

## EXPLANATORY NOTES

### PROPOSED AMENDMENTS TO THE HIRE-PURCHASE ACT

#### 1. BACKGROUND

- 1.1 The Hire-Purchase Act (Cap.125) (HPA) is to be amended to update the implied terms for hire-purchase agreements in order to align them with the implied terms in the Sale of Goods Act (Cap. 393) (SGA) and the Supply of Goods Act (Cap. 394) (SUGA). This includes updating the implied term of “merchantable quality” in the HPA to that of “satisfactory quality”.<sup>1</sup> The amendments are modeled on the UK Supply of Goods (Implied Terms) Act 1973 (UKSOGITA).
- 1.2 Currently the HPA, including the implied terms for hire-purchase agreements in Part III, are subject to value caps of \$20,000<sup>2</sup> for consumer goods and \$55,000<sup>3</sup> for motor vehicles.<sup>4</sup> The proposed amendments remove the value caps insofar as the implied terms in Part III are concerned. Like the implied terms under the SGA and SUGA, the updated implied terms in Part III will also apply to non-consumers though in some cases the implied terms in their favour are more limited than those for consumers.<sup>5</sup> Part III will adopt a definition of “dealing as consumer” which is aligned with the SGA and SUGA.<sup>6</sup>
- 1.3 The Consumer Protection (Fair Trading) Act (CPFTA) will also be amended to provide consumers with an alternative simplified regime for obtaining redress for goods which do not conform to contract at the time of delivery (non-conforming goods). Goods which do not conform to the express terms of a hire-purchase agreement or the implied terms of satisfactory quality, fitness for purpose or correspondence with description or sample under the HPA<sup>7</sup> will be non-conforming goods for the purposes of the new consumer remedies regime proposed under the CPFTA.

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<sup>1</sup> The SGA and SUGA were amended in 1996 to mirror similar amendments made in the UK.

<sup>2</sup> Inclusive GST.

<sup>3</sup> Including GST and import and excise duty, and (on or after 1st April 1989 but before 15th July 1994) the cost of the certificate of entitlement of the vehicle.

<sup>4</sup> First Schedule to the HPA.

<sup>5</sup> See paragraph 2.5.

<sup>6</sup> See footnote 10 for definition of “dealing as a consumer” in UCTA s.12. The definition of “consumer goods” as “goods purchased for personal, family or household purposes and not for the purposes of any trade or business” in the First Schedule will continue to apply to the rest of the HPA.

<sup>7</sup> Proposed sections 7, 7A and 7B of the HPA.

## 2. PROPOSED AMENDMENTS

### *Terminology*

- 2.1 The definition of “hire-purchase agreement”<sup>8</sup> has been modified to adopt the wording in the UKSOGITA. This definition is more explicit and excludes conditional sale agreements<sup>9</sup>. It is necessary to exclude conditional sale agreements because there are differences between the implied terms for such contracts and those applicable to hire-purchase agreements. As the existing definition of “hire-purchase agreement” in the HPA encompasses both hire-purchase agreements and conditional sale agreements, the term “regulated agreement” (defined to mean a hire-purchase agreement or a conditional sale agreement) has been substituted in the other Parts of the HPA to preserve their existing ambit.
- 2.2 Paragraph (b) of the existing definition of “hire-purchase agreement” in the HPA contains a requirement that the hirer must be a consumer. This requirement is now more logically grouped with the value cap requirement in the First Schedule in proposed section 1(2), which will not apply to the implied terms in Part III of the HPA. Part III will adopt a definition of “dealing as a consumer” which is aligned with the SGA and SUGA.<sup>10</sup>

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<sup>8</sup> Proposed definition: “hire-purchase agreement” means an agreement, other than conditional sale agreement, under which—

- (a) goods are bailed in return for periodical payments by the person to whom they are bailed, and  
(b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs—  
(i) the exercise of an option to purchase by that person,  
(ii) the doing of any other specified act by any party to the agreement,  
(iii) the happening of any other specified event.

<sup>9</sup> Proposed definition: “conditional sale agreement” means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled.

A conditional sale agreement is a contract of sale and the rights and liabilities of the parties are therefore subject to the provisions of the SGA. Unlike a hire-purchase agreement, the buyer in a conditional sale contract is contractually bound to purchase the goods.

<sup>10</sup> UCTA s.12:

**Dealing as consumer.**

**12.**—(1) A party to a contract “deals as consumer” in relation to another party if—

- (a) he neither makes the contract in the course of a business nor holds himself out as doing so;  
(b) the other party does make the contract in the course of a business; and  
(c) in the case of a contract governed by the law of sale of goods or hire-purchase, or by section 7, the goods passing under or in pursuance of the contract are of a type ordinarily supplied for private use or consumption.  
(2) But on a sale by auction or by competitive tender the buyer is not in any circumstances to be regarded as dealing as consumer.  
(3) Subject to this, it is for those claiming that a party does not deal as consumer to show that he does not.

- 2.3 The proposed definition of “hire-purchase agreement” refers to the legal concept of “bailment” used in similar UK legislation, instead of “letting” or “hire” currently used in the HPA. At common law, bailment refers to the delivery of goods on a condition, expressed or implied, that they shall be restored by the bailee to the bailor, or according to the bailor’s directions, as soon as the purpose for which they are bailed shall be answered.<sup>11</sup> In the case of a hire-purchase agreement, the goods are bailed on hire to the bailee, with an agreement to transfer the property in the goods to the bailee upon certain events, usually the exercise of an option to purchase the goods by the bailee. For consistency with the rest of the HPA, Part III refers to “hirer”, instead of the “person to whom the goods are bailed” used in the UKSOGITA. The term “hirer” in the HPA has been re-defined to refer to “the person who bails or purchases goods from the owner”.<sup>12</sup> These changes will not change the substantive meaning of the terms.

#### *Implied terms in Part III*

- 2.4 The existing warranties and conditions under Part III of the HPA are replaced by updated implied terms which are aligned to the SGA and SUGA. The implied terms are as follows:
- a. Implied terms as to title: that the owner will have a right to sell the goods at the time when the property will pass, free from any charge or encumbrance which is not known to the hirer, and that the hirer will enjoy quiet possession of the goods. (Section 6)
  - b. Implied terms with regard to bailing by description: that the goods will correspond with the description. (Section 7)
  - c. Implied terms as to quality: in the case of an owner bailing goods in the course of a business, that the goods will be of satisfactory quality, which includes fitness for purposes for which such goods are commonly supplied, appearance and finish, freedom from minor defects, safety and durability. This updates the existing implied term of merchantable quality under the HPA. (Section 7A(2) to (5))
  - d. Implied terms as to fitness for purpose: in the case of an owner bailing goods in the course of a business, that the goods will be fit

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<sup>11</sup> Osborn’s Concise Law Dictionary (Seventh Edition), Roger Bird, Sweet & Maxwell (1983).

<sup>12</sup> The existing definition of “hirer” in the HPA is “the person who takes or has taken goods from an owner under a hire-purchase agreement and includes a person to whom the hirer’s rights or liabilities under the agreement have passed by assignment or by operation of law”.

for purposes which the hirer, expressly or by implication, makes known to the owner or dealer in the course of negotiations. (Section 7A(6))

- e. Implied terms with regard to bailing by sample: that the bulk of the goods will correspond with the sample in quality, that the hirer will have a reasonable opportunity of comparing the bulk with the sample, and that the goods will be free from any defect, making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample. (Section 7B)
- 2.5 In the case of non-consumers (i.e. persons who do not deal as consumers), breach of the implied terms in sections 7, 7A or 7B(1)(a) or (c) are treated as a breach of warranty instead of a breach of condition, unless a contrary intention appears from the agreement. This means that a non-consumer cannot reject the goods for such a breach, even though a consumer could, if the breach is so slight that it would be unreasonable for him to do so. (Section 7C)

*Transitional provisions*

- 2.6 The amended HPA will apply only to agreements made on or after the amendments come into force. Agreements made before the amendments come into force will continue to be governed by the HPA as it currently stands.