

# Goods Mortgages Bill [HL]

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**B I L L**

TO

Repeal the Bills of Sales Acts 1878 and 1882; to make provision for a new form of non-possessory security that may be created over goods owned by individuals; and for connected purposes.

**B**E 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 non-possessory security over goods and repeals the Bills of Sale Acts 1878 and 1882. 5
- (2) In Part 2—
  - (a) sections 2 to 7 (with Schedule 1) contain provision enabling an individual who owns goods to create a goods mortgage over them as security for the discharge of an obligation;
  - (b) section 8 relates to other non-possessory security over goods. 10
- (3) In Part 3—
  - (a) section 9 contains provision about the registration of goods mortgages;
  - (b) section 10 deals with further advances by the mortgagee;
  - (c) sections 11 to 14 deal with the position of third parties.
- (4) Part 4 contains provision about the rights of mortgagors and mortgagees. 15
- (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 in accordance with subsection (2) create a charge over the goods 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 6).
- (3) A person whose only interest in goods is an equitable interest is not to be regarded for the purposes of this Act as “owning” the goods.
- (4) In this Act “goods mortgage” means a charge created in accordance with this section or section 3. 15

**3 Goods mortgages: co-owners**

- (1) Where qualifying goods are owned jointly by two or more individuals, those individuals may in accordance with subsection (3) together create a charge over the goods as security for the discharge of an obligation. 20
- (2) Where qualifying goods are owned in common by two or more persons, any of those persons who is an individual may in accordance with subsection (3) create a charge over his or her undivided share in the goods as security for the discharge of an obligation.
- (3) The following requirements must be met – 25
- (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;
  - (c) the obligation is not an excluded obligation (see section 6).
- (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

**4 Qualifying goods**

- (1) This section applies for the interpretation of this Act. 35
- (2) “Goods” means tangible moveable property.
- (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 is created.
- (4) In subsection (3) “excluded items” means –
- (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; 5
  - (c) a ship as defined by section 313(1) of the Merchant Shipping Act 1995;
  - (d) currency notes or coins that (in either case) are legal tender in the United Kingdom or elsewhere. 10
- 5 Requirements to be met in relation to instrument**
- (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. 15
- (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 –
- (a) that the mortgagor risks losing the goods if the obligation secured by the goods mortgage is not discharged, and 20
  - (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 makes a disposition of the goods without previously disclosing to the purchaser the existence of the goods mortgage.
- (3) Subsection (2) does not apply in the case of an exempt goods mortgage (see section 26). 25
- (4) Nothing in the Consumer Credit Act 1974 enables a court to enforce, or allow the enforcement of, a security that purports to be a goods mortgage but is created by an instrument not complying with this section.
- 6 Excluded obligations** 30
- (1) References in this Part to an “excluded obligation” are to be read in accordance with this section.
- (2) An obligation is an excluded obligation if it –
- (a) is an obligation of the intended mortgagor as employee under a contract of employment, or 35
  - (b) requires the intended mortgagor to do or perform personally any work or services.
- (3) A guarantee is an excluded obligation unless –
- (a) the high net worth conditions (see section 7(2)) are met, and
  - (b) the instrument creating the goods mortgage includes the appropriate declaration (see subsection (5)). 40
- (4) The obligation of the debtor under an agreement for running-account credit is an excluded obligation unless –

- (a) the high net worth conditions (see section 7(2)) or the business credit conditions (see section 7(3)) are met, and
  - (b) the instrument creating the goods mortgage includes the appropriate declaration (see subsection (5)).
- (5) In this section “the appropriate declaration” means a declaration by the mortgagor which—
- (a) acknowledges that the mortgagor will not have available the protection and remedies that would be available to the mortgagor under sections 19(1) and 23(2) in the case of a goods mortgage other than an exempt goods mortgage (see section 26), and
  - (b) complies with prescribed requirements.
- (6) In this Act “guarantee” includes an indemnity given by a person in respect of the obligations of another.
- (7) Schedule 1 makes provision for the purposes of this section about the meaning of “running-account credit” and related matters.
- 7 “The high net worth conditions” and “the business credit conditions”**
- (1) This section applies for the interpretation of this Act.
- (2) “The high net worth conditions”, in relation to a goods mortgage, are—
- (a) that a statement complying with prescribed requirements has been made in relation to the income or assets of the mortgagor,
  - (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.
- (3) “The business credit conditions”, in relation to a goods mortgage, 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 obligation was incurred wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the mortgagor.

*Other non-possessory security on goods*

- 8 Other non-possessory security on goods**
- (1) This section applies to any agreement or arrangement which—
- (a) is entered into by an individual,
  - (b) is neither a goods mortgage (as defined by section 2(4)) nor a security excluded by subsection (4), and
  - (c) would (apart from this section) have the effect of—
    - (i) creating 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
    - (ii) creating a mortgage or charge over an undivided share in qualifying goods owned by the individual in common with other persons, or subsequently to be acquired by the individual

- in common with other persons, as security for the discharge of an obligation.
- (2) If the goods remain in the possession of, or under the custody of, the individual who provides the goods as security, the agreement or arrangement is void to the extent that it would (apart from this section) have the effect mentioned in subsection (1)(c). 5
- (3) If, before the obligation being secured is discharged, the person to whom the obligation is owed passes custody of the goods to the individual who provided the goods as security, the agreement or arrangement becomes void to the extent that it would (apart from this section) have the effect mentioned in subsection (1)(c). 10
- (4) The securities excluded by this subsection are –
- (a) a pledge, lien or other security under which the individual creating the pledge, lien or other security is not entitled to possession of the goods until the obligation is discharged; 15
  - (b) an agricultural charge under Part 2 of the Agricultural Credits Act 1928;
  - (c) a mortgage capable of being registered by virtue of section 86 of the Civil Aviation Act 1982;
  - (d) an international interest as defined by regulation 5 of the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 (S.I. 2015/912). 20
- (5) Nothing in this section –
- (a) affects the validity of the obligation whose discharge the agreement or arrangement purports to secure,
  - (b) affects any lien or charge arising under an enactment or otherwise by operation of law, or 25
  - (c) affects the validity of any hire-purchase agreement or conditional sale agreement.

### PART 3

#### REGISTRATION AND RIGHTS OF THIRD PARTIES 30

##### *Registration*

## 9 Registration of goods mortgages

- (1) A register of goods mortgages is to be kept by the Secretary of State in accordance with regulations made by the Treasury or the Secretary of State under this section (referred to in this section as “registration regulations”). 35
- (2) The provision that may be made by registration regulations includes (but is not limited to) provision as to –
- (a) the making by mortgagees of applications for the registration of goods mortgages;
  - (b) steps to be taken on receipt of an application for registration; 40
  - (c) the persons to whom, and manner in which, notice of the registration of a goods mortgage is required to be given;
  - (d) the information to be included on the register;

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- (e) the circumstances in which, and manner in which, registration is to be discharged;
  - (f) the amendment or rectification of the register;
  - (g) the making by any persons of searches of the register;
  - (h) fees to be payable in respect of the registration of goods mortgages or searches of the register. 5
- (3) Registration regulations may (but need not) –
- (a) provide for the register to be kept in the High Court;
  - (b) confer functions on officers of the High Court.
- (4) Where two or more goods mortgages are created over the same goods, those mortgages as between themselves have priority according to the times at which they were registered. 10
- (5) The registration under this section of a goods mortgage expires (if not previously discharged) at the end of the 10 years beginning with the day on which the goods mortgage was registered (or, as the case may be, the registration was last renewed), but registration regulations may make provision enabling registration to be renewed on application. 15
- (6) Registration regulations may restrict or exclude the liability in tort, in respect of things done or omitted in relation to the registration of goods mortgages, of the Secretary of State or any other person on whom functions are conferred by registration regulations. 20
- (7) Registration regulations may provide for the supply (including the supply by way of sale) of relevant registration information –
- (a) to such persons as may be determined in accordance with the regulations by a person specified in or determined in accordance with the regulations, and 25
  - (b) for such price (if any) and on such other terms, and subject to such restrictions, as may be determined in accordance with the regulations by a person specified in or determined in accordance with the regulations. 30
- (8) In subsection (7) “relevant registration information” means information which is derived from particulars contained in the register but which does not identify any individual or contain anything enabling any individual to be identified.
- (9) In this Act “registered”, in relation to a goods mortgage, means registered in the register kept under this section. 35

*Further advances*

**10 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 any subsequent goods mortgage – 40
- (a) if an arrangement has been made to that effect with the subsequent mortgagee,
  - (b) if, at the time when the further advance is made, the subsequent goods mortgage is not registered, or 45

- (c) if the prior goods mortgage imposes an obligation on the prior mortgagee to make further advances.
- (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 –
  - (a) the subsequent mortgage was not registered at the time when the prior goods mortgage was registered or when the last search of the register by or on behalf of the prior mortgagee was made, whichever happened last, and
  - (b) at the time when the further advance is made, the subsequent mortgagee has not given notice to the prior mortgagee 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) “The register” means the register kept under section 9.

*Position of third parties*

**11 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.
- (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.
- (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 32.

**12 Effect of change in ownership of goods**

- (1) This section applies if –
  - (a) goods are subject to a goods mortgage, and
  - (b) before the obligation secured by the goods mortgage has been discharged, ownership of the goods –
    - (i) is transferred to another person, or
    - (ii) passes by operation of law to another person, otherwise than on the owner’s bankruptcy in England and Wales (as to which, see section 14).

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- (2) If the goods mortgage is not registered at the time of the change of ownership, the goods cease to be subject to the goods mortgage.
- (3) If ownership is transferred by a disposition (see section 32) to a purchaser who—
- (a) is a private purchaser as defined by section 13, 5
  - (b) is a purchaser of the goods in good faith, and
  - (c) at the time of the disposition made to the purchaser, has no actual notice that the goods are subject to a goods mortgage,
- the goods cease to be subject to the goods mortgage.
- (4) In any other case, the goods remain subject to the goods mortgage in the hands of the new owner. 10
- (5) Subsections (2) and (3) do not exonerate the mortgagor and if different the person making the disposition or other transfer of ownership from any liability (whether criminal or civil) to which either of them would be subject apart from this section. 15
- (6) Where an undivided share in goods is subject to a goods mortgage, references in this section to goods are to be read as references to the undivided share.

### **13 Meaning of “private purchaser” in section 12**

- (1) This section makes provision about the interpretation of section 12(3)(a).
- (2) “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 which consists, wholly or partly—
- (a) of purchasing goods of that kind for the purpose of offering or exposing them for sale, or
  - (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. 25
- (3) For the meanings of “disposition” and “purchaser”, see section 32.

### **14 Bankruptcy of owner of goods subject to goods mortgage**

- (1) This section applies if an individual who owns goods subject to a goods mortgage is made bankrupt under Part 9 of the Insolvency Act 1986. 30
- (2) On the vesting of the bankrupt’s estate in the trustee in bankruptcy, the goods cease to be subject to the goods mortgage unless at the relevant time the goods mortgage is registered.
- (3) The “relevant time” is the time when the bankruptcy application is made or the bankruptcy petition is presented. 35

## PART 4

### RIGHTS OF MORTGAGORS AND MORTGAGEES

#### *General provisions about taking of possession by mortgagees*

#### **15 Right of mortgagee to take possession of goods**

- (1) The mortgagee under a goods mortgage is entitled to take possession of the goods only if one or more of the following conditions is met. 5
- (2) Those conditions are—
- (a) that any sum whose payment is secured by the goods mortgage has become due and remains unpaid;
  - (b) that the mortgagor has failed to comply with a term of the goods mortgage relating to the maintenance or insurance of the goods; 10
  - (c) that the mortgagor has moved the goods in breach of a term of the goods mortgage;
  - (d) that the mortgagor has offered the goods for sale without the consent of the mortgagee; 15
  - (e) that, in the case of a goods mortgage that secures an obligation other than an obligation to pay money, the obligation secured has not been discharged at the time when it ought to have been discharged;
  - (f) that the goods have become liable to be seized under a warrant or writ of control to satisfy a court judgment; 20
  - (g) that, since the goods mortgage was created, the mortgagor—
    - (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 25
    - (iv) has been subject to a similar order or judgment made by a court in a territory outside the United Kingdom.
- (3) Subsection (1) applies only while the goods remain subject to the goods mortgage and is subject to—
- (a) any provision of the goods mortgage further restricting the mortgagee’s right to take possession, and 30
  - (b) in a case where a prior goods mortgage over the goods is registered, the rights of the prior mortgagee in relation to possession and sale.
- (4) If the goods remain owned by the mortgagor, subsection (1) is also subject to—
- (a) section 19 (possession notice required while goods owned by mortgagor), and 35
  - (b) subsections (3) to (6) of section 20 (which further restrict the mortgagee’s right to take possession).

#### **16 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 without the consent of the person entitled to authorise entry on the premises (“the appropriate person”). 40

- (2) An entry in contravention of subsection (1) is actionable as a breach of statutory duty.
- (3) A mortgagee under a goods mortgage who—
- (a) wishes to enter any premises for the purposes of taking possession of the goods, and 5
  - (b) does not have the consent of the appropriate person,
- may make an application to the court for an order under this subsection (“an access order”) against the appropriate person.
- (4) On an application under subsection (3), the court may make an access order only if the court is satisfied, at the time when it makes the order, that the applicant is entitled to take possession of the goods. 10

### 17 Mortgagee’s power of sale

- (1) If the mortgagee under a goods mortgage has lawfully taken possession of the goods, the mortgagee has power to sell the goods.
- (2) This is subject to the following provisions of this section and to section 18. 15
- (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.
- (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 under a registered goods mortgage. 20
- (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.

### 18 Goods seized not to be sold until five days have passed 25

- (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.
- (2) The appropriate person 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 15(2) has ceased to be met, may— 30
- (a) restrain the mortgagee from removing or selling the goods,
  - (b) order the return of the goods to the appropriate person, or
  - (c) make such other order as the court thinks just.
- (3) If the appropriate person and any subsequent mortgagees have agreed with the mortgagee that the mortgagee may deal with the goods otherwise than by way of sale, references in subsections (1) and (2) to selling the goods include references to disposing of them in any other way. 35
- (4) “The appropriate person” means the mortgagor, except that, if the goods have become owned by another person, it means that other person. 40
- (5) “Working day” means a day other than a Saturday, a Sunday, Good Friday, Christmas Day or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971 in England or Wales.

- (6) This section does not apply –
- (a) if the mortgagee takes possession under an order of the court, or
  - (b) in a case where –
    - (i) the goods mortgage is an exempt goods mortgage,
    - (ii) the instrument creating the goods mortgage includes a statement that the mortgagor agrees to forgo the protection given by this section, and
    - (iii) the goods remain owned by the mortgagor.

*Protection of mortgagors*

- 19 Possession notice required while goods are owned by mortgagor** 10
- (1) The giving to the mortgagor of a notice complying with section 20 (“a possession notice”) is necessary before the mortgagee can take possession of the goods while they are owned by the mortgagor.
- (2) Subsection (1) does not prevent the mortgagee taking possession without giving a possession notice if – 15
- (a) the goods mortgage is an exempt goods mortgage (see section 26), or
  - (b) in the case of a goods mortgage other than an exempt goods mortgage, the following conditions are met –
    - (i) the obligation secured is one that can be discharged by the payment of money, 20
    - (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 relevant amount has been paid.
- (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. 30
- (5) The “relevant amount” means the redemption total, except in a case within subsection (6).
- (6) In a case where –
- (a) the goods mortgage secures a regulated credit agreement as defined by section 8(3) of the Consumer Credit Act 1974, and 35
  - (b) at the time when the mortgagee takes possession of the goods, part of the indebtedness has been discharged early in accordance with subsections (3) and (4) of section 94 of that Act (right to complete payments ahead of time),
- “the relevant amount” means the redemption total reduced by the amount by which any rebate allowable under section 94 of that Act exceeds any amount which the creditor claims under section 95A(2) of that Act. 40

**20 Possession notice**

- (1) A possession notice must be in the prescribed form and contain prescribed information.
- (2) Regulations made by virtue of subsection (1) must require a possession notice to— 5
- (a) state that the mortgagee considers that one or more of the conditions in section 15(2) is met, specifying which condition and why the mortgagee considers that it is met,
  - (b) state that the mortgagor may exercise the right conferred by section 23 (mortgagor’s right to terminate), 10
  - (c) state that the mortgagor may within a prescribed period (“the notice period”)—
    - (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, 15
  - (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
  - (e) state that the mortgagee intends to take possession of the goods unless within the notice period the mortgagor— 20
    - (i) remedies the breach to which the notice relates (if the breach is capable of remedy), or
    - (ii) acts under paragraph (c)(i) or (ii) or under section 23.
- (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. 25
- (4) Where a possession notice has been given to the mortgagor, the mortgagee is not entitled to take possession of the goods— 30
- (a) before the end of the notice period, and
  - (b) if the mortgagor acts under subsection (2)(c)(ii), during the advice period.
- (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. 35
- (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. 40

**21 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.
- (2) A possession notice— 45

- (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.
- (3) If because of section 19(2) no possession notice is required – 5
- (a) the mortgagee is not entitled to take possession of the goods on the basis that a condition in section 15(2) 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
  - (b) section 15(2)(a) to (f) does not apply to a default that is treated by section 89 of that Act as not having occurred. 10

## 22 Wrongful taking of possession by mortgagee

- (1) If the mortgagee takes possession of the goods to which a goods mortgage relates in contravention of section 15(1), 19 or 20, the mortgagor – 15
- (a) is entitled to have the goods returned, and
  - (b) is released from all further liability under the obligation secured by the goods mortgage.
- (2) This section does not apply if the goods have ceased to be owned by the mortgagor.

## 23 Mortgagor’s right to terminate 20

- (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 – 25
- (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. 30
- (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.
- (5) The mortgagee may refuse termination under subsection (2) by the mortgagor only if one or more of the following applies – 35
- (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,
  - (c) the state of the goods is affected by damage deliberately caused by any person since the creation of the goods mortgage, or 40
  - (d) the goods have suffered damage that – 45
    - (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) Any refusal under subsection (5) must be communicated to the mortgagor within a reasonable time and in any event before the end of the period of 14 days beginning with the day on which the goods were delivered to the mortgagee. 5
- (7) If the mortgagor terminates the goods mortgage under subsection (2) then, unless the mortgagee is entitled under subsection (5) to refuse termination and does so, –
- (a) the mortgagor is released from all further liability under the obligation secured by the goods mortgage, and 10
- (b) property in the goods is to be taken to have passed to the mortgagee when the goods were delivered to the mortgagee.
- (8) If the mortgagee refuses termination on any of the grounds in subsection (5), the mortgagee must return the goods to the mortgagor.
- 24 Additional powers of court where mortgagee seeks possession of goods 15**
- (1) This section applies where –
- (a) in any proceedings the mortgagee under a goods mortgage seeks possession of the goods, and
- (b) the goods mortgage does not secure a regulated agreement within the meaning of the Consumer Credit Act 1974 (see section 129 of that Act for powers available to the court in relation to such an agreement). 20
- (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 25
- (b) to remedy a default consisting of a breach of any other obligation arising under or by virtue of the goods mortgage.
- (3) The court –
- (a) may adjourn the proceedings for such period or periods as the court thinks reasonable, or 30
- (b) on giving judgment, or making an order, for the delivery up of, or the taking possession 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, 35
- for such period or periods as the court thinks reasonable.
- (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. 40
- (5) The court may from time to time vary or revoke any condition imposed by virtue of this section.

*Taking of possession by mortgagee after change of ownership*

**25 Order for taking of possession while goods owned by third party**

- (1) The mortgagee under a registered goods mortgage may apply to the court for an order under this section in relation to goods which are in the ownership of a person other than the mortgagor but which remain subject to the goods mortgage. 5
- (2) The court may order the delivery up of the goods to, or the taking of possession by, the mortgagee.

*Supplementary*

**26 Exempt goods mortgage** 10

- (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 6(3) 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 6(4) 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 or the business credit conditions are met, and
  - (b) the instrument creating 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 19(1) and 23(2), and
    - (ii) complies with prescribed requirements. 20

**27 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. 30
- (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. 35
- (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. 40
- (4) The refusal of the consent mentioned in subsection (3) is not to give rise to any liability.

**28 Interpretation of Part 4**

- (1) This section has effect for the interpretation of this Part.
- (2) In relation to a goods mortgage “mortgagor” includes a person to whom the original mortgagor’s rights and duties under the goods mortgage have passed by operation of law, except that it does not include a trustee in bankruptcy. 5
- (3) 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 10***Repeals***29 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), the following are also repealed – 15
  - (a) the Bills of Sale Act 1890;
  - (b) the Bills of Sale Act 1891;
  - (c) section 23 of the Administration of Justice Act 1925;
  - (d) in Schedule 11 to the Constitutional Reform Act 2005, in paragraph 4(3), the entry relating to the Bills of Sale Act 1878; 20
  - (e) in Schedule 13 to the Tribunals, Courts and Enforcement Act 2007, paragraphs 17 to 19;
  - (f) in Schedule 9 to the Crime and Courts Act 2013, paragraph 15.

*Final provisions 25***30 Regulations**

- (1) Any power of the Treasury or the Secretary of State to make regulations under this Act is exercisable by statutory instrument.
- (2) Any such power includes – 30
  - (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 35 (but see subsections (3) and (4) of that section).
- (4) A statutory instrument containing regulations under any provision of this Act other than section 35 is subject to annulment in pursuance of a resolution of either House of Parliament. 35

### 31 Meaning of “credit” and “credit agreement”

- (1) In this Act “credit” includes a cash loan, and any other form of financial accommodation.
- (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. 5
- (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.
- (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. 10
- (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 (S.I. 2001/544), but as if any reference in the rules to a regulated credit agreement were to a credit agreement as defined by subsection (2). 15

### 32 Meaning of “disposition” etc

- (1) In this Act “disposition” means –
  - (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 –
    - (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 of sale or a hire-purchase agreement; 20and “dispose of” is to be read accordingly. 25
- (2) For the purposes of this Act, a person becomes a “purchaser” of goods if, and at the time when, the person enters into a disposition under which ownership of the goods is or is to be transferred to the person.

### 33 Further general definitions 30

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;
- “hire-purchase agreement” has the meaning given by section 189 of the Consumer Credit Act 1974; 35
- “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 or a person to whom the original mortgagee’s rights and duties under the goods mortgage have passed by assignment or operation of law; 40
- “mortgagor”, in relation to a goods mortgage, means the individual who creates (or individuals who create) the charge in accordance with section 2 or 3, except that in Part 4 it has the extended meaning given by section 28(2); 45

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

### 34 Consequential amendments

Schedule 2 (which contains amendments related to the provisions of this Act, including repeals of spent provisions) has effect. 5

### 35 Commencement

- (1) The following provisions come into force on the day on which this Act is passed –
  - (a) sections 30 to 33;
  - (b) this section and sections 36 and 37. 10
- (2) The remaining provisions of this Act come into force –
  - (a) for the purposes of making regulations, on the day on which this Act is passed;
  - (b) for remaining purposes, on such day or days as the Treasury may by regulations appoint. 15
- (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.
- (4) Regulations under this section may make different provision for different purposes.

### 36 Index of defined terms 20

The following Table sets out expressions defined in this Act for general purposes.

<i>Expression</i>	<i>Provision</i>	
business credit conditions	section 7(3)	
conditional sale agreement	section 33	25
the court	section 33	
credit, credit agreement	section 31	
disposition, dispose of	section 32	
excluded obligation (in Part 2)	section 6	
exempt goods mortgage	section 26	30
goods	section 4(2) (see also sections 11(4), 12(6) and 28(3))	
goods mortgage	section 2(4)	
guarantee	section 6(6)	
high net worth conditions	section 7(2)	35

<i>Expression</i>	<i>Provision</i>	
hire-purchase agreement	section 33	
mortgagee	section 33	
mortgagor	section 33	
to own (and related expressions)	section 2(3)	5
possession notice	section 19(1)	
prescribed	section 33	
purchaser	section 32	
qualifying goods	section 4(3)	
registered (in relation to a goods mortgage)	section 9(9)	10

**37 Short title and extent**

- (1) This Act may be cited as the Goods Mortgages Act 2019.
- (2) Except as provided by subsection (3), this Act extends to England and Wales only. 15
- (3) Any repeal or amendment made by this Act has the same extent as the enactment repealed or amended.

## SCHEDULES

## SCHEDULE 1

Section 6

## RUNNING-ACCOUNT CREDIT: SUPPLEMENTARY PROVISIONS

*Introductory*

- |   |   |   |
|---|---|---|
| 1 | This Schedule has effect for the interpretation of –  | 5 |
|   | (a) subsection (4) of section 6 (excluded obligations), and                                 |   |
|   | (b) section 7(3)(a) (the business credit conditions) in its application to section 6(4)(a). |   |

*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<br>15 |
| 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.  | 20       |

*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(3)(a) (“the specified amount”) if –   |    |
|   | (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 –  | 25 |
|   | (i) the debtor is not enabled to draw at any one time an amount which, so far as (having regard to section 31(4)) it represents credit, exceeds the specified amount,   |    |
|   | (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. | 35 |

- (2) In sub-paragraph (1)(b)(ii) “associate” is to be read in accordance with section 184 of the Consumer Credit Act 1974.

## SCHEDULE 2

Section 34

### CONSEQUENTIAL AMENDMENTS

<i>Stamp Act 1891 (c. 39)</i>	5
1 In the Stamp Act 1891, omit section 41 (bills of sale).	
<i>Perjury Act 1911 (c. 6)</i>	
2 In section 2 of the Perjury Act 1911 (false statements on oath made otherwise than in a judicial proceeding), omit –	
(a) the “or” at the end of paragraph (1), and	10
(b) paragraph (2).	
<i>Law of Property Act 1925 (c. 20)</i>	
3 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 2 of the Goods Mortgages Act 2019”.	15
<i>Agricultural Credits Act 1928 (c. 43)</i>	
4 The Agricultural Credits Act 1928 is amended as follows.	
5 (1) Section 8 (supplemental provisions as to agricultural charges) is amended as follows.	
(2) Omit subsection (1).	20
(3) In subsection (3), for “a bill of sale” substitute “a goods mortgage (as defined by section 2 of the Goods Mortgages Act 2019)”.	
6 In section 14 (provisions as to agricultural societies), in subsection (1), omit the words from “, and the charge if so registered” to “those Acts”.	
<i>Agricultural Marketing Act 1958 (c. 47)</i>	25
7 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”.	
<i>Consumer Credit Act 1974 (c. 39)</i>	
8 In section 189(1) of the Consumer Credit Act 1974 (definitions), omit the definition of “bill of sale”.	30
<i>Sale of Goods Act 1979 (c. 54)</i>	
9 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 (c. 45)*

- 10 (1) Section 344 of the Insolvency Act 1986 (avoidance of general assignment of book debts) is amended as follows.
- (2) In subsection (2), for “the Bills of Sale Act 1878” substitute “section 9 of the Goods Mortgages Act 2019”. 5
- (3) For subsection (4) substitute—
- “(4) For the purposes of the registration mentioned in subsection (2) of this section, subsections (1) to (3) and (5) and (6) of section 9 of the Goods Mortgages Act 2019 (which relate to the registration of goods mortgages) apply with any necessary modifications.” 10

*Co-operative and Community Benefit Societies Act 2014 (c. 14)*

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



# Goods Mortgages Bill [HL]

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## B I L L

To repeal the Bills of Sales Acts 1878 and 1882; to make provision for a new form of non-possessory security that may be created over goods owned by individuals; and for connected purposes.

*Lord Stevenson of Balmacara*

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