending 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

Require-
ments re-
lating to
contracts
of guaran-
tee.

unless, within fourteen days of the making of the contract of guarantee or the making of the vending agreement, whichever is the later, there is delivered to the guarantor and signed for by him or sent to the guarantor by registered post—

- (a) a copy of the vending agreement; and
- (b) a copy of a note or memorandum of the contract of guarantee, being a note or memorandum signed by the guarantor or by a person authorized by him to sign it on his behalf.

(2) Subject to subsection (3), such a contract of guarantee, and any such security, shall also not be enforceable unless—

- (a) each copy delivered or sent as mentioned in subsection (1); and
- (b) the note or memorandum of the contract of guarantee,

complies with the requirements of any regulations made under 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), or with any such requirement as is mentioned in subsection (2), 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.

Further documents to be supplied to guarantor.

15.—(1) Where a contract of guarantee relating to a vending 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 thirty days after he has received a request by registered mail from the guarantor, and

[The inclusion of this page is authorized by L.N. 248/1975]

the guarantor has tendered to him the sum of twenty-five cents for expenses, supply to the guarantor the documents specified in subsection (2).

(2) The documents referred to in subsection (1) are—

- (a) a copy of the vending agreement; and
- (b) a copy of a note or memorandum 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 subsection (1) is made, showing the matters specified in paragraphs (a) to (c) of subsection (1) of section 13.

(3) In the event of a failure to comply with subsection (1), 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 without reasonable cause, the person in default shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding fifty dollars.

(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 this Act as relate thereto, subsection (3) shall apply as if that copy had not been supplied to him.

16.—(1) Where by virtue of a hire-purchase agreement or a conditional sale agreement a purchaser is under a duty to keep the goods comprised in the agreement in his posses-

Duty of purchaser to give vendor information re location of goods.

sion or control, the purchaser shall, on receipt of a request in writing (by personal delivery or by registered post) from the vendor, inform the vendor where the goods are at the time when the information is given, or, if it is sent by post, at the time of posting (as the case may be).

(2) If a purchaser fails without reasonable cause to give that information within fourteen days of the receipt of the notice, he shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding fifty dollars or, in default of payment thereof, to imprisonment for a term not exceeding three months.

Rebate in purchase price and interest on late payment

Rebate on
early pay-
ment, etc.

17. Notwithstanding anything to the contrary contained in a hire-purchase agreement or a conditional sale agreement—

- (a) where the balance of the hire-purchase price or total purchase price payable under the agreement is paid not less than one month prior to the date on which it is due, a rebate in the price of the goods shall be allowed to the purchaser at the rate of 5% per annum or such rate in lieu thereof as may be prescribed, calculated on the amount of such balance for the period in respect of which it was prepaid; and
- (b) where the balance of the hire-purchase price or total purchase price payable under the agreement remains unpaid for more than one month after the date on which it is due, interest on such balance may be charged by the vendor at the rate of 5% per annum or such rate in lieu thereof as may be prescribed, calculated on the amount of such balance for the period in respect of which it is due.

[The inclusion of this page is authorized by L.N. 248/1975]

18.—(1) At any time before the final payment under a hire-purchase agreement or conditional sale agreement falls due, the purchaser shall (subject to subsection (2)) be entitled to terminate the agreement by giving notice of termination in writing to any person entitled or authorized to receive the sums payable under the agreement.

Right to
terminate
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.

(3) Subject to subsection (2), 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 purchaser to terminate a hire-purchase agreement or conditional sale agreement otherwise than by virtue of this section.

19.—(1) Where a purchaser terminates an agreement by virtue of section 18, then, subject to the following provisions of this section and to section 20, and without prejudice to any liability which has accrued before the termination, he shall be liable—

Liability
of pur-
chaser
giving
notice of
termina-
tion.

- (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 subsection (1) (as the case may be) would be equal to the loss sustained by the vendor in consequence of the termination of the agreement by the purchaser, 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 section 18, the purchaser, if he has failed to take reasonable care of the goods, shall be liable to pay damages for the failure.

(4) Where a purchaser, having terminated a hire-purchase agreement or conditional sale agreement under section 18, wrongfully retains possession of the goods, then, in any action brought by the vendor to recover possession of the goods from the purchaser, 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 vendor without giving the purchaser an option to pay the value of the goods.

(5) In this section and in section 22 "loss" means the actual loss sustained by the vendor in consequence of the

termination of the agreement or bailment, as the case may be, but does not include his loss of profit.

20.—(1) Where under a hire-purchase agreement or a conditional sale agreement the vendor 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”) any reference in section 19(1) 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.

Installation charges.

(2) In this section “installation” means—

- (a) the installing of any electric line (as defined in the Electric Lighting Act) or any gas or water pipe;
- (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.

21.—(1) Where there is a requirement under a vending agreement that any goods the subject matter of the agreement are to be insured or to be kept insured, it shall be the responsibility of the vendor to ensure that such insurance is effected.

Power of vendor to insure goods if purchaser fails to do so.

(2) The cost of any insurance effected by a vendor pursuant to subsection (1), together with interest thereon

(or on any unpaid balance thereof) at the prescribed rate, shall be added to the hire-purchase price or total purchase price of the goods, as the case may be, and shall be payable by the purchaser to the vendor.

(3) Any amount added to the hire-purchase price or total purchase price of goods pursuant to subsection (2) shall be paid by the purchaser in such instalments as the vendor and purchaser may agree, or, in default of agreement, in such instalments, as near as possible equal, as will ensure that the total amount so added is repaid to the vendor not later than the date on which the last instalment payable under the vending agreement becomes due.

Avoidance of certain provisions and contracts

General
provi-
sions.

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

(2) Subsection (1) applies to any provision in any agreement (whether a hire-purchase agreement, credit sale agreement or conditional sale agreement or not)—

- (a) whereby, otherwise than as permitted by Part III, a vendor, or any person acting on his behalf, is authorized 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 18 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 19, is imposed on a purchaser by reason of the termination of a hire-purchase agreement or conditional sale agreement under the said section 18; or

[The inclusion of this page is authorized by L.N. 248/1975]

- (c) whereby a purchaser, after the termination in any manner whatsoever of a hire-purchase agreement or conditional sale agreement or (in the case of a hire-purchase agreement) of the bailment, 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 subsection (1) of section 19; and
 - (ii) an amount equal to the loss sustained by the owner or seller in consequence of the termination of the agreement or bailment;
- or
- (d) whereby any person acting on behalf of a vendor in connection with the formation or conclusion of a vending agreement is treated as, or deemed to be, the agent of the purchaser; or
- (e) whereby a vendor 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 vending agreement; or
- (f) whereby a purchaser is precluded from assigning his *rights under the agreement to another person* approved by the vendor or whereby such approval may be unreasonably withheld.

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

- (a) excluding or restricting the operation of any enactment contained in section 8; or
- (b) excluding or modifying any condition implied by virtue of section 11.

(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.

Provisions relating to death of hirer or buyer.

23.—(1) The provisions of subsection (2) or (as the case may be) subsection (3) 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 provisions in question—

- (a) the hire-purchase agreement or conditional sale agreement, or (in the case of a hire-purchase agreement) the bailment of the goods, 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
- (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 subsection (1) 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 provisions of subsections (1), (2) and (3) 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.

PART III. *Recovery of possession and other remedies*

24.—(1) Save as permitted by this Part, a vendor, under a hire-purchase agreement or a conditional sale agreement, shall not enforce otherwise than by action any right to recover possession of goods pursuant to any provision of the agreement.

Restriction on right to recover possession of goods.

(2) If a vendor recovers possession of goods in contravention of subsection (1), the agreement, if not previously terminated, shall terminate and—

- (a) the purchaser shall be released from all liability under the agreement and shall be entitled to recover from the vendor, in an action for money had and received, all sums paid by the purchaser under the agreement or under any security given by him in respect thereof; and
- (b) any guarantor, in relation to that agreement, shall be entitled to recover from the vendor in an action for money had and received, all sums paid by the guarantor under the contract of guarantee or under any security given by him in respect thereof.

Recovery
of possession in
default of
payment
and on
improper
alienation.

25.—(1) Nothing in this Part shall prevent a vendor from enforcing otherwise than by action any right to recover possession of goods where—

- (a) any instalment or other sum due and payable under a hire-purchase agreement or a conditional sale agreement remains unpaid for the prescribed period and, after the expiry of that period, the vendor, by registered post, or in such other manner as may be prescribed, serves on the purchaser the prescribed notices; or
- (b) there is any disposal, or attempted disposal, of the goods, the subject matter of a hire-purchase agreement or conditional sale agreement, or any part thereof by the purchaser contrary to the hire-purchase agreement or the conditional sale agreement or contrary to law; or
- (c) the purchaser terminates the agreement pursuant to section 18.

(2) In this section—
“prescribed period”, in relation to any agreement,
means—

- (a) where not less than two-thirds of the purchase price has been paid, three months or such longer period as may be stipulated in the agreement; and
- (b) in any other case, two months or such longer period as may be stipulated in the agreement:

Provided that—

- (i) if, in relation to any agreement, proceedings are taken against a purchaser under this section the prescribed period in relation to that agreement in any subsequent proceedings under this section shall be one month;
- (ii) if the purchaser dies, notwithstanding the expiry of the prescribed period no repossession of goods shall take place during the period of thirty days after the date of death;

“prescribed notices”, in relation to any agreement, means the following—

- (a) notice of default; and
 - (b) notice of repossession,
- in such terms, and subject to such provisions as may be prescribed.

(3) Where a vendor serves on a purchaser a notice of default and within the time specified in the notice that purchaser pays or tenders to the vendor not less than one-half of the sum stated in the notice, the vendor shall accept such sum and shall grant an extension of time not less than

one-half of the prescribed period for payment of the balance of the sum stated in the notice.

Power
to authorize
repossession of
goods.

26.—(1) Where it appears to a vendor of goods under a hire-purchase agreement or conditional sale agreement that—

- (a) the goods or any part thereof, have been or are likely to be abandoned by the purchaser; or
- (b) the goods or any part thereof are likely to be removed from Jamaica; or
- (c) the purchaser has departed or is about to depart from Jamaica without making satisfactory arrangements—
 - (i) for the due payment of instalments; or
 - (ii) for the care of the goods or any part thereof; or
- (d) the goods or any part thereof have been removed from the address at which, pursuant to the agreement or any variation thereof, the goods are to be kept, and the purchaser has failed to inform the vendor of such removal within seven days thereof; or
- (e) the purchaser has died,

and, in relation to paragraph (a), (b), (c), (d) or (e), the circumstances are such that the right of the vendor to recover possession of the goods would be endangered or unduly prejudiced the vendor may apply *ex parte* to a Resident Magistrate or to two Justices of the Peace for an order authorizing repossession of the goods by the vendor.

(2) If, pursuant to an application under subsection (1), a Resident Magistrate is, or the two Justices of the Peace are, satisfied that any of the circumstances set out in subsection (1) exists he may grant the order authorizing

the vendor, subject to subsection (3), to enforce otherwise than by action any right to recover possession of the goods.

(3) A vendor on obtaining an order under this section—

- (a) shall forthwith send the prescribed notice by registered mail, addressed to the purchaser at his last known address; and
- (b) may then proceed to enforce the right to recover possession of the goods.

(4) Where possession of goods is recovered by a vendor pursuant to an order under subsection (1), the vendor shall not dispose of the goods until a period of thirty days has elapsed from the date on which possession was so recovered and if, during that period an application is made to the Resident Magistrate's Court pursuant to subsection (5), he shall not dispose of the goods until and unless the Resident Magistrate's Court so orders.

(5) During the period of thirty days referred to in subsection (4) the purchaser of the goods under the hire-purchase agreement or the conditional sale agreement or, in the case of the death of the purchaser, the legal personal representative of the purchaser may, by plaint served on the vendor, apply to the Resident Magistrate's Court for an order to set aside the order under subsection (1) and to authorize the return of the goods to the purchaser.

(6) Upon the hearing of a plaint made pursuant to subsection (5) the Resident Magistrate's Court may refuse the application or may make such other order as it thinks just in the circumstances of the case.

(7) In relation to paragraph (e) of subsection (1) a vendor's right to recover possession of goods shall be deemed not to be endangered or unduly prejudiced if within thirty days of the death of the purchaser the legal personal

representative of the purchaser or spouse or some other person who satisfies the vendor that he is carrying out the duties of legal personal representative of the purchaser notifies the vendor in writing that he assumes responsibility for all payments which are outstanding under the agreement at the purchaser's death and all payments which may subsequently become due under the agreement, so, however, that nothing in this subsection shall be construed as authorizing the transfer of goods, the subject matter of the agreement, otherwise than as directed by the purchaser's legal personal representative.

(8) If a vendor disposes of goods in contravention of subsection (4) of this section or fails to return the goods to the purchaser in accordance with an order of a Resident Magistrate's Court under subsection (5) of this section, the provisions of subsection (2) of section 24 shall apply as if the vendor had recovered possession of the goods in contravention of subsection (1) of that section.

Action by vendor to recover possession of goods from purchaser.

27.—(1) An action to recover possession of goods under a vending agreement (being a hire-purchase agreement or a conditional sale agreement) shall be commenced in the Resident Magistrate's Court—

- (a) for the parish in which the purchaser resides or carries on business at the date on which he last made a payment under the vending agreement; or
- (b) for the parish in which the vending agreement was made.

(2) Subject to such exceptions as may be provided for by rules made pursuant to section 135 of the Judicature (Resident Magistrates) Act, 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 vendor, 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.

(4) 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 vendor; or
- (b) make an order for the specific delivery of all the goods to the vendor and postpone the operation of the order on condition that the purchaser or any guarantor pays the unpaid balance of the hire-purchase price or total purchase price, as the case may be, at such times and in such amounts as the Court, having regard to the means of the purchaser and of any guarantor, thinks just, and subject to the fulfilment of such other conditions by the purchaser or a guarantor as the Court thinks just; or
- (c) make an order for the specific delivery of a part of the goods to the vendor and for the transfer to the purchaser of the vendor's title to the remainder of the goods.

(5) No order shall be made under paragraph (b) of subsection (4) of this section unless the purchaser satisfies the Court that the goods are in his possession or control at the time when the order is made.

(6) The Court shall not make an order transferring to the purchaser the vendor's title to a part of the goods unless it is satisfied that the amount which the purchaser has paid in respect of the hire-purchase price or total 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 or total purchase price, as the case may be.

(7) Where damages have been awarded against the vendor in the proceedings, the Court may treat the purchaser as having paid in respect of the hire-purchase price or total purchase price, in addition to the actual amount paid, the amount of the damages, or such part thereof as the Court thinks fit, and thereupon the damages shall accordingly be remitted either in whole or in part.

(8) In this section the expression "order for the specific delivery of the goods" means an order for the delivery of the goods to the vendor without giving the purchaser an option to pay their value, and the expression "price" in relation to any goods means such part of the hire-purchase price or total purchase price as is assigned to those goods by the note or memorandum of the agreement, or, if no such assignment is made, such part of the hire-purchase price or total purchase price as the Court may determine.

(9) If at any time before the hearing of an action to which this section applies the vendor has recovered possession of a part of the goods, the references in subsection (4) to all the goods shall be construed as references to all the goods which the vendor has not recovered, and, if the parties have not agreed upon an adjustment of the hire-purchase price or total purchase price in respect of the goods so recovered, the Court may for the purposes of paragraphs (b) and (c) of subsection (4) make such reduction of the hire-purchase price or total purchase price and of the unpaid balance thereof as the Court thinks just.

28.—(1) While the operation of an order for the specific delivery of goods to the vendor is postponed under section 27, the purchaser shall be deemed to be a bailee of the goods under and on the terms of the vending agreement :

Provided that—

Effect of postponement of operation of an order for specific delivery of goods to the owner.

[The inclusion of this page is authorized by L.N. 248/1975].

- (a) no further sum shall be or become payable by the purchaser or a guarantor on account of the unpaid balance of the hire-purchase price or total purchase price, except in accordance with the terms of the order; and
- (b) the Court may make such further modification of the terms of the vending agreement and of any contract of guarantee relating thereto as the Court considers necessary having regard to the variation of the terms of payment.

(2) If while the operation of an order for the specific delivery of the goods to the vendor is so postponed the purchaser 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 vendor shall not take any civil proceedings against the purchaser 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 any condition relating to the payment of the unpaid balance of the hire-purchase price or total purchase price, it shall not be necessary for the vendor to apply to the Court for leave to execute the order unless the Court has so directed.

(3) When the unpaid balance of the hire-purchase price or total purchase price has been paid in accordance with the terms of the order, the vendor's title to the goods shall vest in the purchaser.

(4) The Court may at any time during the postponement of the operation of such an order as aforesaid—

- (a) vary the conditions of the postponement, and make such further modification of the vending 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;

- (b) revoke the postponement;
- (c) make an order in accordance with the provisions of section 27, for the specific delivery of a part of the goods to the vendor and for the transfer to the purchaser of the vendor's title to the remainder of the goods.

Powers of the Court to deal with payments arising on determination of vending agreements.

29.—(1) Where a vending agreement validly provides for the payment by the purchaser on or after the determination of the agreement or (as the case may be) the bailment, of such sum as, when added to the sums paid and the sums due in respect of the hire-purchase price or total purchase price before the determination, is equal to a fixed amount, and a claim is made in respect of any such sum in an action to which section 27 applies, then—

- (a) if the Court makes an order for the specific delivery of a part of the goods to the vendor and the transfer to the purchaser of the vendor's title to the remainder of the goods, the claim shall be disallowed;
- (b) if the Court postpones the operation of an order for the specific delivery of the goods to the vendor, it shall not entertain the claim unless and until the postponement is revoked, and shall then deal with the claim as if the agreement had just been determined.

(2) Where the purchaser or a guarantor has paid or has been ordered to pay any such sum as aforesaid, and the vendor subsequently seeks to recover the goods in an action to which section 27 applies, the Court may treat the said sum as a sum paid or payable, as the case may be, in respect of the hire-purchase price or total purchase price, as the case may be.

30.—(1) Where pursuant to section 25 a vendor has served on a purchaser the prescribed notices, the goods to which such notices relate shall not be treated for the purposes of section 105 of the Bankruptcy Act, as goods which are by the consent or permission of the vendor in the possession or disposition of the hirer or buyer.

Distress
for rent and
bankruptcy.
15/1979
2nd Sch.

(2) Where under the powers conferred by section 27 the Court has postponed the operation of an order for the specific delivery of goods to any person, those goods shall not, during the postponement, be treated for the purposes of section 105 of the Bankruptcy Act, as goods which are by the consent or permission of the vendor in the possession or disposition of the hirer or buyer.

15/1979
2nd Sch.

(3) At any time—

- (a) after the termination of a hire-purchase agreement or conditional sale agreement, or
- (b) after the owner or seller under such an agreement, having a right to recover from the hirer or buyer goods which have been let or agreed to be sold under the agreement, has begun an action to enforce that right,

the goods let or agreed to be sold under the agreement, or the goods claimed in the action, as the case may be, shall (notwithstanding that the Court in any such action postpones the operation of an order for the specific delivery of goods to the owner or seller) not be treated as goods comprised in that agreement for the purposes of section 105 of the Bankruptcy Act.

15/1979
2nd Sch.

31. If, whilst by virtue of this Act the enforcement by a vendor of a right to recover possession of goods from a purchaser is subject to any restriction, the purchaser refuses to give up possession of the goods to the vendor, the

Purchaser's
refusal to
surrender
goods not
to be
conversion
in certain
cases.

[The inclusion of this page is authorized by L.N. 57/1980]

purchaser shall not by reason only of the refusal, be liable to the owner for conversion of the goods.

Evidence of adverse detention of goods.

32.—(1) Where goods have been let under a hire-purchase agreement or have been agreed to be sold under a conditional sale agreement and the vendor—

- (a) brings an action to enforce a right to recover possession of the goods from the purchaser; and
- (b) proves in that action that after the right to recover possession of the goods accrued, but before the action was begun, he made a request in writing to the purchaser to surrender the goods,

then for the purposes of the claim of the vendor to recover possession of the goods, the possession of them by the purchaser shall be deemed to be adverse to the vendor.

(2) Nothing in this section shall affect a claim for damages for conversion.

Appropriation of payments.

33.—(1) Where a purchaser 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 vendor, 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 subsection (2).

(2) The purchaser 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 a purchaser fails to make any such appropriation, the payment shall, by virtue of this subsection, be appropriated towards the satisfaction of sums due under the several agreements respectively in the proportions which those sums bear to one another.

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

34. Where a vendor has agreed that any part of a hire-purchase price or total purchase price may be discharged otherwise than by 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 purpose of sections 13, 15 and 19 (which relate to liability of vendor to supply information to purchaser and the liability of a purchaser giving notice of termination).

Payment otherwise than in money.

PART IV. *Application of this Act to prescribed bills of sale*

35. In this Part "consumer's bill of sale" means any document which is a bill of sale as defined under section 2 of the Bills of Sale Act, not being—

Interpretation of this Part.

- (a) a document the subject matter of which includes—
 - (i) any part of the stock in trade; or
 - (ii) any plant or equipment, of a trade, business or calling; or
- (b) a document made or given to a bank for a debt incurred for a purpose other than the purchase of the subject matter of such document.

Exclusion of consumers' bills of sale from the provisions of the Bills of Sale Act.

36. The provisions of the Bills of Sale Act shall, from and after the 1st October, 1974, have no application to consumers' bills of sale.

Application of provisions of this Act to consumers' bills of sale.

37. The provisions of sections 7, 13, 16, 17, 22, 24, 25 and 26 of this Act shall apply to consumers' bills of sale in like manner as if—

- (a) the person to whom such bill of sale is granted were a vendor of the goods, the subject matter of the bill of sale;
- (b) the person granting such bill of sale were a purchaser of such goods; and
- (c) the document constituting the bill of sale were a conditional sale agreement.

PART V. *Supplementary*

Regulations.

38.—(1) The Minister may make regulations required by this Act to be made or as the Minister may consider necessary or desirable generally for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1) the Minister may by such regulations—

- (a) prescribe any matter which may be or is required to be prescribed under the provisions of this Act;
- (b) amend, repeal or replace any Schedule to this Act;
- (c) regulate the times at which and the manner in which goods may be repossessed by a vendor

and the amount of charges which may be made in relation thereto;

(d) prescribe for the licensing of persons to be employed in effecting the repossession of goods.

(3) Any regulations made under this section shall be subject to negative resolution.

FIRST SCHEDULE (Section 3)

The Hire-Purchase (Advertisement) Regulations, 1974

- Citation. 1. These Regulations may be cited as the Hire-Purchase (Advertisement) Regulations, 1974.
- Interpretation. 2.—(1) In these Regulations—
- “advertisement” includes any visual form of advertising (whether or not accompanied by spoken words or other sounds), whether in a publication, or by the display of notices, or by means of catalogues, price lists, cards or other documents, or by the exhibition of cinematograph films or photographs, or by way of television, or in any other way, but does not include any form of advertising consisting only of spoken words, with or without other sounds;
- “deposit” includes any initial payment to be made before or at the time of entering into an agreement;
- “directly expressed” means expressed (whether in words or figures or both) otherwise than as a fraction of, or by reference to, some other amount;
- “disposal”, in relation to goods, includes—
- (a) the disposal of the ownership of the goods or of any proprietary interest in them, or of the right to possession of the goods; and
 - (b) the disposal of the possession of the goods, whether or not accompanied by any disposal of the ownership of the goods, or of any proprietary interest in them, or of the right to possession of them;
- “fraction” includes a proportion expressed as a percentage or in any other way;
- “goods” includes vehicles, vessels, aircraft and animals, and generally includes articles of any description.
- (2) In the case of any advertisement contained in a cinematograph film or in a television programme—
- (a) for the purposes of regulation 3, and for the purpose of determining under regulation 4 whether the advertisement contains details of payments in respect of any goods, anything included in any spoken words or other sounds by which the advertisement is accompanied shall be taken to form part of the advertisement;
 - (b) for the purposes of regulation 4, other than the purpose mentioned in sub-paragraph (a) of this paragraph, information shall be taken not to be included in the advertisement unless it is contained in it in a visual form;
 - (c) in determining, for the purposes of paragraph (1) of regulation 4 whether each part of the information required by that regulation is displayed clearly in the advertisement, in such

a way as not to give undue prominence to any part of it in comparison with any other part, regard shall be had to the length of time for which the advertisement is displayed (or, if different parts of the advertisement are displayed successively, to the length of time taken by each of them and to the aggregate length of time taken by them all) as well as to the contents of the advertisement.

(3) For the purposes of these Regulations it is immaterial whether any information included in an advertisement does or does not correspond with the terms on which goods to which the advertisement relates are in fact disposed of; and accordingly—

- (a) for the purposes of paragraph (2) of regulation 3, and of paragraph (4) of regulation 4, an advertisement shall be taken to specify the amount of a deposit or instalment if it specifies an amount as being the amount of the deposit or instalment in question; and
- (b) in so far as any provision of these Regulations requires information as to an amount or number, or the length of a period, to be included in an advertisement, that provision (subject to compliance with any requirement of these Regulations as to the manner in which any such information is to be expressed or displayed) shall be taken to be complied with if the advertisement specifies an amount or number, or length of period, as being the amount or number in question, or the length of the period in question, as the case may be.

3.—(1) These Regulations apply to any advertisement of any goods as being goods available for disposal by way of hire-purchase or credit sale or conditional sale, if the advertisement includes any one or more of the elements mentioned in paragraph (2) and is not an advertisement falling within paragraph (3).

Advertisements to which these Regulations apply.

(2) The said elements are—

- (a) an indication that a deposit is payable, consisting of or including either an indication of the amount of the deposit or an indication that it is a fraction specified in the advertisement, whether the amount of which it is a fraction is specified in the advertisement or not;
- (b) words indicating that no deposit is payable;
- (c) an indication of the amount of any one or more of the instalments payable.

(3) An advertisement of goods as being goods available for disposal by way of credit sale is not an advertisement to which these Regulations apply, notwithstanding that it includes one or more of the elements mentioned in paragraph (2), if—

- (a) it does not advertise any goods as being available for disposal by way of hire-purchase or conditional sale; and

[The inclusion of this page is authorized by L.N. 248/1975]

- (b) the terms of credit sale set out in the advertisement are such that no single article could be disposed of in accordance with those terms at a total price exceeding \$20.00.

Information to be included in advertisements to which these Regulations apply.

4.—(1) An advertisement to which these Regulations apply shall not be displayed or issued unless it includes all the information required by these Regulations, and each part of that information is displayed clearly in the advertisement, in such a way as not to give undue prominence to any part of it in comparison with any other part.

(2) Where an advertisement contains details of payments in respect of any goods, then, in so far as it relates to those goods, the information required by this regulation is the following, that is to say—

(a) either—

- (i) the amount of the deposit directly expressed; or
 - (ii) a statement that the amount of the deposit is a fraction specified in the advertisement of a sum the amount of which is directly expressed therein; or
 - (iii) a statement that no deposit is payable;
- (b) the amount of each instalment directly expressed;
- (c) the total number of instalments payable;
- (d) the length of the period in respect of which each instalment is payable;
- (e) if any instalments are payable before delivery of the goods, the number of instalments so payable; and
- (f) a sum stated as the cash price of the goods.

(3) In so far as an advertisement to which these Regulations apply relates to goods in respect of which the advertisement does not contain details of payments, the information required by this regulation is that specified in paragraph (2), subject to the following modifications, that is to say—

(a) with regard to the deposit, the information required by this regulation (instead of that specified in sub-paragraph (a) of paragraph (2)) is either—

- (i) a statement that the amount of the deposit is a fraction specified in the advertisement of a price or sum the nature of which is clearly indicated in the advertisement; or
- (ii) a statement that no deposit is payable; and

(b) sub-paragraphs (b) and (f) of paragraph (2) shall not apply.

(4) For the purposes of this regulation an advertisement shall be taken to contain details of payments in respect of any goods, if it specifies the amount of the deposit payable in respect of those goods, or of any one or more of the instalments so payable, and that amount is directly expressed in the advertisement.

(5) Without prejudice to the generality of paragraph (1), in the case of an advertisement of goods—

- (a) as being goods available for disposal by way of hire-purchase or conditional sale or credit sale; or
- (b) as being goods available for disposal in accordance with two or more alternative schemes of hire-purchase or conditional sale or credit sale,

the information required by these Regulations shall not be taken to be displayed clearly in the advertisement if it is not displayed so as to distinguish clearly between the information applicable to hire-purchase, the information applicable to conditional sale and the information applicable to credit sale, or as the case may be, so as to distinguish clearly between the information applicable to each of the schemes of hire-purchase or conditional sale or credit sale respectively.

SECOND SCHEDULE

(Section 6)

PART A

Notice to be included in Hire-Purchase Agreement

Notice

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 applicable under section 19 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.

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 complies with the requirements of Part III of the Act.

PART B

Notice to be included in Conditional Sale Agreement

Notice

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.

[The inclusion of this page is authorized by L.N. 248/1975]

HIRE-PURCHASE

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 applicable under section 19 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.

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 complies with the requirement of Part III of the Act.