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## SCHEDULES

### SCHEDULE 2

#### EXTENSION OF HIRE-PURCHASE ACT 1938 TO SCOTLAND

##### PART I

###### MODIFICATIONS OF HIRE-PURCHASE ACT 1938 FOR PURPOSES OF EXTENSION TO SCOTLAND

- 1 In the Act of 1938, for any reference to an assignment (other than in section 12(8) thereof) there shall be substituted a reference to an assignation and any reference to the bailment of goods shall be omitted.
- 2 In section 8 of the Act of 1938, for any reference to a warranty or condition there shall be substituted a reference to a stipulation ; and after subsection (3B) there shall be inserted the following subsection, that is to say:—

“(3C) In relation to every hire-purchase agreement the stipulations referred to in subsection (1)(b) and (d) and subsection (2) of this section shall be deemed to be material to the agreement.”
- 3 Section 10 of the Act of 1938 shall be omitted.
- 4 In section 11 of the Act of 1938,
  - (a) for any reference to a judgment there shall be substituted a reference to an order of the court;
  - (b) at the end of subsection (1) there shall be added the words:—

“Provided that nothing in this subsection shall be taken to confer on an owner any right to recover, otherwise than by action, possession of any goods let under a hire-purchase agreement where one-third of the hire-purchase price has not been paid or tendered as aforesaid”; and
  - (c) in subsection (2) the words " in an action for money had and received ", in each place where they occur, shall be omitted.
- 5 In section 12 of the Act of 1938,
  - (a) for subsection (1) there shall be substituted the following subsections—

“(1) The following provisions of this section shall apply, in a case to which the last foregoing section applies, where the owner commences an action to enforce a right to recover possession of any of the goods from the hirer after one-third of the hire-purchase price has been paid or tendered as aforesaid.

(1A) After such an action has been commenced the owner shall not take any steps to enforce payment of any sum due under the hire-purchase agreement or under any contract of guarantee relating thereto, except by claiming the said sum in the said action”; and

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- (b) for any reference to the county court there shall be substituted a reference to the sheriff court.
- 6 In section 13 of the Act of 1938, for any reference to a bailee there shall be substituted a reference to a custodier ; and for any reference to executing an order there shall be substituted a reference to executing diligence on an order.
- 7 Sections 16 to 18 of the Act of 1938 shall be omitted.
- 8 In section 19 of the Act of 1938, the words " made after the commencement of this Act" and the words " and in section 14(1) of the Hire-Purchase Act 1964 " shall be omitted.
- 9 After section 19 of the Act of 1938 there shall be inserted the following section, that is to say—

**“19A Jurisdiction.**

- (1) Subject to the following provisions of this section, where goods have been let under a hire-purchase agreement to which this Act applies and the owner brings or institutes an action to enforce a right to recover possession of any of the goods from the hirer, the action shall be brought or instituted in the sheriff court for the district in which the hirer 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.
- (2) No cause, action or proceeding on or arising out of any hire-purchase agreement to which this Act applies or credit-sale agreement to which this Act applies which may competently be brought or instituted in the small debt court shall be brought or instituted 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 cause, action or proceeding brought or instituted 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.”
- 10 Section 20 of the Act of 1938 shall be omitted.
- 11 In subsection (1) of section 21 of the Act of 1938, the definition of " warranty " shall be omitted and for the definition of " hire-purchase agreement " there shall be substituted the following definition, that is to say—
- “" 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.”
- 12 In section 22 of the Act of 1938, subsection (3) shall be omitted.
- 13 In the Schedule to the Act of 1938—
- (a) in the second paragraph 1, the words from the beginning to " has been paid, then " shall be omitted ; and
- (b) in the second paragraph 2, after the word " If ", in the first place where it occurs, there shall be inserted the words " \*[after (*here insert an amount calculated in accordance with the provisions of sections 11 and 19 of this*

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*Act*) has been paid] " and after the word " court ", in the second place where it occurs, there shall be inserted the words " (under powers conferred by the Hire-Purchase (Scotland) Acts 1938 to 1964) ".