

Goods Mortgages Bill

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Make provision for a new form of security that may be created over goods owned by individuals; to repeal the Bills of Sale Acts 1878 and 1882; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

INTRODUCTORY

1 Overview

- (1) This Act contains provision about security over goods.
- (2) In Part 2—
 - (a) sections 2 to 5 contain provision enabling an individual who owns goods to create a goods mortgage over them as security for the discharge of an obligation; 5
 - (b) section 6 relates to other non-possessory security over goods;
 - (c) section 7 (with Schedule 1) contains provision about the obligations that cannot be secured by a goods mortgage. 10
- (3) In Part 3—
 - (a) sections 8 to 11 contain provision about the registration of goods mortgages;
 - (b) section 12 deals with further advances by the mortgagee; 15
 - (c) sections 13 to 17 deal with the position of third parties.
- (4) Part 4 contains provision about the rights of mortgagors and mortgagees.
- (5) Part 5 contains repeals and amendments, provisions about regulations and interpretation, and other final provisions.

PART 2

CREATION OF GOODS MORTGAGES

*Goods mortgages***2 Goods mortgages**

- (1) An individual who owns qualifying goods (see section 4) may create a charge over the goods (in this Act referred to as a “goods mortgage”) as security for the discharge of an obligation. 5
- (2) The following requirements must be met –
- (a) the goods exist, and are owned by the individual concerned, at the time when the charge is created; 10
 - (b) the charge is created by a written instrument complying with section 5;
 - (c) the obligation is not an excluded obligation (see section 7).
- (3) A person whose only interest in goods is an equitable interest arising under a trust is not to be regarded for the purposes of this Act as “owning” the goods.

3 Goods mortgages: co-owners

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- (1) Where qualifying goods are owned jointly by two or more individuals, those individuals may together create a charge over the goods as security for the discharge of an obligation.
- (2) Where qualifying goods are owned in common by two or more persons, any of those persons who is an individual may create a charge over his or her undivided share in the goods as security for the discharge of an obligation. 20
- (3) The following requirements must be met –
- (a) the goods exist, and are owned by the person or persons concerned, at the time when the charge is created;
 - (b) the charge is created by a written instrument complying with section 5; 25
 - (c) the obligation is not an excluded obligation (see section 7).
- (4) References to ownership jointly or in common with others by an individual include references to ownership jointly or in common with others by an individual as a member of a partnership (other than a limited liability partnership). 30
- (5) A charge created under subsection (1) or (2) is a “goods mortgage”.

4 Qualifying goods

- (1) This section applies for the interpretation of this Act.
- (2) “Goods” means any of the following –
- (a) tangible moveable property, 35
 - (b) [growing crops, if charged separately from any interest in the land, and
 - (c) other things that are attached to or form part of land but are capable of being severed from the land, if the things are charged separately from any interest in the land.]

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- (3) “Qualifying goods” means goods other than –
- (a) excluded items, or
 - (b) goods that are outside England and Wales at the time when the charge over them is created.
- (4) In subsection (3) “excluded items” means – 5
- (a) aircraft registered in the United Kingdom;
 - (b) anything that is by virtue of provision made under subsection (2)(f) of section 86 of the Civil Aviation Act 1982 included in a mortgage registered by virtue of that section;
 - (c) ships registered on Part I of the register maintained under section 8 of the Merchant Shipping Act 1995; 10
 - (d) ships registered with full registration on Part II of that register;
 - (e) currency notes or coins that (in either case) are legal tender in the United Kingdom or elsewhere.
- 5 Requirements to be met in relation to instrument** 15
- (1) The instrument creating a goods mortgage must –
- (a) contain prescribed provisions, and
 - (b) be signed or otherwise authenticated by the prescribed persons and in the prescribed manner.
- (2) The Treasury must by regulations require the inclusion in the instrument of statements in such form as the Treasury consider appropriate for the purpose of warning the mortgagor – 20
- (a) that the mortgagor risks losing the goods if the obligation secured by the goods mortgage is not discharged, and
 - (b) that the mortgagor may commit an offence under the Fraud Act 2006 if, while the goods remain subject to the goods mortgage, the mortgagor – 25
 - (i) makes a disposition of the goods without previously disclosing to the purchaser the existence of the goods mortgage, or
 - (ii) creates a further security over the goods without previously disclosing to the person to whom the security is given the existence of the goods mortgage. 30
- (3) Subsection (2) does not apply in the case of an exempt goods mortgage (see section 28).
- Other non-possessory security on goods* 35
- 6 Other non-possessory security on goods**
- (1) This section applies to any agreement or arrangement that is entered into by an individual and is not –
- (a) a goods mortgage (as defined by sections 2 and 3),
 - (b) a pledge, lien or other security under which the goods are to remain in the possession of, or under the custody of, the person to whom the obligation being secured is owed until the obligation is discharged, 40
 - (c) an agricultural charge under Part 2 of the Agricultural Credits Act 1928, or

- (d) a mortgage capable of being registered by virtue of section 86 of the Civil Aviation Act 1982.
- (2) The agreement or arrangement is void to the extent that it would (apart from this subsection) –
- (a) create a mortgage or charge over qualifying goods owned by the individual, or subsequently to be acquired by the individual, as security for the discharge of an obligation, or 5
 - (b) create a mortgage or charge over an undivided share in qualifying goods owned by the individual in common with others, or subsequently to be acquired by the individual in common with others, as security for the discharge of an obligation. 10
- (3) A pledge, lien or other security –
- (a) which has effect over qualifying goods owned by an individual,
 - (b) which is not a goods mortgage, and
 - (c) under which the goods are to remain in the possession of, or under the custody of, the person to whom the obligation being secured is owed until the obligation is discharged, 15
- becomes void if, before the obligation being secured is discharged, the person to whom the obligation is owed passes custody of the goods to the person by whom the pledge, lien or other security is given. 20
- (4) Nothing in this section –
- (a) affects the validity of the obligation whose discharge the agreement or arrangement purports to secure, or
 - (b) affects the validity of any hire-purchase agreement or conditional sale agreement. 25

Obligations that cannot be secured by a goods mortgage

7 Excluded obligations

- (1) This section makes provision about the obligations that are excluded obligations for the purposes of sections 2(2)(c) and 3(3)(c) (and so cannot be secured by a goods mortgage). 30
- (2) A guarantee is an excluded obligation unless –
- (a) the high net worth conditions in section 28(4) are met, and
 - (b) the goods mortgage includes a declaration by the mortgagor which –
 - (i) acknowledges that the mortgagor will not have available the protection and remedies that would be available to the mortgagor under sections 20(1) and 27(2) in the case of a goods mortgage other than an exempt goods mortgage, and 35
 - (ii) complies with prescribed requirements.
- (3) The obligation of the debtor under an agreement for running-account credit is an excluded obligation unless – 40
- (a) the high net worth conditions in section 28(4) or the business credit conditions in section 28(5) are met, and
 - (b) the goods mortgage includes a declaration by the mortgagor which –
 - (i) acknowledges that the mortgagor will not have available the protection and remedies that would be available to the 45

- mortgagor under sections 20(1) and 27(2) in the case of a goods mortgage other than an exempt goods mortgage, and
- (ii) complies with prescribed requirements.
- (4) For the meaning of “exempt goods mortgage”, see section 28.
- (5) In this Act “guarantee” includes an indemnity. 5
- (6) Schedule 1 makes provision for the purposes of this section about the meaning of “running-account credit” and related matters.

PART 3

REGISTRATION AND RIGHTS OF THIRD PARTIES

Registration 10

8 Meaning of “general goods mortgage” and “vehicle mortgage”

- (1) This section has effect for the interpretation of this Part.
- (2) A goods mortgage is a “general goods mortgage” if the goods to which it relates consist of or include goods other than qualifying vehicles.
- (3) A goods mortgage is a “vehicle mortgage” if the goods to which it relates consist of or include one or more qualifying vehicles. 15
- (4) “Qualifying vehicle” means –
- (a) a vehicle registered under the Vehicle Excise and Registration Act 1994, or
 - (b) a mechanically propelled vehicle which, although not so registered – 20
 - (i) is intended or adapted for use on roads to which the public has access, and
 - (ii) bears a vehicle identification number, allocated in accordance with standards issued by the International Organization for Standards, or another unique identification code. 25

9 Registration of general goods mortgages

[To be added - see notes.]

10 Registration of vehicle mortgages

[To be added - see notes.]

11 Designated operator 30

[To be added - see notes.]

12 Tacking and further advances

- (1) The mortgagee under a registered goods mortgage may make a further advance on the security of the goods mortgage ranking in priority to subsequent goods mortgages – 35

- (a) if an arrangement has been made to that effect with the subsequent mortgagees,
 - (b) if, at the time when the further advance is made, the subsequent goods mortgage is not registered, or
 - (c) if the prior goods mortgage imposes an obligation on the prior mortgagee to make further advances. 5
- (2) Subsection (1) applies whether or not the prior goods mortgage was made expressly for securing further advances.
- (3) If the prior goods mortgage was made expressly for securing a current account or other further advances, the prior mortgagee may also make a further advance ranking in priority to a subsequent goods mortgage if – 10
- (a) the subsequent mortgage was not registered at the time when the prior goods mortgage was registered or when the last search of the relevant register by or on behalf of the prior mortgagee was made, whichever happened last, and 15
 - (b) at the time when the further advance is made, the prior mortgagee has no actual notice of the registration of the subsequent goods mortgage.
- (4) Tacking in relation to a goods mortgage is possible only as provided by this section.
- (5) In this section “registered”, in relation to a goods mortgage, means – 20
- (a) if or to the extent that the goods mortgage relates to goods other than qualifying vehicles, registered under section 9;
 - (b) if or to the extent that the goods mortgage relates to one or more qualifying vehicles, registered under section 10;
- and the reference to the “relevant register” is to be read accordingly. 25

Position of third parties

13 Priority as between goods mortgage and land mortgage

- (1) [This section applies where a goods mortgage relates to goods that are –
- (a) growing crops, or
 - (b) other things attached to or forming part of land. 30
- (2) If, at the time when the goods mortgage is created –
- (a) the goods within subsection (1)(a) or (b) form part of the land, and
 - (b) an interest in the land is subject to a mortgage (“the land mortgage”),
- the land mortgage has priority over the goods mortgage.
- (3) In any other case, the goods mortgage has priority over a mortgage over an interest in the land.] 35

14 Duty of owner to disclose existence of goods mortgage

- (1) This section applies where a person owns goods which are subject to a goods mortgage (“the current mortgage”).
- (2) If the owner of the goods disposes of the goods to a purchaser without discharging the obligation secured by the current mortgage, the owner is under a duty to disclose to the purchaser the existence of the current mortgage before the disposition. 40

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- (3) If the owner of the goods creates a further goods mortgage or other security over the goods without discharging the obligation secured by the current mortgage, the owner is under a duty to disclose to the person to whom the further goods mortgage or other security is provided the existence of the current mortgage, before creating the further goods mortgage or other security. 5
- (4) Where an undivided share in goods is subject to a goods mortgage, references in this section to the goods are to be read as references to the undivided share.
- (5) For the meanings of “disposition” and “purchaser”, see section 34.
- 15 Protection of purchasers** 10
- (1) This section applies if –
- (a) goods are subject to a goods mortgage,
 - (b) before the obligation secured by the goods mortgage has been discharged, the owner of the goods disposes of the goods to another person (“the purchaser”), and 15
 - (c) the non-registration condition or the protected purchaser condition is met (or both are met).
- (2) The non-registration condition is that at the time of the disposition the goods mortgage is not registered –
- (a) in the case of goods other than a qualifying vehicle, under section 9, or 20
 - (b) in the case of a qualifying vehicle, under section 10.
- (3) The protected purchaser condition is that the purchaser –
- (a) is a private purchaser, and
 - (b) is a purchaser of the goods in good faith without notice of the goods mortgage. 25
- (4) On the disposition to the purchaser, the goods cease to be subject to the goods mortgage.
- (5) This section does not exonerate the mortgagor and if different the person making the disposition to the purchaser from any liability (whether criminal or civil) to which either of them would be subject apart from this section. 30
- (6) This section is to be read with section 16.
- 16 Interpretation of section 15**
- (1) This section makes provision about the interpretation of section 15.
- (2) A person becomes a purchaser of goods if, and at the time when, a disposition of the goods (see section 34) is made to the person. 35
- (3) “Trade or finance purchaser”, in relation to goods of any kind, means a purchaser who, at the time of the disposition made to the purchaser, carries on a business which consists, wholly or partly –
- (a) of purchasing goods of that kind for the purpose of offering or exposing them for sale, or 40
 - (b) of providing finance by purchasing goods of that kind for the purpose of bailing them under hire-purchase agreements or agreeing to sell them under conditional sale agreements.

- (4) “Private purchaser”, in relation to goods of any kind, means a purchaser who, at the time of the disposition made to the purchaser, does not carry on a business falling within subsection (3).
- (5) A person is to be taken to be a purchaser of goods without notice of a goods mortgage if, at the time of the disposition made to the person, the person has no actual notice that the goods are subject to a goods mortgage. 5
- (6) Where an undivided share in goods is subject to a goods mortgage, references to goods, including the references in subsections (2) and (5) of this section, are to be read as references to the undivided share.
- 17 Bankruptcy** 10
- (1) This section applies if an individual who owns goods subject to a goods mortgage is made bankrupt.
- (2) The goods mortgage is void against the trustee of the bankrupt’s estate unless at the relevant time the goods mortgage is registered under this Part.
- (3) The relevant time is the time when the bankruptcy application is made or the bankruptcy petition is presented. 15

PART 4

RIGHTS OF MORTGAGORS AND MORTGAGEES

- 18 Restriction on mortgagee taking possession of goods**
- (1) The mortgagee under a goods mortgage is not entitled to take possession of the goods from the mortgagor unless one or more of the following applies – 20
- (a) any sum whose payment is secured by the goods mortgage has not been paid at the time when it became due,
- (b) the mortgagor has failed to comply with a term of the goods mortgage relating to the maintenance or insurance of the goods, 25
- (c) the mortgagor has moved the goods in breach of a term of the goods mortgage,
- (d) the mortgagor has offered the goods for sale without the consent of the mortgagee,
- (e) a relevant non-financial obligation has not been discharged at the time when it ought to have been discharged, 30
- (f) the goods have become liable to be seized under a warrant of execution to satisfy a court judgment,
- (g) since the goods mortgage was created, the mortgagor – 35
- (i) has been made bankrupt (under Part 9 of the Insolvency Act 1986),
- (ii) has been adjudged bankrupt by a court in Northern Ireland,
- (iii) has had his or her estate sequestrated by a court in Scotland, or
- (iv) has been subject to a similar order or judgment made by a court in a territory outside the United Kingdom. 40
- (2) In subsection (1)(e) a “relevant non-financial obligation” means an obligation that is secured by the goods mortgage but is not –
- (a) an obligation to pay money,

- (b) an obligation ancillary to an obligation to pay money,
- (c) an obligation arising under a term of the kind mentioned in subsection (1)(b) or (c) or under a term restricting the disposal of the goods.

19 Entry onto premises

- (1) Except under an order of the court, the mortgagee under a goods mortgage is not entitled to enter any premises to take possession of the goods. 5
- (2) An entry in contravention of subsection (1) is actionable as a breach of statutory duty.

20 Possession notice required before taking possession

- (1) The giving to the mortgagor of a notice complying with section 21 (“a possession notice”) is necessary before the mortgagee can take possession of the goods. 10
- (2) Subsection (1) does not prevent the mortgagee taking possession without giving a possession notice if –
 - (a) the following conditions are met – 15
 - (i) the obligation secured is one that can be discharged by the payment of money,
 - (ii) at the time when the goods mortgage was created, the redemption total could be determined, and
 - (iii) at the time when the mortgagee takes possession of the goods, less than one third of the redemption total has been paid, or 20
 - (b) the goods mortgage is an exempt goods mortgage (see section 28).
- (3) “The redemption total” means the total sum that is to be payable by the mortgagor in order to discharge the obligation secured by the goods mortgage, including interest but excluding any sum payable as a penalty. 25
- (4) Where the obligation can be discharged either by the payment of money or by other means, it is to be assumed for the purposes of subsection (3) that the mortgagor does not discharge it by those other means.

21 Possession notice

- (1) A possession notice must be in the prescribed form and contain prescribed information. 30
- (2) Regulations made by virtue of subsection (1) must require a possession notice to –
 - (a) state that the mortgagee considers that one or more of the conditions in section 18(1) is met, specifying which condition and why the mortgagee considers that it is met, 35
 - (b) state that the mortgagor may exercise the right conferred by section 27 (mortgagor’s right to terminate),
 - (c) state that the mortgagor may within a prescribed period (“the notice period”) – 40
 - (i) require the mortgagee not to take possession of the goods unless authorised to do so by an order of the court, or

- (ii) inform the mortgagee of the mortgagor’s intention to seek advice,
 - (d) indicate the amount of any costs that may become payable by the mortgagor under an order of the court if the mortgagor acts under paragraph (c)(i) and the mortgagee applies for such an order, and 5
 - (e) state that the mortgagee intends to take possession of the goods unless within the notice period the mortgagor –
 - (i) remedies the breach to which the notice relates (if the breach is capable of remedy), or
 - (ii) acts under subsection (c)(i) or (ii) or under section 27. 10
- (3) If the mortgagor informs the mortgagee under subsection (2)(c)(ii), within the notice period, of the mortgagor’s intention to seek advice, the mortgagor may within a further prescribed period (“the advice period”), require the mortgagee not to take possession of the goods unless authorised to do so by an order of the court. 15
- (4) Where a possession notice has been given to the mortgagor, the mortgagee is not entitled to take possession of the goods –
 - (a) before the end of the notice period, and
 - (b) if the mortgagor acts under subsection (2)(c)(ii), during the advice period. 20
- (5) If the mortgagor so requires under subsection (2)(c)(i) or (3), the mortgagee may not take possession of the goods except under an order of the court.
- (6) If before the relevant time the mortgagor remedies the breach to which the possession notice relates, the breach is to be treated as not having occurred.
- (7) In subsection (6) “the relevant time” means the end of the notice period or, if the mortgagor acts under subsection (2)(c)(ii), the end of the advice period. 25

22 Defaults under consumer credit agreements

- (1) This section applies if the goods mortgage was given to secure the payment of money under a regulated agreement to which subsection (1) of section 87 of the Consumer Credit Act 1974 (need for default notice) applies. 30
- (2) A possession notice –
 - (a) may not be given until the restriction imposed by section 88(2) of that Act has ceased to apply to the goods mortgage, and
 - (b) may not be given if, by virtue of section 89 of that Act (compliance with default notice), the default is treated as not having occurred. 35
- (3) If because of section 20(2) no possession notice is required –
 - (a) the mortgagee is not entitled to take possession of the goods on the basis that a condition in section 18(1) is met unless the restriction imposed by section 88(2) of the Consumer Credit Act 1974 has ceased to apply to the goods mortgage, and 40
 - (b) section 18(1)(a) to (f) does not apply to a default that is treated by section 89 of that Act as not having occurred.

23 Consequences of breach of section 18, 20 or 21

If the mortgagee takes possession of the goods to which a goods mortgage relates in contravention of section 18, 20 or 21, the mortgagor –

- (a) is entitled to have the goods returned, and
- (b) is released from all further liability under the obligation secured by the goods mortgage. 5

24 Additional powers of court where mortgagee seeks possession of goods

- (1) This section applies where in any proceedings the mortgagee under a goods mortgage seeks possession of the goods.
- (2) The court may exercise any of the powers conferred by this section if it appears to the court that in the event of its exercising the power the mortgagor is likely to be able within a reasonable period –
 - (a) to pay any sums due under the goods mortgage, or
 - (b) to remedy a default consisting of a breach of any other obligation arising under or by virtue of the goods mortgage. 15
- (3) The court –
 - (a) may adjourn the proceedings for such period or periods as the court thinks reasonable, or
 - (b) on giving judgment, or making an order, for the delivery up of the goods that are subject to the goods mortgage, or at any time before the execution of such a judgment or order, may –
 - (i) stay or suspend execution of the judgment or order, or
 - (ii) postpone the date for the delivery of possession, for such period or periods as the court thinks reasonable. 20
- (4) The adjournment, stay, suspension or postponement may be made subject to such conditions with regard to the payment by the mortgagor of any sum secured by the goods mortgage or the remedying of any default as the court thinks fit. 25
- (5) The court may from time to time vary or revoke any condition imposed by virtue of this section. 30
- (6) Nothing in this section applies if the goods mortgage secures an agreement which is a regulated agreement within the meaning of the Consumer Credit Act 1974 (but see section 129 of that Act).

25 Mortgagee's power of sale

- (1) If the mortgagee under a goods mortgage has taken possession of the goods, the mortgagee has power to sell the goods. 35
- (2) This is subject to the following provisions of this section and to section 26.
- (3) If the goods mortgage is not registered but another goods mortgage over the goods is registered, the mortgagee under the unregistered goods mortgage may not sell the goods. 40
- (4) Where two or more goods mortgages are registered in relation to the same goods, a subsequent mortgagee may not, except under an order of the court, sell the goods without the concurrence of every prior mortgagee.

- (5) Section 101 of the Law of Property Act 1925 (which contains provisions relating to mortgages made by deed) does not apply in relation to a goods mortgage.

26 Goods seized not to be sold until 5 days have passed

- (1) If the mortgagee takes possession of the goods to which a goods mortgage relates, the mortgagee must not sell the goods before the end of the fifth working day following the day on which possession is taken. 5
- (2) The mortgagor may before the end of the fifth working day apply to the court and the court, if satisfied that, by reason of the payment of money or otherwise, the condition in section 18(1) has ceased to be met, may – 10
- (a) restrain the mortgagee from removing or selling the goods,
 - (b) order the return of the goods to the mortgagor, or
 - (c) make such other order as the court thinks just.
- (3) “Working day” means a day other than a Saturday, a Sunday, Good Friday, Christmas Day or a bank holiday under the Banking and Financial Dealings Act 1971 in England or Wales. 15
- (4) This section does not apply where the mortgagee takes possession under an order of the court.

27 Mortgagor’s right to terminate

- (1) This section applies to a goods mortgage that is not an exempt goods mortgage.
- (2) The mortgagor is entitled to terminate the goods mortgage by – 20
- (a) informing the mortgagee of the mortgagor’s intention to terminate the goods mortgage, and
 - (b) as soon as reasonably practicable after doing so, delivering the goods to the mortgagee.
- (3) If the mortgagee refuses to accept goods that the mortgagor offers or attempts to deliver to the mortgagee after informing the mortgagee of an intention to terminate the goods mortgage, the goods are to be taken for the purposes of subsection (2) to have been delivered to the mortgagee. 25
- (4) The right given by subsection (2) cannot be exercised in relation to a goods mortgage if another goods mortgage over the goods has been registered and the other mortgagee (or mortgagees) have not agreed to the termination. 30
- (5) The mortgagee may refuse termination under subsection (2) by the mortgagor if –
- (a) the mortgagee has applied to the court for possession of the goods,
 - (b) the mortgagee is entitled to take possession of the goods without such an order and has incurred expenditure in attempting to take possession of them, 35
 - (c) the state of the goods is affected by damage deliberately caused by any person since the creation of the goods mortgage, or
 - (d) the goods have suffered damage that – 40
 - (i) is attributable to a failure by the mortgagor to comply with a term of the goods mortgage requiring the mortgagor to take reasonable care of the goods, and
 - (ii) has a significant adverse effect on the market value of the goods.

- (6) On termination of a goods mortgage under subsection (2) –
 - (a) the mortgagor is released from all further liability under the obligation secured by the goods mortgage, and
 - (b) property in the goods passes to the mortgagee.
- (7) If the mortgagee refuses termination on any of the grounds in subsection (5), the mortgagee must return the goods to the mortgagor. 5

28 Exempt goods mortgage

- (1) A goods mortgage is an “exempt goods mortgage” for the purposes of this Act in the following cases.
- (2) A goods mortgage is an exempt goods mortgage if the obligation secured by it is –
 - (a) a guarantee (see section 7(2) for the cases in which a goods mortgage may secure a guarantee), or
 - (b) the obligation of the borrower under an agreement for running-account credit as defined by Schedule 1 (see section 7(3) for the cases in which a goods mortgage may secure such an obligation). 15
- (3) A goods mortgage is also an exempt goods mortgage if –
 - (a) the high net worth conditions (see subsection (4)) or the business credit conditions (see subsection (5)) are met, and
 - (b) the goods mortgage includes a declaration by the mortgagor which –
 - (i) states that the mortgagor agrees to forgo the protection and remedies given by sections 20(1) and 27(2), and
 - (ii) complies with prescribed requirements. 20
- (4) The high net worth conditions are –
 - (a) that a statement complying with prescribed requirements has been made in relation to the income or assets of the mortgagor, 25
 - (b) that the connection between the statement and the goods mortgage complies with prescribed requirements, and
 - (c) that a copy of the statement was provided to the mortgagee before the goods mortgage was created. 30
- (5) The business credit conditions are –
 - (a) that the obligation to which the goods mortgage relates arises from the provision of credit exceeding the prescribed amount, and
 - (b) that the agreement under which that obligation is owed was entered into wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the mortgagor. 35

29 Contracting-out forbidden

- (1) A term contained in a goods mortgage, or in any agreement secured by or related to a goods mortgage, is void if, and to the extent that, it is inconsistent with a provision for the protection of the mortgagor contained in this Act or in any regulations made under this Act. 40
- (2) Where the provision specifies the duty or liability of the mortgagor in certain circumstances, the term is inconsistent with that provision if it purports to impose, directly or indirectly, an additional duty or liability on the mortgagor in those circumstances. 45

- (3) Despite subsection (1), a provision of this Act under which a thing may be done in relation to any person only on an order of the court is not to be taken to prevent its being done at any time with that person’s consent given at that time.
- (4) The refusal of the consent mentioned in subsection (3) is not to give rise to any liability. 5

30 Interpretation of Part 4

- (1) This section has effect for the interpretation of this Part.
- (2) “Registered”, in relation to a goods mortgage, means – 10
- (a) if or to the extent that the goods mortgage relates to goods other than qualifying vehicles as defined in section 8(4), registered under section 9;
 - (b) if or to the extent that the goods mortgage relates to one or more qualifying vehicles as so defined, registered under section 10.
- (3) In relation to a goods mortgage – 15
- (a) “mortgagor” includes a person to whom the original mortgagor’s rights and duties under the goods mortgage have passed by operation of law;
 - (b) “mortgagee” includes a person to whom the original mortgagee’s rights and duties under the goods mortgage have passed by assignment or operation of law. 20
- (4) In relation to a goods mortgage over an undivided share in goods, references to goods are to be read, unless the context requires otherwise, as references to the undivided share.

PART 5

REPEALS AND FINAL PROVISIONS 25

Repeals

31 Repeal of Bills of Sale Acts 1878 and 1882

- (1) The Bills of Sale Act 1878 and the Bills of Sale Act (1878) Amendment Act 1882 are repealed.
- (2) In consequence of the repeals made by subsection (1) – 30
- (a) the Bills of Sale Act 1890 and the Bills of Sale Act 1891 are repealed;
 - (b) the following are omitted –
 - (i) section 23 of the Administration of Justice Act 1925;
 - (ii) in Schedule 11 to the Constitutional Reform Act 2005, in paragraph 4(2), the entry relating to the Bills of Sale Act 1978; 35
 - (iii) in Schedule 13 to the Tribunals, Courts and Enforcement Act 2007, paragraphs 17 to 19;
 - (iv) in Schedule 9 to the Courts and Crime Act 2013, paragraph 15.

Final provisions

32 Regulations

- (1) Any power of the Treasury to make regulations under this Act is exercisable by statutory instrument.
- (2) Any such power includes— 5
 - (a) power to make different provision for different purposes, and
 - (b) power to make transitional, transitory or saving provision.
- (3) Subsection (2) does not apply in relation to the power conferred by section 37 (but see subsections (3) and (4) of that section).
- (4) A statutory instrument containing regulations under any provision this Act other than section 37 is subject to annulment in pursuance of a resolution of either House of Parliament. 10

33 Meaning of “credit” and “credit agreement”

- (1) In this Act “credit” includes a cash loan, and any other form of financial accommodation. 15
- (2) In this Act “credit agreement” means an agreement between one or more persons (“the debtor”) and any other person (“the creditor”) by which the creditor provides the debtor with credit of any amount.
- (3) Where credit is provided otherwise than in sterling, it is to be treated for the purposes of this Act as provided in sterling of an equivalent amount. 20
- (4) For the purposes of this Act, an item entering into the total charge for credit is not to be treated as credit even though time is allowed for its payment.
- (5) In subsection (4) “the total charge for credit” has the meaning given by rules made by the Financial Conduct Authority under Article 60M of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, but as if any reference in the rules to a regulated credit agreement were to a credit agreement as defined by subsection (2). 25

34 Meaning of “disposition” etc

- (1) In this Act “disposition” means— 30
 - (a) a contract of sale, as defined by section 2 of the Sale of Goods Act 1979, or
 - (b) a contract under which the owner of goods transfers or agrees to transfer ownership of the goods to another person and— 35
 - (i) the other person provides or agrees to provide consideration otherwise than by paying a price, or
 - (ii) the contract is, for any other reason, not a contract for sale or a hire-purchase agreement;and “dispose of” is to be read accordingly.
- (2) For the purposes of this Act, a person becomes a “purchaser” of goods if, and at the time when, a disposition of the goods is made to that person. 40

35 General interpretation

In this Act –

“conditional sale agreement” has the meaning given by section 189 of the Consumer Credit Act 1974;

“the court” means the High Court or the county court; 5

“credit” and “credit agreement” have the meanings given by section 33;

“disposition” has the meaning given by section 34(1);

“exempt goods mortgage” has the meaning given by section 28;

“goods” has the meaning given by section 4;

“goods mortgage” has the meaning given by sections 2 and 3; 10

“guarantee” has the meaning given by section 7(5);

“hire-purchase agreement” has the meaning given by section 189 of the Consumer Credit Act 1974;

“mortgagee”, in relation to a goods mortgage, means the person or persons to whom the security is provided in accordance with section 2 or 3, except that in Part 4 it has the extended meaning given by section 30(2)(a); 15

“mortgagor”, in relation to a goods mortgage, means the individual who creates (or individuals who create) the mortgage in accordance with section 2 or 3, except that in Part 4 it has the extended meaning given by section 30(2)(b); 20

“own” and related expressions are to be read in accordance with section 2(3);

“possession notice” has the meaning given by section 20(1);

“prescribed” means prescribed by regulations made by the Treasury under this Act; 25

“purchaser” is to be read in accordance with section 34(2);

“qualifying goods” has the meaning given by section 4.

36 Consequential amendments

Schedule 2 (which contains amendments related to the provisions of this Act) has effect. 30

37 Commencement

(1) The following provisions come into force on the day on which this Act is passed –

(a) sections 32 to 35; 35

(b) this section and section 38.

(2) The other provisions of this Act come into force on such day as the Treasury may by regulations appoint.

(3) The Treasury may by regulations make saving, transitional or transitory provision in connection with the coming into force of any provision of this Act. 40

(4) Regulations under this section may make different provision for different purposes.

38 Short title and extent

- (1) This Act may be cited as the Goods Mortgages Act 2017.
- (2) Except as provided by subsection (3), this Act extends to England and Wales only.
- (3) Any repeal or amendment made by this Act has the same extent as the enactment repealed or amended.

5

SCHEDULES

SCHEDULE 1

Section 7

RUNNING-ACCOUNT CREDIT: PROVISIONS SUPPLEMENTING SECTION 7

Introductory

- 1 This Schedule has effect for the interpretation of section 7. 5

Running-account credit

- 2 Running-account credit is a facility under a credit agreement under which the debtor is enabled to receive from time to time (whether for the debtor or for another person) from the creditor or a third party cash, goods and services (or any of them) to an amount or value such that, taking into account payments made by or to the credit of the debtor, the credit limit (if any) is not at any time exceeded. 10
- 3 In relation to running-account credit, “credit limit” means, as respects any period, the maximum debit balance which, under the credit agreement, is allowed to stand on the account during that period, disregarding any term of the agreement allowing that maximum to be exceeded merely temporarily. 15

Determining amount of running-account credit

- 4 (1) Running-account credit is to be taken not to exceed the amount prescribed for the purposes of section 7(5)(a) (“the specified amount”) if – 20
- (a) the credit limit does not exceed the specified amount, or
 - (b) whether or not there is a credit limit, and if there is, despite the fact that it exceeds the specified amount –
 - (i) the debtor is not enabled to draw at any one time an amount which, so far as (having regard to section 33(4)) it represents credit, exceeds the specified amount, or 25
 - (ii) the agreement provides that, if the debit balance rises above a given amount (not exceeding the specified amount), any condition favouring the creditor or the creditor’s associate comes into operation, or 30
 - (iii) at the time the agreement is made it is probable, having regard to the terms of the agreement and any other relevant considerations, that the debit balance will not at any time rise above the specified amount.
- (2) In sub-paragraph (1)(b)(ii) “associate” is to be read in accordance with section 184 of the Consumer Credit Act 1974. 35

SCHEDULE 2

Section 36

CONSEQUENTIAL AMENDMENTS

Perjury Act 1911

- 1 In section 2 of the Perjury Act 1911 (false statements on oath made otherwise than in a judicial proceeding), omit paragraph (2). 5

Law of Property Act 1925

- 2 In section 114 of the Law of Property Act 1925 (transfers of mortgages), in subsection (5) for “bill of sale of chattels by way of security” substitute “goods mortgage as defined by section 35 of the Goods Mortgages Act 2017”.

Agricultural Credits Act 1928 10

- 3 The Agricultural Credits Act 1928 is amended as follows.
- 4 In section 8 (supplemental provisions as to agricultural charges), for subsection (1) substitute –
- “(1) An agricultural charge is not to be taken to be a goods mortgage within the meaning of the Goods Mortgages Act 2017.” 15
- 5 In section 14 (provisions as to agricultural societies), in subsection (1), omit the words from “, and the charge if so registered” to “those Acts”.

Agricultural Marketing Act 1958

- 6 In section 15 of the Agricultural Marketing Act 1958 (borrowing powers of boards and provisions as to loans and grants made to boards), in subsection (5), omit the words from “, and the charge if so registered” to “those Acts”. 20

Consumer Credit Act 1974

- 7 In section 189 of the Consumer Credit Act 1974 (definitions), in subsection (1), for the words from “has” to “Ireland,” substitute “, in relation to Northern Ireland, has the meaning given”. 25

Sale of Goods Act 1979

- 8 In section 62 of the Sale of Goods Act 1979 (savings, rules of law etc), in subsection (3), omit “the enactments relating to bills of sale, or”.

Insolvency Act 1986

- 9 (1) Section 344 of the Insolvency Act 1986 (avoidance of general assignment of book debts) is amended as follows. 30
- (2) In subsection (2), for “under the Bills of Sale Act 1878” substitute “under section 9 of the Goods Mortgages Act 2017”.

(3) For subsection (4) substitute –

“(4) For the purposes of section 9 of the Goods Mortgages Act 2017, an assignment of book debts is to be treated as if it were a general goods mortgage as defined by section 8(2) of that Act.”

Co-operative and Community Benefit Societies Act 2014

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10 In section 59 of the Co-operative and Community Benefit Societies Act 2014 (charges on assets of English and Welsh societies), omit subsection (2).

