

Malawi

Hire-Purchase Act

Chapter 48:05

Legislation as at 31 December 2014

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Malawi

Hire-Purchase Act

Chapter 48:05

Not commenced

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An Act to make provision for the regulation of Hire-Purchase Agreements and certain instalment sales, and for other purposes incidental thereto

Preliminary

1. Short title

- (1) This Act may be cited as the Hire-Purchase Act.
- (2) This Act shall not apply to any agreement under which the Government is the seller or, subject to [section 28](#), to any agreement made before the 12th day of February, 1964.

2. Interpretation

- (1) In this Act, unless inconsistent with the context—
 - “**agreement**” means a hire-purchase agreement or an instalment sale agreement;
 - “**cash price**”, in relation to any goods, means the price at which the goods may be purchased outright for cash;
 - “**goods**” means any movable property which may lawfully form the subject-matter of a contract of hire or sale;
 - “**hire-purchase agreement**” means—
 - (a) any contract whereby goods are sold subject to the condition that notwithstanding delivery of the goods the ownership in such goods shall not pass except in terms of the contract and the purchase price is to be paid in two or more instalments;
 - (b) any contract which provides for the hiring of goods whereby the hirer has the right—
 - (i) to purchase such goods after two or more instalments have been paid in respect thereof; or
 - (ii) after two or more instalments have been paid in respect thereof, to continue or renew from time to time such hiring at a nominal rental, or to continue or renew from time to time the right to be in possession of the goods, without any further payment or against payment of a nominal amount periodically or otherwise;whether or not the agreement may at any time be terminated by either party or one of the parties;
 - (c) any other contract which has, or contracts which together have, the same import as either or both the contracts defined in paragraph (a) or (b) of this definition, whatever form such contract or contracts may take;

“**instalment**” includes any cash amount payable in terms of [section 24](#) (1) (a) and, where no cash amount is payable in terms of that paragraph, the amount of any deposit or initial payment payable under an agreement;

“**instalment sale agreement**” means any contract of sale under which—

- (a) the ownership in the goods sold passes either before or upon delivery;
- (b) the purchase price is to be paid in instalments, of which one or more are payable after delivery; and
- (c) the seller is entitled to the return of the goods sold if the purchaser fails to comply with any provision thereof,

and includes any other contract which has, or contracts which together have, the same import, whatever form such contract or contracts may take;

“**purchase price**” means the total sum payable by the purchaser under an agreement, including any sum payable by him by way of a deposit or other initial payment, or credited or to be credited to him under such agreement on account of any such deposit or payment, whether that sum is to be or has been paid to the seller or to any other person or is to be or has been discharged by a payment of money or by the transfer or delivery of goods or by any other means, but excluding any sum payable —

- (a) as compensation or damages for breach of the agreement;
- (b) for licence or registration fees;
- (c) for any insurance premiums which have been paid to insure the goods sold under the agreement;
- (d) by way of interest upon instalments which are in arrear; or
- (e) in respect of any installation as defined in [section 18](#) (2);

“**purchaser**” means the person who, in terms of any agreement, is the purchaser or hirer, as the case may be, and includes his successors in title;

“**seller**” means the person who, in terms of any agreement, is the seller or the lessor, as the case may be, and includes his successors in title.

“**writing**”—

- (a) in relation to an agreement in a form the provisions of which the Act requires shall be set out in printed or typed letters, means printing or typewriting; and
- (b) in relation to an agreement which is not in a form such as is referred to in paragraph (a), means writing as defined in section 2 of the General Interpretation Act.

[Cap. 1:01]

- (2) References in sections [4](#), [6](#) and [24](#) to “contain”, “set out” and “provide” shall, without derogation from [section 4](#)(1) (a), be construed as references to “contain expressly in writing”, “set out expressly in writing” and “provide expressly in writing” respectively.
- (3) Where a seller has agreed that any part of the purchase price may be discharged otherwise than by the payment of money, any such discharge shall, for the purposes of this Act, be deemed to be a cash payment of that part of the purchase price.

Part I – General provisions relating to agreements

3. Application of Part I

Except for sections 4, 22 and 23, which shall apply to every agreement or, as the case may be, to the parties to every agreement, this Part shall not apply to an agreement under which the purchase price exceeds the sum of fifteen hundred pounds.

4. Provisions as to agreements

- (1) Every agreement shall—
 - (a) be reduced to writing and signed by or on behalf of all the parties to the agreement;
 - (b) contain a statement of the cash price.
- (2) If an agreement does not comply with subsection (1)—
 - (a) the goods which are the subject of the agreement shall be deemed to have been sold to the purchaser—
 - (i) without any reservation as to the ownership of the goods or, as the case may be, without any stipulation as to the seller's right to the return of the goods; and
 - (ii) on credit at a price, payable in the same manner as that stipulated in the agreement, which is twenty-five *per centum* less than the purchase price;and
 - (b) the seller shall not be entitled to enforce any contract of suretyship, indemnity or guarantee relating to the agreement except, in the case of an agreement which has been the subject of a cession or assignment, against a surety or guarantor who was the original seller under the agreement:

Provided that if, in any action arising out of the agreement, the court is satisfied that the purchaser would not, but for this subsection, have been prejudiced by the fact that the agreement does not comply with subsection (1), the court may, subject to such conditions that it thinks just and equitable to impose, order the parties to carry out the terms of the agreement as if the agreement had complied with subsection (1).

5. Supply of copies to purchaser

- (1) It shall be the duty of the seller to hand or send by registered post to the purchaser a copy of any agreement entered into between them as soon as possible after it has been entered into. If a seller fails so to supply such a copy, the purchaser may hand or send to him by registered post a written request for the supply of such a copy, and any seller who, within fourteen days of the receipt of such a request, fails to hand such a copy to the purchaser, or send it to him by registered post, shall be guilty of an offence.
- (2) Any person who is guilty of an offence under subsection (1) shall be liable to a fine of fifty pounds or, in default of payment, to imprisonment for thirty days.

6. Provisions to be included in agreements

- (1) Every agreement shall set out—
 - (a) (i) the amount of the purchase price of the goods;
 - (ii) the amount paid or to be paid by the purchaser under [section 26](#) (1) (a);

- (iii) the amount of each of the instalments by which the purchase price is to be paid;
 - (iv) the mode of payment of such instalments;
 - (v) the date or mode of determining the date on which each instalment is payable; and
 - (vi) the rate of interest, which shall not exceed the maximum rate of interest referred to in [section 7](#) (2), chargeable upon an instalment in arrear.
- (b) a description of the goods let, sold or delivered under the agreement and of any goods delivered to the seller under [section 24](#) (1) (a) which is sufficient to identify them;
- (c) the terms as to the reservation and passing of ownership of the goods or as to the seller's right to the return of the goods, as the case may be.
- (2) No seller shall use any form of agreement the provisions of which, whatever their nature, are not set out in clearly legible printed or typed letters of substantially the same size.
- (3) If an agreement does not comply with subsection (1) or with subsection (2)—
- (a) the goods which are the subject of the agreement shall be deemed to have been sold to the purchaser—
 - (i) without any reservation as to the ownership of the goods or, as the case may be, without any stipulation as to the seller's right to the return of the goods; and
 - (ii) on credit at a price, payable in the same manner as that stipulated in the agreement, which is twenty-five *per centum* less than the purchase price;
- and
- (b) the seller shall not be entitled to enforce any contract of suretyship, indemnity or guarantee relating to the agreement except, in the case of an agreement which has been the subject of a cession or assignment, against a surety or guarantor who was the original seller under the agreement:
- Provided that if, in any action arising out of the agreement, the court is satisfied that the purchaser would not, but for the provisions of this subsection, have been prejudiced by the fact that the agreement does not comply with subsection (1), the court may, subject to such conditions that it thinks just and equitable to impose, order the parties to carry out the terms of the agreement as if the agreement had complied with subsection (1).

7. Invalidity of certain provisions

- (1) A provision of an agreement shall not be of any force or effect if it provides whether expressly or impliedly that—
- (a) the seller or any person acting on his behalf is authorized to enter upon any premises for the purpose of taking possession of goods which are the subject of any agreement, or is relieved from liability for any such entry;
 - (b) the right conferred on a purchaser by this Act to determine the agreement is excluded or restricted;
 - (c) any liability, in addition to the liability imposed by this Act, is imposed on a purchaser by reason of the termination of the agreement by him under this Act;
 - (d) a purchaser, after the termination of the agreement in any manner whatsoever, is subject to a liability which exceeds the liability to which he would have been subject if the agreement had been terminated by him under this Act;
 - (e) any person acting on behalf of a seller in connexion with the formation or conclusion of an agreement is to be treated as or deemed to be the agent of the purchaser;

- (f) a seller is to be relieved from liability for the acts or defaults of any person acting on his behalf in connexion with the formation or conclusion of an agreement;
 - (g) the purchaser shall pay interest on an instalment in arrear at a rate which exceeds the maximum rate of interest referred to in subsection (2).
- (2) The maximum rate of interest chargeable under an agreement on an instalment in arrear shall be the rate *per centum* per annum specified by the Minister in fixing, in terms of [section 26](#), the maximum amount by which the purchase price under agreements of the class in question may exceed the cash price, which was so specified at the date of the agreement.

8. Purchaser entitled to certain information

- (1) If a purchaser hands or sends by registered post a request therefor to the seller and tenders to the seller a sum of five shillings for expenses, the seller shall, within thirty days after the tender is received by him, hand or send by registered post to the purchaser all or any of the following particulars as the purchaser may specify—
- (a) a statement signed by or on behalf of the seller, showing—
 - (i) the amount paid under the agreement by or on behalf of the purchaser and the date of each payment;
 - (ii) the amount due under the agreement and unpaid, the date upon which each unpaid instalment became due and the amount of each such instalment; and
 - (iii) the amount which is to become payable under the agreement, the date or mode of determining the date upon which each future instalment is to become payable and the amount of each such instalment;
 - (b) a copy of the agreement.
- (2) In the event of a failure without reasonable cause 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 suretyship, indemnity or guarantee relating to the agreement, and the seller shall not be entitled to enforce any right to recover the goods from the purchaser; and
 - (b) no security given by the purchaser in respect of money payable under the agreement or given by a surety or guarantor in respect of money payable under such a contract of suretyship, indemnity or guarantee as aforesaid shall be enforceable by any holder thereof against the purchaser, surety or guarantor, as the case may be;

and, if the default continues for a period exceeding thirty days, the defaulter shall be liable to a fine of £50 or, in default of payment, to imprisonment for thirty days.

9. Removal of goods

- (1) It shall be lawful for the seller of goods under a hire-purchase agreement to stipulate—
- (a) that the purchaser shall record his address in such agreement; and
 - (b) that if before the ownership of the goods has passed to the purchaser the purchaser changes such address or at any time removes or allows such goods or any part thereof to be removed from any premises for keeping at other premises, he shall, prior to such change of address or removal, notify the seller or his agent in writing of all or any of the following particulars—
 - (i) his new address;
 - (ii) the premises to which such goods have been removed;

- (iii) the name and address of the landlord, if any, of such new premises;

but no such stipulation shall require the purchaser to notify the seller more than 48 hours before such change or removal.

- (2) If any purchaser fails to comply with any stipulation made in terms of subsection (1), he shall be liable to a fine of £50 or, in default of payment, to imprisonment for thirty days. In any prosecution for a contravention of this subsection it shall be a sufficient defence if the purchaser satisfies the court that his failure to comply with any such stipulation was due to circumstances over which he had no control.
- (3) If the seller of goods under a hire-purchase agreement has given written notice of his ownership thereof to the landlord of the premises where such goods are kept, such landlord shall not have any right of distress over such goods for rental.

10. Removal of goods from Malawi

- (1) It shall be lawful for the seller of goods under a hire-purchase agreement to stipulate that the purchaser shall not remove or permit the removal of the goods from Malawi without the consent of the seller.
- (2) If a purchaser, in breach of a stipulation made in terms of subsection (1) and with intent to deprive the seller of his ownership of the goods or to defeat the rights of the seller to obtain any payment due to him under the agreement, removes or permits the removal of the goods from Malawi, he shall be liable to a fine of £100 and to imprisonment for three months.
- (3) If a hire-purchase agreement contains a stipulation such as is referred to in subsection (1) and the seller believes that the goods sold under the hire-purchase agreement have been removed or are being removed or are about to be removed from Malawi without his consent, he may bring an action for the return of the goods.
- (4) A seller referred to in subsection (3) may, before bringing the action referred to in that subsection or while his action is pending, make an application, in which the purchaser or other person substantially interested in the goods shall be made respondent, to a court for an order for the attachment of the goods.
- (5) An application for an order referred to in subsection (4) may be made, on summons or notice to the respondent or ex parte, to a court having jurisdiction in the area in which the respondent or the goods proposed to be attached may be or through which the goods are likely to be removed.
- (6) The rules of court governing applications on summons or notice or, as the case may be, applications ex parte in interlocutory proceedings of a like nature to an application referred to in subsection (4) which are in force in the court to which such an application is made shall, subject to subsections (7) to (9) inclusive, *mutatis mutandis*, apply to that application.
- (7) A court which makes an order ex parte for the attachment of goods in terms of this section may require the applicant to give such security for damages as may be caused by the order as the court may think fit.
- (8) An order referred to in subsection (7)—
- (a) may be discharged or varied by the court on cause shown by any person affected by the order and on such terms as to costs as the court may think fit; and
- (b) shall *ipso facto* be discharged upon the giving of security by the respondent for the amount of the value of the goods to which the order relates, together with costs.
- (9) If goods are attached by order of a court other than the court in which the action for the return of the goods is brought, the court which made the order of attachment shall cause copies of the application, order and proceedings, together with the goods attached or, as the case may be, the security given for their release, to be transmitted to the court in which the action is brought.

11. Conditions and warranties implied in agreements

- (1) In every agreement there shall be—
 - (a) an implied warranty that the purchaser shall have and enjoy quiet possession of the goods;
 - (b) an implied condition on the part of the seller that he is not and will not be precluded from passing the ownership of the goods to the purchaser at the time when the ownership is to pass;
 - (c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the ownership is to pass;and such warranties and conditions shall be implied notwithstanding any agreement to the contrary.
- (2) Every agreement shall be deemed to contain any warranties or conditions implied in a contract for the sale of goods under any enactment or under the common law applicable in Malawi.
- (3) The seller shall not be entitled to rely on any provision in the agreement excluding or modifying any warranty or condition referred to in subsection (2) unless he proves that, before the agreement was made, the provision was brought to the notice of the purchaser and its effect made clear to him.

12. Appropriation of payments made in respect of agreements

A purchaser who is liable to make payments to the same seller in respect of two or more agreements 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 the 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 appropriations, the payment shall by virtue of this section be appropriated towards the satisfaction of the sums due under the respective agreements in the proportions which those sums bear to one another.

13. Negotiable instruments

- (1) If a seller takes from a purchaser any negotiable instrument (other than a dated cheque which is not a post-dated cheque) in respect of any instalment or part of an instalment payable under an agreement, the seller shall not have any right to recover any such instalment or part of an instalment in terms of the agreement, and any such seller shall be confined, in respect of the recovery of such instalment or part of an instalment, to his rights of action, if any, in relation to such negotiable instrument, so, however, that nothing in this subsection contained shall affect any other rights of such seller under the agreement or this Act.
- (2) If any negotiable instrument (other than a dated cheque which is not a post-dated cheque) is given or drawn by a purchaser in respect of any liability under an agreement, the seller shall when he takes it from the purchaser—
 - (a) write clearly on the face of such negotiable instrument the words “Issued in connexion with a hire-purchase agreement” or “Issued in connexion with an instalment sale agreement”, as may be appropriate; and
 - (b) write clearly at the top of the first page of such agreement the words “A negotiable instrument has been issued in connexion with this agreement” or “Negotiable instruments have been issued in connexion with this agreement”, as may be appropriate.
- (3) Nothing contained in subsection (2) shall prevent the seller from writing on either the negotiable instrument or the agreement in question such further words as may serve to identify with greater particularity the negotiable instrument or agreement to which he refers.

- (4) Any seller who fails to comply with subsection (2) shall be liable to a fine of £50 or, in default of payment, to imprisonment for thirty days.

14. Right of purchaser to be reinstated after return of goods to seller

- (1) If the seller has, as a result of the failure of the purchaser to pay any instalment of the purchase price due under any agreement, recovered possession, otherwise than by an order of a court, of any goods to which the agreement relates, the purchaser shall, unless he himself has terminated the agreement, be entitled, if he pays all arrear instalments of the purchase price due under the agreement within a period of twenty-one days after the seller recovered possession of the goods, to the return of the goods at the seller's place of business or, if he has no place of business or if the purchaser so requests, at the premises in which the goods are kept, and to be reinstated in his rights under the agreement.
- (2) The seller shall, after the return of the goods under subsection (1), be entitled to recover the reasonable expenses incurred by him in the taking and storing of such goods.

15. Right of purchaser to pay outstanding balance of purchase price

A purchaser shall at all times be entitled to pay any instalment of the purchase price before it is due and shall, if he pays the whole of the purchase price remaining unpaid in one amount, be entitled to the reduction of each instalment not due at the said date of payment by an amount calculated at the rate of five *per centum* per annum on such instalment in respect of the period by which the payment of such instalment is accelerated.

16. Passing of ownership

The ownership in any goods which are the subject of a hire-purchase agreement shall pass to the purchaser upon payment of all sums payable by him in terms of the agreement.

17. Right of purchaser to terminate hire-purchase agreement

- (1) A purchaser shall, at any time before the final payment under a hire-purchase agreement falls due, be entitled, upon the return to the seller of any goods which are the subject of the agreement, 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.
- (2) On the termination of a hire-purchase agreement by the purchaser in terms of subsection (1), the purchaser shall be liable, without prejudice to any liability which has accrued before the termination—
- (a) to pay to the seller—
- (i) the amount, if any, by which one half of the purchase price exceeds the sum of—
- (A) all instalments in respect of the purchase price paid by the purchaser before the date of the termination; and
- (B) all instalments in respect of the purchase price in arrear at the date of the termination;
- or
- (ii) if an amount less than the sum referred to in subparagraph (i) is payable under the agreement on its termination by the purchaser in terms of subsection (1), the amount payable under the agreement; and
- (b) if the purchaser has failed to take reasonable care of the goods, to pay to the seller damages in respect of his failure.

- (3) Nothing in this section shall prejudice any right of a purchaser to terminate a hire-purchase agreement otherwise than by virtue of this section.

18. Special provisions as to installation charges

- (1) Where under any hire-purchase agreement the seller is required to carry out any installation and the agreement specifies the amount to be paid in respect of the installation, the reference in [section 17 \(1\)](#) to one-half of the purchase price shall be construed as a reference to the aggregate of the said amount and one-half of the purchase price.
- (2) For the purposes of this section, the expression “installation” means—
 - (a) the installing of any gas or water pipe, or the installing of any line or other means of conveying, transmitting, distributing or supplying electricity;
 - (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.

19. Disposal of goods upon termination of agreement

- (1) If any agreement is lawfully terminated or rescinded at the instance of the seller after he has been paid fifty *per centum* of the purchase price, the seller shall not, save with the written consent of the purchaser, be entitled to recover possession of the goods which are the subject-matter of such agreement, but the goods shall be sold by a person appointed on the application of the seller by a magistrate, who, in making the appointment, shall have regard to the information available to him as to the whereabouts of the goods and may give directions as to the advertisement and place, date and method of sale. Before making any appointment in terms of this subsection, the magistrate shall ascertain whether or not any negotiable instrument has been given or drawn by the purchaser in respect of any instalment or part of an instalment payable under the provisions of the agreement in question and, if any such instrument has been so given or drawn, the magistrate shall not appoint a person to sell the goods unless he is satisfied that—
 - (a) every such negotiable instrument has been cancelled or returned to the purchaser; or
 - (b) the seller has made arrangements to indemnify the purchaser against any liability on the part of the purchaser in respect of such instrument which may be in excess of the amount outstanding under the agreement after the disposal of the proceeds of the sale of the goods in terms of this section.
- (2) The seller shall give notice of such appointment to the purchaser by handing it to him or sending it to him by registered post at his last known address.
- (3) If the purchaser fails within fourteen days of such notice to deliver the goods to the person so appointed, the seller shall be entitled to recover possession of the goods, and this section shall not apply in relation to such goods.
- (4) After the sale, the person selling the goods shall, after deducting his reasonable costs, pay to the seller the purchase price and all other moneys payable in terms of the agreement, less the total amount of any payments actually made thereunder, and shall pay over the balance of the proceeds of the sale to the purchaser.
- (5) In the event of the net proceeds of the sale being insufficient to discharge the amount outstanding under the agreement, the seller may recover such amount from the purchaser.
- (6) If any dispute arises as to the amount payable to the purchaser or the seller, the person selling such goods shall deposit the amount in dispute with a magistrate, who shall retain such amount pending

action brought by either party to the agreement against the other, and the person who sold the goods shall be discharged from any further liability in the matter.

- (7) Where a hire-purchase agreement has been terminated under this section, the purchaser shall, if he has failed to take reasonable care of the goods, be liable to pay damages for the failure.

20. Powers of the court

- (1) In any action by the seller for the return of any goods to which any agreement relates, the court may, without prejudice to any other power and subject to sections [17](#) and [19](#)—
- (a) make an order for the return of the goods to the seller, subject to repayment by the seller of so much of the purchase price received by him as the court may deem just;
 - (b) make an order for the return of a part of the goods to the seller and—
 - (i) in the case of an instalment sale agreement, for the retention by the purchaser of the remainder of the goods; or
 - (ii) in the case of a hire-purchase agreement, for the transfer to the purchaser of the seller's title to the remainder of the goods;
 - (c) make an order—
 - (i) in the case of an instalment sale agreement, for the retention by the purchaser of part of the goods; or
 - (ii) in the case of a hire-purchase agreement, for the transfer to the purchaser of the seller's title to part of the goods, and an order referred to in paragraph (e) in respect of the remainder of the goods;
 - (d) make an order referred to in paragraph (b), subject to—
 - (i) repayment by the seller of so much of the purchase price received by him; or
 - (ii) payment by the purchaser of so much of the unpaid balance of the purchase price, as the court may deem just; or
 - (e) make an order requiring the goods to be sold by public auction by a person appointed by the court, within a period stated in the order, or, if the parties so agree, by private treaty.
- (2) No order shall be made in terms of subsection (1)(d)(ii) unless the purchaser satisfies the court that the order will be carried out forthwith.
- (3) In making any order in terms of this section, the court may, if any negotiable instrument has been given or drawn by the purchaser in respect of any instalment or part of an instalment payable under the agreement in question, order that the seller shall—
- (a) cancel such negotiable instrument or return it to the purchaser; or
 - (b) indemnify the purchaser against any liability on the part of the purchaser in respect of such negotiable instrument.
- (4) Any order referred to in subsection (1) (e) shall state—
- (a) the total amount found by the court to be payable under the agreement;
 - (b) the amount fixed by the court as damages for any failure by the purchaser to take reasonable care of the goods;
 - (c) the total amount of payments so found to have been made thereunder;
 - (d) the party by whom the costs incidental to the sale shall be borne; and

- (e) any directions given by the court as to advertisement and the place, date and method of the sale of the goods;

and the court may, when making any such order, at the same time order the purchaser to pay to the seller the deficiency referred to in subsection (6), if any.

- (5) If any goods are sold in pursuance of an order referred to in subsection (1)(e), the person appointed by the court or, in the case of a sale by private treaty, the seller shall, after deducting—
 - (a) any costs incidental to the sale awarded by the court against the purchaser;
 - (b) any other costs so awarded; and
 - (c) the total amount stated in the order to be payable under the agreement, less the total amount of payments so stated to have been made thereunder,

pay over the balance of the proceeds of the sale to the purchaser. Any costs incidental to the sale which have been so awarded shall be a first charge upon the proceeds of the sale.

- (6) If the net proceeds of the sale are insufficient to discharge the purchaser's liability in respect of any costs referred to in subsection (5) and his liability under the agreement, the seller may recover the deficiency from the purchaser.
- (7) If damages have been awarded against the seller in the proceedings, the amount thereof or so much of such amount as the court may determine shall be deemed to have been paid by the purchaser in respect of the purchase price of the goods, and thereupon the damages shall be remitted either in whole or in part.
- (8) On the institution of an action referred to in subsection (1) and pending the conclusion of the proceedings, the court shall, in addition to any other powers, have power, upon the application of the seller, to make such orders as the court may deem 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.

21. Waiver of rights by purchaser

No waiver by any purchaser of any right under this Act shall be of any force or effect.

22. Agreements binding on liquidator or trustee of seller

If a company is being wound up under any enactment in force in Malawi relating to companies or a person is adjudged or otherwise declared bankrupt under any enactment in force in Malawi relating to bankruptcy, any agreement entered into by such company or person as seller shall remain of full force and effect and shall be binding on the liquidator of such company or the trustee concerned, as the case may be:

Provided that nothing in this section shall affect the powers of the court to set aside any disposition of property made by way of undue preference.

23. Bankruptcy of purchaser

- (1) In this section "trustee's expenses", in relation to goods which are the subject of an agreement entered into by a purchaser referred to in subsection (2)(a) means—
 - (a) the trustee's remuneration in respect of the goods; and
 - (b) the costs incurred by the trustee in conserving the goods; and
 - (c) all other expenses of liquidation or administration incurred by the trustee in connexion with the goods.
- (2) (a) If, in terms of an enactment in force in Malawi relating to bankruptcy, a purchaser is adjudged or otherwise declared bankrupt, the goods which are the subject of the agreement

entered into by the purchaser shall, notwithstanding the terms of the agreement, vest in his trustee:

Provided that if the goods are used by the trustee on behalf of the purchaser's estate, the trustee shall pay to the seller, as a cost in the administration of the estate, each instalment in respect of the purchase price which becomes due under the agreement during the period the goods are so used.

- (b) The trustee of a purchase referred to in paragraph (a) shall pay to the seller out of the proceeds of the sale of the goods referred to in that paragraph, reduced by the amount of the trustee's expenses and the cost of realizing the goods so far as there are proceeds available an amount equal to the balance of the unpaid purchase price together with all other sums due to the seller under the agreement.
 - (c) If the full amount due to the seller in terms of paragraph (b) is unpaid by reason of the insufficiency of the proceeds of the sale of the goods, the seller shall, unless he relies for the satisfaction of the payment due to him solely on the proceeds of the sale of the goods, have a claim in the bankruptcy in respect of the balance.
- (3)
- (a) The trustee of a purchaser referred to in subsection (2) (a) shall give not less than twenty-eight days notice in writing to the seller of the date on which he proposes to sell the goods which are the subject of the agreement.
 - (b) The trustee shall, if required in writing by the seller not less than seven days before the date referred to in paragraph (a), deliver the goods to the seller on the pre-payment by the seller of the cost of delivery and the trustee's expenses.
 - (c) On the delivery of the goods to the seller, the seller shall thereupon have, in respect of the goods, a lien or right of retention with all the rights of a creditor holding a security under any law in force in Malawi.
 - (d) In proving a claim in bankruptcy a seller referred to in this subsection shall state in his affidavit or other document of claim the nature, particulars and value of his security.
- (4) If the purchaser is a company which is in course of being wound up under an enactment in force in Malawi providing for the winding up of companies, subsections (2) and (3) shall apply as if the company were an individual adjudged or otherwise declared bankrupt and the liquidator of the company were the trustee of the purchaser.
- (5) This section shall, notwithstanding [section 1](#) (2), apply in relation to an agreement under which the Government is the seller.

Part II – Financial provisions relating to agreements

24. Initial payments and periods for repayment

- (1) Every agreement under which the purchase price exceeds ten pounds shall provide—
- (a) that payment shall be made in money (which for this purpose shall include a cheque) or in goods before any of the goods which are the subject of the agreement are delivered to the purchaser of a sum equal at least to that percentage of the cash price which is specified in the second column of the Schedule for the particular class of goods sold under the agreement; and
 - (b) that the period within which the full purchase price is payable shall not exceed the period specified in the third column of the Schedule for the particular class of goods sold under the agreement.

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- (2) The period referred to in subsection (1) (b) shall be reckoned from the date of the payment made in terms of paragraph (a) of that subsection:

Provided that if the agreement provides for the delivery of the goods which are the subject of the agreement from a place outside Malawi to a purchaser who at the time of delivery is outside Malawi the period shall, at the election of the seller, be reckoned from the date on which the goods are first imported into Malawi.

- (3) If an agreement does not comply with subsection (1) or payment has not been made in terms of paragraph (a) of that subsection—
- (a) the goods which are the subject of the agreement shall be deemed to have been sold to the purchaser—
- (i) without any reservation as to the ownership of the goods or, as the case may be, without any stipulation as to the seller's right to the return of the goods; and
- (ii) on credit at a price, payable in the same manner as that stipulated in the agreement, which is twenty-five *per centum* less than the purchase price;
- and
- (b) the seller shall not be entitled to enforce any contract of suretyship, indemnity or guarantee relating to the agreement except, in the case of an agreement which has been the subject of a cession or assignment, against a surety or guarantor who was the original seller under the agreement.
- (4) No payment in cash shall, to the extent to which it is made out of moneys borrowed directly or indirectly from or through the seller or any person whose business or part of whose business it is by arrangement with the seller to advance money for payments under agreements with the seller, and no payment in goods shall, to the extent to which the amount thereof exceeds the normal market price for the goods, be deemed to be a payment for the purposes of subsection (1)(a).
- (5) The Schedule may be varied by the Minister after consultation with the Minister for the time being responsible for matters relating to trade by notice published in the *Gazette* so, however, that no such variation shall affect the operation of any agreement entered into prior to the date of publication of such notice.

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25. Time limit for certain actions

- (1) A seller shall have no right to institute a suit or action for—
- (a) the return of goods to which an agreement relates; or
- (b) the recovery of a portion of the purchase price due under an agreement,
- after the lapse of the period prescribed by subsection (2).
- (2) The period after the lapse of which no suit or action referred to in subsection (1) may be brought shall be the period, fixed by or under subsection (3), which was so fixed at the time the right to institute the suit or action first accrued.
- (3) The period to which subsection (2) relates shall be—
- (a) such number of days, not less than one hundred and fifty, as the Minister may by notice published in the *Gazette* fix; or
- (b) if no period is fixed in terms of paragraph (a), three hundred and sixty-five days.
- commencing on the day following the last day of the appropriate period within which this Act requires the full purchase price to be paid.

- (4) In determining for the purposes of paragraph (a) or, as the case may be, subsection (3)(b) the number of days which have elapsed there shall not be taken into account any period during which—
- (a) the purchaser was absent from Malawi; or
 - (b) service of summons issued by the seller for the return of any goods or the recovery of any portion of the purchase price could not be effected owing to the whereabouts of the purchaser being unknown or owing to the purchaser wilfully evading service or owing to his absence from Malawi; or
 - (c) the seller was a minor or was of unsound mind; or
 - (d) the obligation of the purchaser to pay instalments was suspended pursuant to this Act or any other relevant written law.
- (5) This section shall not apply if at any time before the end of the period of limitation prescribed by subsection (2) the seller or purchaser—
- (a) is adjudged or otherwise declared bankrupt; or
 - (b) makes an assignment to or composition with his creditors; or
 - (c) being a company, is wound up or placed under judicial management; or
 - (d) dies.

26. Control of purchase price

- (1) The Minister shall, for all classes of agreement and goods, by notice published in the *Gazette*, fix the maximum amount, to be determined by reference to the rate *per centum* per annum referred to in subsection (2), by which the purchase price under an agreement may exceed the cash price.
- (2) The rate *per centum* per annum to which subsection (1) relates shall be a rate *per centum* per annum, specified by the Minister in the notice referred to in that subsection, of the balance of the cash price remaining unpaid before the due date of each instalment.
- (3) The Minister may, in fixing the maximum amount referred to in subsection (1), make different provision in respect of different classes of agreements and different classes of goods.
- (4) A provision in an agreement shall be of no effect in so far as it provides for the payment of a purchase price exceeding the cash price by more than the appropriate amount fixed in terms of subsection (1) at the date of the agreement and the amount of each instalment payable under an agreement containing such a provision shall be decreased accordingly.

Part III – Miscellaneous

27. Exemptions

The Minister may, by notice published in the *Gazette*, order that any agreement or class of agreements entered into by any body corporate established directly by any law shall be exempted from any of the provisions of this Act.

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28. ***

[Repealed by 39 of 1981]

Schedule (Section 24)

Initial payments and periods for payment

Class of goods	Description of goods	Percentage of cash to be paid before goods are delivered	Period within which full purchase price is payable (months)
A.	Agricultural, irrigation machinery and any other goods mainly used for agricultural purposes where an agricultural officer has certified the intended use of such goods	10%	48
B.	Motor assisted cycles, motor cars (including estate cars and station wagons), motor cycles, motor cycle combinations, motor scooters	25%	24
C.	Ambulances, hearses, lorries, road passenger vehicles designed to seat more than eight persons, vans designed for commercial purposes, vanettes	20%	48
D.	Motor vehicles other than those referred to in Class Band Class C	20%	48
E.	Commercial, industrial and mining plant and machinery, earth moving equipment	20%	48
F.	Accounting, adding calculating and cash register machines, aircraft, air conditioning units, bicycles, boats, cameras, caravans (non-motorized),	30%	24

	duplicating machines, floor polishers, furniture, geysers, invalid tricycles, lawn mowers, marine engines (including outboard motors), pianos, radios, radiograms, refrigerators, sewing machines, stoves, tape recorders, vacuum-cleaners, washing machines		
G.	Any other goods	30%	24

[G.N. 43/1984]