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SCHEDULES

SCHEDULE 2

EXTENSION OF HIRE-PURCHASE ACT 1938 TO SCOTLAND

PART III

PROVISIONS OF HIRE-PURCHASE ACT 1938 IN ITS APPLICATION TO SCOTLAND

“1 Application of Act.

- (1) This Act shall (except as provided by section 2 of the Hire-Purchase Act 1964) apply in relation to all hire-purchase agreements and credit-sale agreements under which the hire-purchase price or total purchase price, as the case may be, does not exceed £2000 ; and the expressions " hire-purchase agreement" and " credit-sale agreement" shall be construed accordingly.
- (2) If at any time after the commencement of the Hire-Purchase Act 1964 it appears to Her Majesty in' Council that the limit specified in the foregoing subsection (whether by virtue of that subsection or of a previous Order in Council under this subsection) should be further raised, Her Majesty may by Order in Council direct that the foregoing subsection shall be amended so as to substitute, for the sum specified in that subsection, such larger sum as may be specified in the Order.
- (3) No recommendation shall be made to Her Majesty to make an Order in Council under the last foregoing subsection unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament.

2 Requirements relating to hire-purchase agreements.

- (1) Before any hire-purchase agreement is entered into in respect of any goods, the owner shall state in writing to the prospective hirer, otherwise than in the agreement, a price at which the goods may be purchased by him for cash (in this section referred to as the " cash price ");

Provided that this section shall be deemed to have been sufficiently complied with—

- (a) if the hirer has inspected the goods or like goods and 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
 - (b) if the hirer 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) An owner shall not be entitled to enforce a hire-purchase agreement or any contract of guarantee relating thereto or any right to recover the goods from the hirer, and no security given by the hirer in respect of money payable under the hire-purchase

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agreement or given by a guarantor in respect of money payable under such a contract of guarantee as aforesaid shall be enforceable against the hirer or guarantor by any holder thereof, unless the requirement specified in the foregoing subsection has been complied with, and—

- (a) the agreement is signed by the hirer and by or on behalf of all other parties to the agreement, and
- (aa) the agreement, at the time when it is signed by the hirer, complies with the requirements of any regulations made under subsection (3) of this section which are applicable thereto, and
- (b) the agreement contains a statement of the hire-purchase price and of the cash price of the goods to which the agreement relates and of the amount of each of the instalments by which the hire-purchase price is to be paid and of the date, or the mode of determining the date, upon which each instalment is payable, and contains a list of the goods to which the agreement relates sufficient to identify them, and
- (c) the agreement contains a notice, which is at least as prominent as the rest of the contents of the agreement, in the terms prescribed in the Schedule to this Act, and
- (d) a copy of the agreement is delivered or sent to the hirer within seven days of the making of the agreement, and
- (e) either—
 - (i) the agreement is signed by or on behalf of all other parties immediately after it is signed by the hirer, and the copy referred to in paragraph (d) of this subsection is there and then delivered to him, or, the agreement having been signed by or on behalf of all other parties before it is signed by the hirer, that copy is delivered to him immediately after he signs the agreement, or
 - (ii) if, in a case not falling within the foregoing sub-paragraph, the relevant document (that is to say, the document which, on being signed as mentioned in paragraph (a) of this subsection, became the agreement) was presented, and not sent, to the hirer for his signature, then immediately after he signed the relevant document there was delivered to him a copy of that document in the form in which it then was, or
 - (iii) if the relevant document was sent to the hirer for his signature, then 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:

Provided that, if the court is satisfied in any action that a failure to comply with the requirement specified in the foregoing subsection or any requirement specified in paragraph (aa), (b), (c), (d) or (e) of this subsection has not prejudiced the hirer, 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.

- (3) The Board of Trade may by regulations provide that in any document which on being signed as mentioned in subsection (2)(a) of this section constitutes a hire-purchase agreement to which this Act applies, the signature of the hirer 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

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lettering or otherwise) as the Board may consider appropriate for securing that the words come to the attention of the hirer at the time when he is about to sign the document.

- (4) A document to which any regulations made under the last foregoing subsection apply shall not be invalid by reason only that the regulations are not complied with ; but subsection (2) of this section shall have effect in relation to compliance with the requirements of any such regulations as it has effect in relation to compliance with the requirements specified in paragraphs (b) to (e) of the said subsection.

3 Requirement relating to credit-sale agreements.

- (1) Before making any credit-sale agreement under which the total purchase price exceeds £30, the seller shall state in writing to the prospective buyer, otherwise than in the agreement, a price at which the goods may be purchased by him for cash (in this section referred to as the " cash price "):

Provided that this subsection shall be deemed to have been sufficiently complied with—

- (a) if the buyer has inspected the goods or like goods and 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
 - (b) if the 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) A person who has sold goods by a credit-sale agreement under which the total purchase price exceeds £30 shall not be entitled to enforce the agreement or any contract of guarantee relating thereto, and no security given by the buyer in respect of money payable under the credit-sale agreement or given by a guarantor in respect of money payable under such a contract of guarantee as aforesaid shall be enforceable against the buyer or guarantor by any holder thereof, unless the requirement specified in the foregoing subsection has been complied with, and—
- (a) the agreement is signed by the buyer and by or on behalf of all other parties to the agreement, and
 - (aa) the agreement, at the time when it is signed by the buyer, complies with the requirements of any regulations made under subsection (3) of the last foregoing section (as extended by subsection (3) of this section) which are applicable thereto, and
 - (b) the agreement contains a statement of the total purchase price and of the cash price of the goods to which the agreement relates and of the amount of each of the instalments by which the total purchase price is to be paid and of the date, or the mode of determining the date, upon which each instalment is payable, and contains a list of the goods to which the agreement relates sufficient to identify them, and
 - (c) a copy of the agreement is delivered or sent to the buyer within seven days of the making of the agreement, and
 - (d) either—
 - (i) the agreement is signed by or on behalf of all other parties immediately after it is signed by the buyer, and the copy referred to in paragraph (c) of this subsection is there and then delivered to him, or, the agreement having been signed by or on behalf of all other parties before it is signed

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by the buyer, that copy is delivered to him immediately after he signs the agreement, or

- (ii) if, in a case not falling within the foregoing sub-paragraph, the relevant document (that is to say, the document which, on being signed as mentioned in paragraph (a) of this subsection, became the agreement) was presented, and not sent, to the buyer for his signature, then immediately after he signed the relevant document there was delivered to him a copy of that document in the form in which it then was, or
- (iii) if the relevant document was sent to the buyer for his signature, then 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:

Provided that, if the court is satisfied in any action that a failure to comply with the requirement specified in the foregoing subsection or any requirement specified in paragraph (aa), (b), (c) or (d) of this subsection has not prejudiced the 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.

- (3) Subsections (3) and (4) of the last foregoing section shall apply in relation to a credit-sale agreement to which this Act applies under which the total purchase price exceeds £30 as it applies to a hire-purchase agreement, with the substitution for any reference to the hirer of a reference to the buyer and, for any reference to paragraph (a) or to paragraphs (b) to (e) of subsection (2) of the said section, of a reference to paragraph (a) or, as the case may be, to paragraphs (b) to (d) of subsection (2) of this section.

4 Right of hirer to determine hire-purchase agreement.

- (1) A hirer shall, at any time before the final payment under a hire-purchase agreement falls due, be entitled to determine the agreement by giving notice of termination in writing to any person entitled or authorised to receive the sums payable under the agreement, and shall, on determining the agreement under this section, be liable, without prejudice to any liability which has accrued before the termination, 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 such less amount as may be specified in the agreement:

Provided that, if the court is satisfied in any action that a sum less than the amount 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 would be equal to the loss sustained by the owner in consequence of the termination of the agreement by the hirer, the court may make an order for the payment of that sum in lieu of that amount.

- (2) Where a hire-purchase agreement has been determined under this section, the hirer shall, if he has failed to take reasonable care of the goods, be liable to pay damages for the failure.
- (3) Where a hirer, having determined a hire-purchase agreement under this section, wrongfully retains possession of the goods then, in any action brought by the owner to recover possession of the goods from the hirer, the court shall, unless it is satisfied that having regard to the circumstances it would not be just and equitable so to do, order the goods to be delivered to the owner, without giving the hirer an option to pay the value of the goods.

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

5 Avoidance of certain provisions.

- (1) Any provision in any agreement—
- (a) whereby an owner 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 is relieved from liability for any such entry or,
 - (b) whereby the right conferred on a hirer by this Act to determine the hire-purchase agreement is excluded or restricted, or whereby any liability in addition to the liability imposed by this Act is imposed on a hirer by reason of the termination of the hire-purchase agreement by him under this Act, or
 - (c) whereby a hirer, after the determination of the hire-purchase agreement in any manner whatsoever, 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, the amount first mentioned in section 4(1) of this Act and an amount equal to the loss sustained by the owner 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 or credit-sale agreement is treated as, or deemed to be, an agent of the hirer or the 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 or credit-sale agreement,
- shall be void.

6 Duty of owners and sellers to supply documents and information.

- (1) At any time before the final payment has been made under a hire-purchase agreement or credit-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 two shillings and six pence for expenses, supply to the hirer or buyer a copy of the 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, together (in either case) with a statement signed by the said 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 upon 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 upon 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 last foregoing 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

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case of a hire-purchase agreement, the owner shall not be entitled to enforce any right to recover goods from the hirer, 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 such a contract of guarantee as aforesaid 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 defaulter shall be liable on summary conviction to a fine not exceeding £25.

7 Duty of hirer to give information as to whereabouts of goods.

- (1) Where by virtue of a hire-purchase agreement a hirer is under a duty to keep the goods comprised in the agreement in his possession or control, the hirer shall, on receipt of a request in writing from the owner, inform the owner where the goods are at the time when the information is given or, if it is sent by post, at the time of posting.
- (2) If a hirer fails without reasonable cause to give the said information within fourteen days of the receipt of the notice, he shall be liable on summary conviction to a fine not exceeding £25.

8 Stipulations to be implied in hire-purchase agreements.

- (1) In every hire-purchase agreement there shall be—
 - (a) an implied stipulation that the hirer shall have and enjoy quiet possession of the goods ;
 - (b) an implied stipulation on the part of the owner that he shall have a right to sell the goods at the time when the property is to pass ;
 - (c) an implied 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;
 - (d) except in so far as the stipulation referred to in this paragraph is excluded by virtue of subsection (3A) or subsection (3B) of this section, an implied stipulation that the goods shall be of merchantable quality, so, however, that no such stipulation shall be implied by virtue of this paragraph, if the hirer has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed.
- (2) Where the hirer, whether expressly or by implication.—
 - (a) has made known to the owner, or to a servant or agent of the owner, 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 be an implied stipulation that the goods shall be reasonably fit for that purpose.

Section 24(2) of the Hire-Purchase Act 1964 shall apply for the purposes of this subsection as it applies for the purposes of Part I of that Act.

- (3) Subject to the following provisions of this section, the stipulations set out in subsection (1) of this section shall be implied notwithstanding any agreement to the contrary, and the owner shall not be entitled to rely on any provision in the agreement

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excluding or modifying the stipulation set out in subsection (2) of this section unless he proves that before the agreement was made the provision was brought to the notice of the hirer and its effect made clear to him.

- (3A) Where under a hire-purchase agreement goods are let as second-hand goods and—
- (a) the agreement contains a statement to that effect, and a provision that the stipulation referred to in subsection (1)(d) of this section 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 and its effect made clear to him,
- that stipulation shall not be implied in the agreement in relation to those goods.
- (3B) Where under a hire-purchase agreement goods are let 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 stipulation referred to in subsection (1)(d) of this section 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 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.
- (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.
- (4) Nothing in this 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.

9 Appropriation of payment made in respect of hire-purchase agreements.

A hirer who is liable to make payments in respect of two or more hire-purchase agreements to the same owner shall, notwithstanding any agreement to the contrary, 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 a sum so paid by him in or towards the satisfaction of the sum due under any one of the agreements or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit, and, if he fails to make any such appropriation as aforesaid, the payment shall by virtue of this section be appropriated towards the satisfaction of the sums due under the respective hire-purchase agreements in the proportions which those sums bear to one another.

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11 Restriction of owner's right to recover possession.

- (1) Where goods have been let under a hire-purchase agreement and one-third of the hire-purchase price has been paid, whether in pursuance of an order of a court or otherwise, or tendered by or on behalf of the hirer or any guarantor, the owner shall not enforce any right to recover possession of any of the goods from the hirer otherwise than by action:

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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.

- (2) If an owner recovers possession of goods in contravention of the foregoing subsection the hire-purchase agreement, if not previously determined, shall determine, and—
 - (a) the hirer shall be released from all liability under the agreement and shall be entitled to recover from the owner all sums paid by the hirer 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 all sums paid by him under the contract of guarantee or under any security given by him in respect thereof.
- (3) The provisions of this section shall not apply in any case in which the hirer has determined the agreement by virtue of any right vested in him.

12 Powers of court in certain actions by owners to recover possession of the goods.

- (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.
- (2) Subject to such exceptions as may be provided for by rules of court, all 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, upon 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 user 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 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 of such other conditions by the hirer 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 owner and for the transfer to the hirer of the owner's title to the remainder of the goods.
- (5) No order shall be made under paragraph (b) of the last foregoing subsection unless the hirer 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 hirer the owner's title to a part of the goods unless it is satisfied that the amount which the hirer has paid in respect of the

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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.

- (7) Where damages have been awarded against the owner in the proceedings, 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 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 owner without giving the hirer an option to pay their value, and the expression " price " in relation to any goods means such part of the hire-purchase price as is assigned to those goods by the hire-purchase agreement, or, if no such assignment is made, such part of the hire-purchase price as the court may determine.
- (9) If at any time before the hearing of an action to which this section applies the owner has recovered possession of a part of the goods, the references in subsection (4) hereof to all the goods shall be construed as references to all the goods which the owner has not recovered and, if the parties have not agreed upon an adjustment of the hire-purchase price in respect of the goods so recovered, the court may for the purposes of paragraphs (b) and (c) of subsection (4) hereof make such reduction of the hire-purchase price and of the unpaid balance thereof as the court thinks just.
- (10) Where an owner has recovered a part of the goods let under a hire-purchase agreement, and recovery was effected in contravention of the last foregoing section, the provisions of this section shall not apply in relation to any action by the owner to recover the remainder of the goods.

13 Effect of postponement of operation of order for specific delivery of goods to the owner,

- (1) While the operation of an order for the specific delivery of goods to the owner is postponed under the last foregoing section, the hirer shall be deemed to be a custodian of the goods under and on the terms of the hire-purchase agreement:

Provided that—

- (a) no further sum shall be or become payable by the hirer or guarantor on account of the unpaid balance of the hire-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 hire-purchase agreement and of any contract of guarantee relating thereto as the court considers necessary having regard to the variation of the terms of the payment.
- (2) If while the operation of an order for the specific delivery of the goods to the owner is so 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 any 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.

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- (3) 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.
- (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 hire-purchase 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 the last foregoing section, 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.

13A Further provisions relating to postponed orders for specific delivery of goods.

- (1) Where a postponed order for the specific delivery of goods to the owner has been made under paragraph (b) of subsection (4) of section 12 of this Act, the powers of the court under paragraphs (a) and (c) of subsection (4) of the last foregoing section 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 ; and where such a warrant has been issued the court shall—
 - (a) if the court varies the conditions of the postponement under the said paragraph (a), suspend the warrant on the like conditions ;
 - (b) if the court makes an order under the said paragraph (c) 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 remaining part thereof, cancel the warrant so far as it provides for the delivery of the last mentioned part of the goods.
- (2) At any time before the delivery of goods to the owner in accordance with a warrant issued as aforesaid, 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.
- (3) If, in an action to which the said section 12 applies, an offer as to conditions for the postponement of the operation of an order under paragraph (b) of subsection (4) of that section is made by the hirer and accepted by the owner in accordance with rules of court, an order under that paragraph may thereupon be made by the court in accordance with the said offer without hearing evidence as to matters specified in the said paragraph (b) or in subsection (5) of that section:

Provided that where a guarantor is a party to the action, no such order shall be made before the date fixed for the hearing of the action.

14 Powers of the court to deal with payments arising on determination of hire-purchase agreements.

- (1) Where a hire-purchase agreement validly provides for the payment by the hirer on or after the determination 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 determination, is equal

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to a fixed amount, and a claim is made in respect of any such sum in an action to which section 12 of this Act applies, then—

- (a) if 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 shall be disallowed,
 - (b) if the court postpones the operation of an order for the specific delivery of the goods to the owner, 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 hirer or a guarantor has paid or has been ordered to pay any such sum as aforesaid, and the owner subsequently seeks to recover goods in an action to which section 12 of this Act 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.

15 Successive hire-purchase agreements between the same parties.

Where 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 relating to the whole or any part of those goods (with or without other goods), the provisions of sections 11 and 12 of this Act shall have effect in relation to that further agreement as if in section 11(1) of this Act the words from " and one-third " to " any guarantor ", and in section 12(1) of this Act the words " after one-third of the hire-purchase price has been paid or tendered as aforesaid ", were omitted.

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19 Special provisions as to installation charges.

- (1) Where under any hire-purchase agreement the owner is required to carry out any installation, and the agreement specifies as part of the hire-purchase price the amount to be paid in respect of the installation, the references in section 4 of this Act to one-half of the hire-purchase price and in sections 11, 12 and 15 of this Act to one-third of the hire-purchase price shall be construed as references to the aggregate of the said amount and either one-half of the remainder of the hire-purchase price or one-third of the remainder of the hire-purchase price, as the case may be.
- (2) For the purpose of this section the expression " installation " means—
 - (a) the installing of any electric line as defined by the Electric Lighting Act 1882 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 thereon, 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 such construction or erection.

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

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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.

21 Interpretation.

- (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say:—

" action ", " buyer ", " delivery ", " goods ", " property ", " sale ", " seller ", have the meanings respectively assigned to them by the Sale of Goods Act 1893 ;

" 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 " has the meaning assigned to it by section 21(5) of the Hire-Purchase Act 1964 ;

" hire-purchase price " 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, inclusive of any sum so payable by way of a deposit or other initial payment, or credited or to be credited to the hirer under such an agreement on account of any such deposit or payment, whether that sum is to be or has been paid to the owner 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 ; but exclusive of any sum payable as a penalty or as compensation or damages for a breach of the agreement;

" 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 ;

" 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;

" contract of guarantee " means, in relation to any hire-purchase agreement or credit-sale agreement, a contract, made at the request express or implied of the hirer or buyer, to guarantee the performance of the hirer's or buyer's obligations under the hire-purchase agreement or credit-sale agreement, or to indemnify the

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owner or the seller against any loss which he may incur in respect of the hire-purchase agreement or credit-sale agreement; and the expression " guarantor " shall be construed accordingly ;

" total purchase price " means the total sum payable by the buyer under a credit-sale agreement, exclusive of any sum payable as a penalty or as compensation or damages for a breach of the agreement;

and any reference in this Act to a document which constitutes a hire-purchase agreement or a credit-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.

- (2) Where an owner has agreed that any part of the hire-purchase price may be discharged otherwise than by the payment of money, any such discharge shall, for the purposes of sections 4, 6, 11, 12, 13, 14 and 15 of this Act, be deemed to be a payment of that part of the hire-purchase price.

22 Short title

- (1) This Act may be cited as the Hire-Purchase Act 1938.”

“SCHEDULE (TO HIRE- PURCHASE ACT 1938)

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 4 and 19 of this Act apart from the proviso to subsection (1) of section 4*) 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

- 1 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.

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- 2 If *[after (*here insert an amount calculated in accordance with the provisions of sections 11 and 19 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) Acts 1938 to 1964) 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 " further " agreement within the meaning of section 15 of this Act, the words in square brackets should be omitted."*