

HIRE-PURCHASE

No. 5 of 1964.

An Ordinance to amend the *Hire-purchase Ordinance* 1961.

1.—(1.) This Ordinance may be cited as the *Hire-purchase Ordinance* 1964.*

Short title
and citation.

(2.) The *Hire-purchase Ordinance* 1961† is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Hire-purchase Ordinance* 1961-1964.

2.—(1.) Section five of the Principal Ordinance is amended by adding at the end thereof the following sub-section:—

Application.

“(2.) This Ordinance applies to and in relation to hire-purchase agreements entered into in the Territory and, except where the contrary intention appears, hire-purchase agreements entered into in a State or in another Territory of the Commonwealth.”

(2.) Any reference to hire-purchase agreements in the provision inserted in the Principal Ordinance by the last preceding sub-section shall be read as including a reference to hire-purchase agreements entered into before the commencement of this Ordinance.

3. Section six of the Principal Ordinance is amended by adding at the end thereof the following sub-section:—

Interpretation.

“(5.) A reference in a section of this Ordinance to a declared State or to a declared Territory shall be read as a reference to a State or to a Territory of the Commonwealth, as the case may be, that is declared by the Minister, by notice in the *Gazette*, to be a State or Territory of the Commonwealth in relation to which the section applies, being a notice that has not been revoked.”

4. Section seven of the Principal Ordinance is amended—

(a) by omitting sub-section (1.) and inserting in its stead the following sub-sections:—

Summary of
proposed
transaction,
and form and
contents of
hire-purchase
agreement.

“(1.) A person shall not enter into a hire-purchase agreement in the Territory as owner

* Made on 16 April, 1964; notified in the *Commonwealth Gazette* and commenced on 23 April, 1964.

† Ordinance No. 9, 1961.

or on behalf of the owner unless, before the agreement is entered into, or, where the agreement is entered into by way of acceptance by or on behalf of the owner of a written offer signed by or on behalf of the hirer, before the written offer was so signed, there was given to the hirer, or the owner has reasonable grounds for believing that there was given to the hirer, either in the Territory or elsewhere, a written statement, duly completed, in accordance with the First Schedule.

“(1A.) A person, not being the proposed owner, who prepares, in whole or in part, an offer to enter into a hire-purchase agreement for signature by or on behalf of the proposed hirer shall not submit the offer to the proposed hirer, or to a person acting on behalf of the proposed hirer, for signature by or on behalf of the proposed hirer unless there has been given to the proposed hirer, either in the Territory or elsewhere, a written statement, duly completed, in accordance with the First Schedule, and a person, not being the proposed owner, shall not accept from the proposed hirer, or a person acting on behalf of the proposed hirer, for transmission to the proposed owner a written offer to enter into a hire-purchase agreement signed by or on behalf of the proposed hirer unless there has been given to the proposed hirer, either in the Territory or elsewhere, such a written statement.

“(1B.) A reference in either of the last two preceding sub-sections to a written statement in accordance with the First Schedule shall, if the owner or the dealer in relation to the hire-purchase agreement resides or carries on business in a declared State or in a declared Territory, be read as including a reference to a written statement in accordance with a form corresponding with that Schedule that is specified in the law of that State or of that Territory, as the case may be, that corresponds with this Ordinance.”;

(b) by inserting in sub-section (2.), after the word “agreement” (first occurring), the words “entered into in the Territory”; and

(c) by inserting in sub-section (3.), after the word “who”, the words “in the Territory”.

5. Section nine of the Principal Ordinance is amended by inserting in sub-section (1.), after the word "agreement" (first occurring), the words "in the Territory".

Certain copy documents to be served on hirer.

6. Section twelve of the Principal Ordinance is repealed and the following section inserted in its stead:—

" 12.—(1.) Where—

(a) before the final payment has been made under a hire-purchase agreement, the owner receives from the hirer a request in writing to send to the hirer a copy of the agreement and a statement of his position under the agreement; and

Hirer entitled to copy of agreement and statement of his position.

(b) the owner has not sent to the hirer a copy of the agreement and a statement under this sub-section within a period of three months immediately preceding the receipt of the request,

the owner shall, within fourteen days after receiving the request, send to the hirer a copy of the agreement, together with a statement in writing signed by the owner or his agent showing—

(c) the amount that has been paid to the owner by or on behalf of the hirer;

(d) the amount that has become due under the agreement but remains unpaid; and

(e) the amount that is to become payable under the agreement.

Penalty: Fifty pounds.

" (2.) Where an owner contravenes the last preceding sub-section, or a law of a declared State or of a declared Territory that corresponds with that sub-section, by failing to comply with a request made by a hirer, then, until the default is remedied and notwithstanding any penalty that may be imposed on the owner in respect of the default—

(a) the owner is not entitled—

(i) to enforce the agreement against the hirer;

(ii) to enforce any right to recover from the hirer the goods comprised in the agreement; or

(iii) to enforce any contract or guarantee relating to the agreement; and

(b) any security given by the hirer in respect of moneys payable under the agreement or given by a guarantor is not enforceable against the hirer or the guarantor by a holder of the security."

Assignments
of rights under
hire-purchase
agreements.

7. Section fourteen of the Principal Ordinance is amended by omitting sub-section (3.) and inserting in its stead the following sub-sections:—

“ (3.) Where—

- (a) a hire-purchase agreement has been entered into in the Territory; or
- (b) the hirer under a hire-purchase agreement is, and was at the time the agreement was entered into, a resident of the Territory and any negotiation or transaction, or other act, deed or thing, leading to or otherwise relating to the agreement, or relating to a matter preliminary to the making of the agreement, was carried out, entered into or done in the Territory,

and the owner fails or refuses to give his consent to the assignment by the hirer of the right, title or interest of the hirer under the agreement, the hirer may apply to the Court of Petty Sessions for an order declaring that the consent of the owner to the assignment has been unreasonably withheld, and where such an order is made, that consent shall be deemed to be unreasonably withheld.

“ (3A.) Where a court of a declared State or of a declared Territory makes an order by virtue of a law of that State or Territory that corresponds with the last preceding sub-section, the order has, for the purposes of this section, the same force and effect as if it were an order made by the Court of Petty Sessions by virtue of the last preceding sub-section.”.

8. Section fifteen of the Principal Ordinance is repealed and the following section inserted in its stead:—

“ 15.—(1.) Where—

- (a) it is the duty of a hirer to keep the goods comprised in a hire-purchase agreement in his possession or control in a particular place or not to remove the goods from a particular place; and
- (b) the agreement was entered into in the Territory or—
 - (i) the hirer is, and was at the time the agreement was entered into, a resident of the Territory; and
 - (ii) any negotiation or transaction, or other act, deed or thing, leading to or otherwise relating to the agreement, or relating to a matter preliminary to the making of the agreement, was carried out, entered into or done in the Territory,

Power of
Court of Petty
Sessions to
allow goods to
be removed.

the Court of Petty Sessions may, on the application of the hirer, make an order approving the removal of the goods to some other place specified in the order, and that place shall thereafter, for the purposes of the agreement, be substituted for the place referred to in paragraph (a) of this sub-section.

“(2.) Where a Court of a declared State or of a declared Territory makes an order under a law of that State or Territory that corresponds with the last preceding sub-section, the order has the same force and effect as if it were an order made by the Court of Petty Sessions under the last preceding sub-section.”.

9. Section seventeen of the Principal Ordinance is amended by omitting sub-section (3.) and inserting in its stead the following sub-sections:—

Power of
hirer to
determine
hiring.

“(3.) Where—

(a) a hire-purchase agreement has been entered into in the Territory; or

(b) the hirer under a hire-purchase agreement is, and was at the time the agreement was entered into, a resident of the Territory and any negotiation or transaction, or other act, deed or thing, leading to or otherwise relating to the agreement, or relating to a matter preliminary to the making of the agreement, was carried out, entered into or done in the Territory,

the hirer may apply to the Court of Petty Sessions for an order fixing the place to which the goods may be returned under paragraph (b) of the last preceding sub-section.

“(3A.) Where a court of a declared State or of a declared Territory makes an order by virtue of a law of that State or Territory that corresponds with the last preceding sub-section, the order has, for the purposes of this section, the same force and effect as if it were an order made by the Court of Petty Sessions by virtue of the last preceding sub-section.”.

10. Section eighteen of the Principal Ordinance is repealed and the following section inserted in its stead:—

“18.—(1.) Subject to this section, an owner or a person acting on behalf of an owner shall not exercise any power of taking possession of goods comprised in a hire-purchase agreement arising out of a breach of the agreement relating to the payment of instalments until—

Notice to
be given to
hirer when
goods
re-possessed.

(a) a notice in writing in accordance with the Third Schedule has been served on the hirer; and

(b) the period fixed by the notice, being a period that does not expire before the expiration of seven days after the service of the notice, has expired.

“(2.) An owner or a person acting on his behalf is not required to comply with the last preceding sub-section if there are reasonable grounds for believing that the goods comprised in the hire-purchase agreement will be removed or concealed by the hirer contrary to the provisions of the agreement, but the onus of proving those grounds lies upon the owner or the person acting on behalf of the owner, as the case may be.

“(3.) Within twenty-one days after an owner or a person acting on his behalf has taken possession of goods comprised in a hire-purchase agreement, the owner shall serve on the hirer and every guarantor of the hirer a notice in writing in accordance with the Fourth Schedule.

“(4.) If a notice required by the last preceding sub-section, or by a corresponding law of a declared State or of a declared Territory, is not served, the rights of the owner under the hire-purchase agreement concerned cease and determine, but if the hirer exercises his rights under this Ordinance, or under a corresponding law of a declared State or of a declared Territory, to recover the goods so taken possession of, the agreement has the same force and effect in relation to the rights and liabilities of the owner and the hirer as it would have had if the notice had been duly given.

“(5.) A reference in this section to a notice in writing in accordance with a Schedule to this Ordinance shall, if the owner, or the person acting on behalf of the owner, resides or carries on business in a declared State or in a declared Territory, be read as including a reference to a notice in writing in accordance with the form corresponding with that Schedule that is specified in the law of that State or of that Territory, as the case may be, that corresponds with this Ordinance.”

11. Section nineteen of the Principal Ordinance is amended by omitting paragraph (a) and inserting in its stead the following paragraph:—

“(a) the expiration of twenty-one days from the date of the service on the hirer of the notice required by sub-section (3.) of the last preceding section;”

12. Section twenty of the Principal Ordinance is amended—

(a) by omitting from paragraph (a) of sub-section (1.) the words “a notice in accordance with the Fourth Schedule” and inserting in their stead the words “the notice required by sub-section (3.) of section eighteen of this Ordinance”;

Owner to retain possession of goods re-possessed for twenty-one days.

Hirer's rights and immunities when goods re-possessed.

(b) by omitting from sub-paragraph (ii) of paragraph (a) the words "in accordance with the Fourth Schedule served upon the hirer" and inserting in their stead the words "required by sub-section (3.) of section eighteen of this Ordinance"; and

(c) by omitting from sub-section (3.) the words "Except where the owner has failed to serve on the hirer a notice as required by sub-section (3.) of section eighteen of this Ordinance" and inserting in their stead the words "Except where a notice as required by sub-section (3.) of section eighteen of this Ordinance has not been served on the hirer".

13. Section twenty-three of the Principal Ordinance is amended by inserting in sub-section (2.), after the word "Ordinance", the words "or pursuant to a law of a State, or of another Territory of the Commonwealth, corresponding with this Ordinance".

Provisions
as to
guarantors.

14. Section twenty-nine of the Principal Ordinance is amended—

Re-opening of
certain
hire-purchase
transactions.

(a) by omitting sub-section (4.) and inserting in its stead the following sub-section:—

"(4.) Where—

(a) a hire-purchase agreement has been entered into in the Territory; or

(b) the hirer under a hire-purchase agreement is, and was at the time the agreement was entered into, a resident of the Territory and any negotiation or transaction, or other act, deed or thing, leading to or otherwise relating to the agreement, or relating to a matter preliminary to the making of the agreement, was carried out, entered into or done in the Territory,

proceedings may be instituted in the Court of Petty Sessions by the hirer, or by a guarantor under the agreement, for the purpose of obtaining relief under this section in relation to the agreement.";

- (b) by omitting from paragraph (a) of sub-section (6.) the words "in accordance with the Fourth Schedule" and inserting in their stead the words "required by sub-section (3.) of section eighteen of this Ordinance"; and
- (c) by adding at the end thereof the following sub-section:—

"(7.) Where a court of a declared State or of a declared Territory makes an order under a law of that State or Territory that corresponds with this section, the order has the same force and effect as if it were an order made under this section."

Power of
Court of Petty
Sessions to
restrain
re-possession
of certain goods
from farmer.

15. Section thirty of the Principal Ordinance is amended—

- (a) by omitting sub-sections (1.) and (2.) and inserting in their stead the following sub-sections:—

"(1.) This section applies to a hire-purchase agreement where—

- (a) goods consisting of a harvester, binder, tractor, plough or other agricultural implement or a motor truck are comprised in the agreement; and
- (b) the hirer is a farmer.

"(2.) Section eighteen of this Ordinance applies in relation to a hire-purchase agreement to which this section applies as if the reference in paragraph (b) of sub-section (1.) of that section to the period of seven days were a reference to a period of thirty days.

"(2A.) Where—

- (a) a hire-purchase agreement to which this section applies has been entered into in the Territory;
- (b) the hirer under a hire-purchase agreement to which this section applies is, and was at the time the agreement was entered into, a resident of the Territory and any negotiation or transaction, or other act, deed or thing, leading to or otherwise relating to the agreement, or relating to a matter preliminary to the making of the agreement, was carried out, entered into or done in the Territory; or

- (c) the goods comprised in a hire-purchase agreement to which this section applies are in the Territory but are not in the Territory contrary to the agreement,

and a notice is served on the hirer under sub-section (1.) of section eighteen of this Ordinance, the hirer may, within the period fixed by the notice, apply to the Court of Petty Sessions for an order restraining the owner from taking possession of the goods.”; and

- (b) by inserting after sub-section (4.) the following sub-section:—

“ (4A.) Where—

- (a) the goods comprised in a hire-purchase agreement to which this section applies are in the Territory; and

- (b) a court of a declared State or of a declared Territory makes an order under a law of that State or Territory that corresponds with this section in relation to the goods,

the order has the same force and effect as if it were an order made by the Court of Petty Sessions under this section.”.

16.—(1.) Section thirty-three of the Principal Ordinance is amended by inserting after paragraph (b) of sub-section (1.) the following paragraph:—

Avoidance of certain provisions.

- “ (ba) a right is conferred on the owner under a hire-purchase agreement to recover any amount in respect of costs incurred in recovering moneys under the hire-purchase agreement; ”.

(2.) The amendment made by the last preceding sub-section does not apply in relation to a hire-purchase agreement entered into before the fourteenth day after the date of commencement of this Ordinance.

17. Section forty-one of the Principal Ordinance is amended by inserting in sub-section (1.), after the word “ agreement ”, the words “ (being goods that are in the Territory) ”.

Power of Court of Petty Sessions to order delivery of goods unlawfully detained.
Service of notices.

18. Section forty-two of the Principal Ordinance is amended—

- (a) by inserting in sub-section (1.), after the word “ given ” (first occurring), the words “ or sent ”;

- (b) by omitting from sub-section (1.) the words “or given” (second occurring) and inserting in their stead the words “, given or sent”; and
- (c) by inserting in sub-section (2.), after the word “served”, the words “, given or sent”.

Size, &c., of
type, &c., re-
quired in
certain
documents.

19. Section forty-three of the Principal Ordinance is amended—

- (a) by inserting in paragraph (b) of sub-section (2.), after the figure “(1.)”, the words and figure “or sub-section (1A.)”; and
- (b) by omitting from paragraph (d) of that sub-section the figure “(2.)” and inserting in its stead the figure “(1.)”.