

Buying on Hire Purchase



A Guide for Consumers

The information in this booklet applies only to contracts entered into BEFORE 1 April 2005. For contracts entered into on or after 1 April 2005, see our booklet *Credit - What you need to know when borrowing money or buying goods on credit.*



MINISTRY OF CONSUMER AFFAIRS
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Watch your language

Definitions and terms used in this booklet:

Assignment: when legal rights and obligations are passed on or sold to another person or another company.

Contract: a legal agreement.

Credit: when you are lent money and given time to pay it back, or when you buy goods or services and are given time to pay for them.

Finance company: a company that lends the money to pay for the goods you buy on credit.

Goods: things you buy – *eg, cars, stereos, carpet.*

Security interest: an interest (in the goods) held by the finance company enabling it to seize the goods if you default under the agreement.

Seller: the shop or the dealer that supplied the goods.

What is hire purchase?

Hire purchase is buying on credit, without paying the full amount straight away. It is often used to buy household appliances, furniture and cars. You take the goods home and pay for them over time but the finance company has a security interest in them until you have made the final payment. Shops advertising “easy terms”, “time payment”, “no deposit”, or “interest free” are offering hire purchase.

Anyone can buy goods on hire purchase if they meet the finance company’s credit conditions. These conditions should be based on your ability to repay. Often the finance company will do a credit check to make sure you have not defaulted on any credit contracts in the past.

A finance company cannot refuse you credit because of your age (if you are over 16), gender, marital status, ethnic origin, or employment status. If you believe you have been refused hire purchase for any of these reasons, contact the Human Rights Commission.



Be aware

Hire purchase will almost always cost more than the price on the price tag. You will also pay interest and administrative costs. Even an interest free deal usually has extra charges like booking fees or insurance.

Shop around for the best credit deal

Compare the cost of hire purchase at several shops. Find out if a bank loan would be cheaper. If you don't need the goods right away, think about putting them on layby instead.



Guarantors

The finance company may ask you for a deposit or a guarantor. A person who signs your hire purchase contract as a guarantor will have to pay any money you owe on the hire purchase if you do not keep up your payments.

If you ask someone to be your guarantor make sure that they understand that they will have to pay if you don't. See our factsheet *Being a Guarantor*.

The hire purchase contract

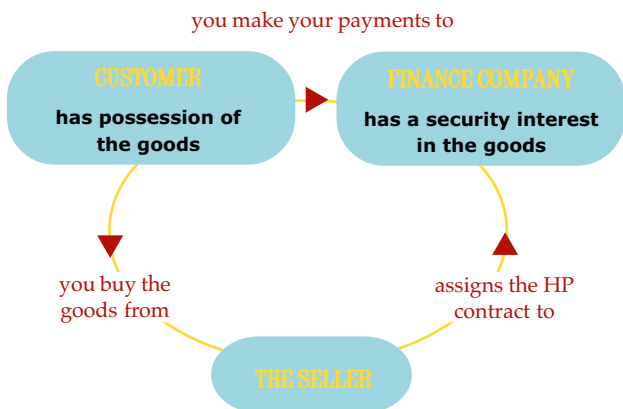
This contract sets out your rights and obligations. It tells you:

- what you are buying
- how much it will cost
- how much and how many payments there are
- the timing of the payments
- how to make the payments.

When you buy goods on hire purchase you will usually have to deal with the seller **and** a finance company. This is because most hire purchase contracts are assigned or on sold to a finance company.

Your contract is with the finance company and not the seller. You make your payments directly to the finance company. The name and address of the finance company must be on the contract. You may be given a payment book.

Sometimes a seller has to check with their finance company before they agree to finance you. If they do this it is best not to take the goods home in the meantime. This is especially important when buying a car. If you have to sign anything, take a copy of the document and read it before you sign.



Checking the contract

Before you sign the contract, you should ask yourself these questions:

- how much are the goods? What is the cash price?
- are there charges in addition to the cash price of the goods? Am I prepared to pay them?
- can I afford the payments?

Other questions you might consider:

- do the figures add up?
- do I need insurance?
- are the goods described correctly?
- are they asking for any extra security, and if so, is it reasonable?
- should I get advice from a budget advisor, lawyer, or a Community Law Centre (see page 22 for further details).

Ask the seller to go over the contract with you and ask questions if you are not sure.

**Be aware**

Don't sign any contract if you are not sure. Ask for a copy, take it home to read, sleep on it, get advice, compare costs with those of other sellers.

**What if I did not get a copy of the contract?**

You must be given a copy of the contract within 10 days of the day after you signed.

If you do not get a signed copy of the contract straight away, you must be given a sales docket that gives the same details. If you are a guarantor you must also be sent a copy of the contract and all financial details within 15 working days.

The seller cannot change the contract after you sign it without your agreement, except to enter details from the sales docket or to correct clerical errors such as a spelling mistake.

If you do not receive a copy of the contract you may not have to pay the cost of credit. See "How to deal with a dispute" on page 21 for more advice.

What the contract must include

1 Payment details

- how many, how often to pay
- the amount to pay
- when to pay
- the name and address of the finance company.

2 The amount financed or how much you are borrowing

by adding:

- the cash price of the goods
- the charges
 - freight
 - installation
 - statutory fees
 - insurance advanced by seller
- other charges (must be specific)

and deducting:

- cash deposit
- trade-in allowance.

This is total C on your contract.

3 The charges, or how much it is costing you to borrow

by adding:

- finance (or interest charge) for the number of months
- booking fee
- maintenance and repairs
- insurance required by finance company
- other charges such as credit check fee.

This is total D on your contract.

Total C and total D are added together to show the total cost of the whole deal. This is called the **total cost of transaction (total E)**.

4 The additional cost over a cash transaction (total D)

This figure tells you how much more you have to pay on hire purchase than if you were paying cash.

5 The finance rate

The finance rate is higher than the interest rate. It shows the true cost because it adds the interest and the other charges together and shows them as a percentage of the amount financed (the amount you borrowed).

6 An explanation of your right to:

- a rebate if you repay early
- cancel the contract
- transfer (assign) your rights and obligations to another person.



Be aware

If any of this information is missing from your contract, you may not have to pay all of the cost of credit. The contract cannot be enforced until you have been given the required information.

Your obligations

The small print on the back of the contract will tell you your obligations. If you sign a contract, in law you have agreed to it even if you didn't read it.

Some of the obligations included in your contract may be:

- you must notify the finance company in writing if you change your address
- you must keep the goods insured
- you must not allow the goods out of your control – *eg, don't lend a stereo on hire purchase to another person to keep at their house*
- if you get behind on your payments you will have to pay
 - penalty interest (usually higher than the finance rate)
 - any costs of sending out reminder notices (some companies charge \$15 per notice)
 - repossession costs
- if you are buying a car, you must not let an unlicensed driver drive it
- you must keep the goods in good working order.



Be aware

Until you have paid off the goods, you cannot sell them or use them as security to borrow money. If you do, the finance company can take action against you and seize the goods.



Cancelling the contract

If you have already taken the goods home you will have to buy them, but you do have three working days to cancel the hire purchase (finance) contract and pay by cash instead. The three days start from the day after the day that you signed the contract. You have to cancel in writing and you have to come up with the cash price within 15 working days. Saturdays, Sundays and public holidays are not working days.

If you have not taken the goods home, you have three working days to cancel the whole deal. You must cancel in writing. Take the letter yourself to make sure it gets there on time.

If you have an interest free deal with no cost of credit then you do not have any right to cancel at all, unless such a right is included in your contract.

If you have signed a hire purchase contract with a door-to-door seller, then you have slightly longer to cancel. See our factsheet *Door to Door Sales Act*.

Insuring the goods

There are two types of insurance. As neither kind is required by law, insurance is negotiable.

1 Insurance against theft, loss or damage

When you buy goods on hire purchase the finance company may insist that the goods be insured against theft, loss or damage. If you **do not** have your household insurance, you may agree to have the cost of insurance added to the contract. The finance company can decide which company you must insure the goods with. The cost of the insurance must be reasonable.



Be aware

If you do not have insurance in the contract, or your own household insurance, you will have to keep paying for the goods if they are stolen or damaged.

If you do have household insurance, the goods on hire purchase will probably be covered. You should not have to pay for extra insurance when you already have this kind of insurance. If the seller insists on extra insurance for the hire purchase goods, consider buying the goods somewhere else before making any commitment.

2 Repayment or consumer protection insurance (CPI, PPI)

If you lose your income because of illness, accident or redundancy, this insurance will cover your payments for a short time. Before you agree to pay for this insurance, ask:

- how many payments will this insurance cover?
- does it cover you if you are sacked from your job?
- do you receive income that you could lose through accident, illness or redundancy?
- is the insurer reputable and is the insurance reasonably priced? (Ring around and compare).



Dealing with hire purchase problems

Early repayment

You can pay the hire purchase off early at any time. If the cash price of the goods is under \$15,000, you will be entitled to a rebate (a reduction in the amount you have to pay). You can get a rebate for:

- some of the cost of the insurance for the time that you will no longer need it (you may need to contact the insurance company yourself to get this rebate)
- some of the cost of credit.

Check that the amount of rebate makes early repayment worthwhile. If the contract has been running for some time the rebate will be quite small.

The Hire Purchase Act sets out how the rebate must be calculated. You do not get back all the unearned interest, only a proportion of it.

Can't keep up payments

Contact the finance company as soon as you realise that you can't afford the payments. They will usually help you arrange one of the options listed on page 14 but are not required to by law. If you do not contact them, you will be charged penalty interest and the goods will eventually be repossessed. If this happens you will owe repossession fees as well.

1 Spread the payments over a longer period

Your monthly payments will be less, but overall you will pay more interest as you are borrowing over a longer period. This change must be written down by the finance company.

2 Find someone who will buy the goods for the current value

You will probably still owe some money to the finance company after the goods are sold, because the current value usually does not cover the whole amount you owe.

3 Ask someone else to take over your hire purchase

You must write to the finance company asking them to agree. They should agree if the new person has a good credit rating. You will both have to sign papers.

4 Ask the finance company to take the goods back and cancel the agreement

You will probably end up still owing some money if you do this, but you will not have to pay repossession fees. The goods will be sold by private sale, auction or tender. The finance company must try to get the best market price. Or the finance company may decide to value the goods at 80 percent of the original cash price.



Repossession

The goods can be repossessed if you do not keep up the payments, or if you break one of the other requirements of the contract – *eg, if you have a car on hire purchase and you allow an unlicensed driver to drive it.*

Under the Credit (Repossession) Act, six steps must be followed.

1 Pre-possession notice is sent

The finance company must send you a pre-possession notice. It must tell you:

- the amount you owe (the arrears)
- that you have 15 days from the day the notice was sent to pay the arrears.



The finance company will usually post this notice to your last known address. If you have moved house and not told the finance company, in writing, of your new address, you may not receive this notice. This is your fault. The finance company has done all it is required to do by sending the notice.

The finance company does not have to send the notice or wait 15 days if they have a good reason to believe that the goods are at risk – *eg, if they hear from another car dealer that you have tried to trade in your car which is on hire purchase.*

2 Goods are repossessed

If you do not pay the amount owing within the 15 days, the finance company can repossess the goods, usually through a repossession agent.

A repossession agent cannot:

- have been convicted of a crime of violence or dishonesty such as theft within the last five years
- have been sentenced to ten years in prison
- have been released from prison within the last year.

If you are at home when the agent comes, they must give you:

- a copy of the pre-possession notice
- written information that proves the agent is working for the finance company.

You must not stop the agent from entering the house but you can pay the agent the arrears to stop the goods being taken. Even if the goods aren't taken away you may



have to pay the cost to the finance company of calling out the repossession agent. The agent does not have to accept a cheque, but they may give you time to get to a bank or money machine.

If you are not at home the agent can take the goods but must leave:

- a notice saying the house has been entered
- a list of the goods taken
- a copy of the pre-possession notice
- written information that proves the agent is working for the finance company.

The agent is entitled to take only the goods listed on the hire purchase contract.

Most hire purchase contracts give the finance company or their agent the right of entry if you are in default. However, they must enter your house in a reasonable way. They may have to break in, but they should do as little damage as possible. They must not leave your house obviously open when they leave.

The agent can enter your property between 6 am and 9 pm, Monday to Saturday only. They cannot come on Sundays or on public holidays. But they can come during these times if, after you get behind in your payments, you sign something agreeing for them to come at one of these times.

Do I have to pay repossession costs?

You agreed to pay these costs when you signed the hire purchase contract. If you think you have been charged an unreasonable amount:

- ask the finance company to explain the charges
- check out how much other places charge
- go to the Disputes Tribunal.
(See page 23).

3 Post-possession notice is sent

The finance company must send you a notice within 21 days of taking possession of the goods. This notice must state:

- the date of repossession
- repossession costs
- what you need to do if you want to “reinstate” or “settle the agreement”.
(*Reinstate means to pay the default, get the goods back again, and keep on paying them off under the contract. Settle means to pay the full amount left on the hire purchase.*)
- the finance company’s estimate of the current value of the goods
- what will happen if you do not pay.

The finance company does not have to send you a post-possession notice if they valued the goods at not less than 80 percent of the cash price and if you returned the goods voluntarily.

4 Your options after repossession

You now have 15 days before the goods are sold. You have some options to consider. Think about:

- how necessary the goods are
- how much of the contract you have paid off already
- if you are getting yourself into an even worse situation by borrowing money to pay the default – *eg, if you go to a loan shark who has a higher finance rate than the hire purchase.*

Your options are to:

- pay the default amount and repossession costs
- pay the total amount owing
- find someone who will buy the goods for the current value
- find someone else to take over your hire purchase
- do nothing.

See “Can’t keep up payments” on page 13 to help you decide what action to take.

5 Repossessed goods are sold

If after 15 days you have done nothing, the finance company can sell your goods. The goods can be sold privately, at auction or by tender. If the goods are to be sold by auction or tender, the finance company must let you know the details of the time and place of the auction or the details of the tender. Both you and the finance company have the right to bid at an auction for the goods.

The finance company must ensure that every aspect of the sale is commercially reasonable and must use all reasonable efforts to obtain the best price – *eg, the finance company must not sell the repossessed car for a cheap price to their mate*. You are entitled to get your own valuation (at your own expense) before the goods are sold.

If the goods have not been sold within three months, you can write to the finance company and require the finance company to put the goods up for auction.

6 Statement of account is sent

Within 10 days of selling the goods the finance company must send you a statement of account, setting out:

- how much the goods were sold for
- the cost of the sale – *eg, advertising, auctioneers fees*
- how much you owed before the goods were sold (the amount required to settle the agreement)
- how much you still owe or, if the goods were sold for more than you owe, how much you are entitled to get back (it is very unlikely that you will get money back, most often you will owe the finance company money).

Important note for Guarantors

Because you are liable for the arrears if the debtor won't or can't pay, the finance company must send you the same pre-possession and post-possession notices. The finance company does not have to send you a notice when the goods are sold. These notices are sent to your last known address, so if you are moving write and let the finance company know. This way you will get a warning if the payments are not kept up.

How to deal with a dispute

If your complaint is about the notices that should have been sent, or about repossession, contact the finance company first. If they tell you it is not their problem any more, then go to the seller.

Some finance companies have arrangements with sellers by which they will “give” the whole contract back to the seller if you get behind in your payments. So you may receive a pre-possession notice from a finance company, but the repossession agent has been sent by the seller and the finance company is no longer involved.

If your complaint is about the terms of the hire purchase contract, go to the finance company. If you think you have been treated unfairly by the finance company, or your hire purchase contract is harsh or oppressive (eg, putting your house as security for a car), you can take a claim to the Disputes Tribunal (see page 23).

If your problem is with the quality of the goods, go to the seller. However, the law says that both the seller and the finance company are responsible. If the seller is not helpful, ask the seller and the finance company to sort it out between them.



Be aware

If you are having a dispute over faulty goods on hire purchase, don't stop making payments. You may end up having to pay penalty interest or, even worse, having the goods repossessed.



1 Ask for the problem to be put right

Go to the seller or the finance company and ask for the problem to be put right. Keep a note of:

- when you talked to someone
- who you talked to
- what they said.

If you write to them keep a copy of your letter. For more information about making a complaint see our factsheet *Making a Customer Complaint*.

2 Get advice

If this does not fix the problem ask for advice from your nearest Community Law Centre, Citizens Advice Bureau or Budget Advice Service which will be listed in your local phone book.

Make sure you have your contract and any letters or notices from the finance company or the seller. If the dispute is about how much you owe, get a printout of your balance and payments from the finance company and bring in any receipts or bank statements that prove how much you have paid.

3 Try again

Once you know more about your rights, write or talk to the seller or finance company again and ask for the problem to be put right. You might find it helps to give them a copy of this pamphlet. If you write, keep a copy of your letters.

4 Disputes Tribunal

At this point, if the problem has still not been solved you can take your complaint to the Disputes Tribunal. The address and phone number is listed under Courts in the blue pages of the phone book. For more information about making a claim in the Disputes Tribunal, see our factsheet *The Disputes Tribunal* or contact your nearest Community Law Centre, Citizens Advice Bureau, Budget Advice Service or District Court.

Related Ministry resources

- Being a Guarantor
- The Consumer Guarantees Act – Goods
- The Door to Door Sales Act
- The Disputes Tribunal
- The Fair Trading Act
- Making a Customer Complaint

OR check out our website

www.consumeraffairs.govt.nz

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The Ministry of Consumer Affairs has produced this booklet as a general guide for consumers about the Hire Purchase Act and the Credit (Repossession) Act.

The booklet sets out the Ministry's interpretation of the Acts. The booklet should not be used as a substitute for specialist legal advice.

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