



Moveable Transactions (Scotland) Act 2023

2023 asp 3

PROSPECTIVE

PART 2

SECURITY OVER MOVEABLE PROPERTY

CHAPTER 1

PLEDGE

Pledge, secured obligation and encumbered property

42 Pledge

- (1) A pledge is created in accordance with [this section](#).
- (2) Where a pledge is to be created over moveable property which is corporeal only, the pledge is created—
 - (a) by delivery of the property to the secured creditor, provided that the property is the provider's at the time of delivery,
 - (b) in a case where the property is not the provider's at the time of such delivery, on the property becoming the provider's subsequent to such delivery, or
 - (c) by registration in accordance with [section 48](#) or [49](#).
- (3) Where a pledge is to be created over moveable property which is—
 - (a) incorporeal only, or
 - (b) both corporeal and incorporeal,the pledge is created by registration in accordance with [section 48](#) or [49](#).
- (4) A pledge created by registration in accordance with [section 48](#) or [49](#) is to be known as a “statutory pledge”.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (5) Nothing in [this section](#) affects any rule of law which existed prior to the commencement of this section whereby a pledge may be created over a negotiable instrument, and nothing in [this Part](#) applies in relation to any pledge created in accordance with such a rule.

Commencement Information

I1 S. 42 not in force at Royal Assent, see [s. 121\(2\)](#)

43 Secured obligation and encumbered property

- (1) The obligation secured by a pledge (“the secured obligation”)—
- (a) may be any obligation owed, or which will or may become owed, to or by any person, and
 - (b) includes ancillary obligations owed (for example, to pay interest, damages and the reasonable expense of extra-judicial recovery of interest or damages).
- (2) The property over which a pledge is created and in respect of which the pledge subsists (“the encumbered property”) includes, except in so far as the provider and the secured creditor agree otherwise, the natural fruits of the property but not its incorporeal fruits.
- (3) At the time the pledge is created, the property which is to be the encumbered property must be transferable (whether or not its transferability is restricted in some way).

Commencement Information

I2 S. 43 not in force at Royal Assent, see [s. 121\(2\)](#)

Possessory pledge

44 Delivery

- (1) For the purposes of [section 42\(2\)\(a\)](#) and [\(b\)](#), delivery must be carried out—
- (a) by physically handing over, or giving control of, the property to the relevant person,
 - (b) by giving control of the premises in which the property is located to the relevant person,
 - (c) by instructing another person who has direct possession or custody of the property to hold the property on behalf of the relevant person, or
 - (d) by delivering a bill of lading representing the property to the relevant person (and where that bill is to the order of a particular person, by procuring the endorsement of the bill in favour of the secured creditor).
- (2) Property which, at the time agreement is reached on the creation of the pledge, is already in the direct possession or custody of the relevant person is deemed to have been delivered to the secured creditor for the purposes of [section 42\(2\)\(a\)](#) or, as the case may be, [\(b\)](#).
- (3) In [this section](#), “relevant person” means—
- (a) the secured creditor, or

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(b) a person authorised to accept delivery on behalf of the secured creditor or, where [subsection \(2\)](#) applies, authorised to hold the property on behalf of the secured creditor.

(4) [This section](#) is without prejudice to section 2 of the Factors Act 1889.

Commencement Information

I3 S. 44 not in force at Royal Assent, see [s. 121\(2\)](#)

Statutory pledge

45 Constitutive document

- (1) A statutory pledge requires a constitutive document.
- (2) The constitutive document must—
 - (a) be executed or authenticated by the provider,
 - (b) identify the property which is to be the encumbered property, and
 - (c) identify the obligation which is to be the secured obligation.
- (3) If the encumbered property is to consist of more than one item, the constitutive document must—
 - (a) identify each item separately, or
 - (b) identify the items in terms of their constituting an identifiable class.
- (4) The property identified (whether separately or as a class) as the property which is to be the encumbered property may be either property of, or property to be acquired by, the provider.
- (5) For the purposes of subsections (2) and (3), the ways in which the encumbered property or the secured obligation can be identified in the constitutive document include by making reference in the constitutive document to another document, the terms of which are not reproduced.

Commencement Information

I4 S. 45 not in force at Royal Assent, see [s. 121\(2\)](#)

46 Competence of individual acting as provider of a statutory pledge

- (1) It is not competent for an individual to be the provider of a statutory pledge unless—
 - (a) the individual is acting in the course of—
 - (i) the individual's business,
 - (ii) the activities of a charity of which the individual is a trustee, or
 - (iii) the activities of an unincorporated association (other than a charity) of which the individual is a member, and
 - (b) the encumbered property is a permitted asset, or consists only of permitted assets.

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- (2) For the purpose of subsection (1)(b), an asset is a “permitted asset” if—
- (a) it is (as the case may be)—
 - (i) used, or to be used, wholly or mainly for the purposes of the individual’s business,
 - (ii) an asset of the charity, or
 - (iii) owned by the individual on behalf of, or jointly with the other members of, the association, and
 - (b) in the case of corporeal property, it has a monetary value exceeding £3,000 immediately before the document under which it will become encumbered property is granted.
- (3) The Scottish Ministers may by regulations—
- (a) modify subsection (2)(b) so as to modify the amount for the time being specified there,
 - (b) modify this section so as to specify types of property which are or are not permitted assets.
- (4) For the purposes of this section—
- (a) “charity” means—
 - (i) a charity within the meaning of section 106 of the Charities and Trustee Investment (Scotland) Act 2005, or
 - (ii) an organisation managed or controlled wholly or mainly outwith Scotland and which is registered in a register equivalent to the Scottish Charity Register (kept under section 3 of that Act) for the purposes of the country in which it operates,
 - (b) a trustee of a charity is one of the persons having the general control and management of the administration of the charity.

Commencement Information

I5 S. 46 not in force at Royal Assent, see [s. 121\(2\)](#)

47 Competence of creating statutory pledge over certain kinds of property

- (1) It is not competent to create a statutory pledge over corporeal property which is—
- (a) an aircraft in respect of which it is competent to register a mortgage in the register of aircraft mortgages kept by the Civil Aviation Authority,
 - (b) an aircraft object (as defined in regulation 5 of the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 ([S.I. 2015/912](#))), or
 - (c) a ship (or a share in a ship) in respect of which it is competent to register a mortgage in the register of British ships maintained for the United Kingdom under section 8 of the Merchant Shipping Act 1995.
- (2) It is not competent to create a statutory pledge over incorporeal property unless that property is—
- (a) intellectual property, or
 - (b) an application for, or licence over, intellectual property.

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Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (3) The Scottish Ministers may by regulations modify [this section](#) so as to specify further kinds of incorporeal property over which it is competent to create a statutory pledge.

Commencement Information

I6 S. 47 not in force at Royal Assent, see [s. 121\(2\)](#)

48 Creation of statutory pledge by registration: general

- (1) A statutory pledge is created over property which is identified in a constitutive document in accordance with [section 45](#) on the requirements mentioned in [subsection \(2\)](#) all being met.
- (2) Those requirements are that—
- (a) the property is the provider's,
 - (b) the statutory pledge is registered, and
 - (c) the property is identifiable as property to which the constitutive document relates.
- (3) Subsection (2)(b) is subject to [section 91](#) (effective registration of statutory pledge) and, accordingly, the requirement of that subsection—
- (a) is not met if the registration of the constitutive document is ineffective in accordance with [section 91\(1\)](#), and
 - (b) is met if and when that registration becomes effective in accordance with [section 91\(3\)](#).
- (4) [This section](#) is subject to [section 50](#) (creation of statutory pledge: insolvency).

Commencement Information

I7 S. 48 not in force at Royal Assent, see [s. 121\(2\)](#)

49 Creation of statutory pledge over added property

- (1) Where a statutory pledge is amended so as to add property to the encumbered property by means of an amendment document under [section 58](#), a statutory pledge is created over the added property on the requirements mentioned in [subsection \(2\)](#) all being met.
- (2) Those requirements are that—
- (a) the added property is the provider's,
 - (b) the amendment is registered, and
 - (c) the added property is identifiable as property to which the amendment document relates.
- (3) Subsection (2)(b) is subject to [section 92](#) (effective registration of amendment to statutory pledge) and, accordingly, the requirement of that subsection—
- (a) is not met if the registration of the amendment document is ineffective in accordance with [section 92\(1\)](#), and
 - (b) is met if and when that registration becomes effective in accordance with [section 92\(3\)](#).

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(4) [This section](#) is subject to [section 50](#) (creation of statutory pledge: insolvency).

Commencement Information

I8 S. 49 not in force at Royal Assent, see [s. 121\(2\)](#)

50 Creation of statutory pledge: insolvency

- (1) [This section](#) applies where—
- (a) the property identified (whether separately or as a class) as the property which is to be the encumbered property under a statutory pledge is or includes property to be acquired by the provider, and
 - (b) after the pledge is granted, the provider becomes insolvent.
- (2) The statutory pledge is not created over any property which, though identified by the constitutive document or by an amendment document as property to be encumbered, is acquired by the provider after becoming insolvent.
- (3) For the purposes of [subsection \(2\)](#)—
- (a) a provider who is an individual, or the estate of which may be sequestrated by virtue of section 6 of the Bankruptcy (Scotland) Act 2016, becomes insolvent when—
 - (i) the provider’s estate is sequestrated,
 - (ii) the provider grants a trust deed for creditors or makes a composition or arrangement with creditors,
 - (iii) the provider is adjudged bankrupt,
 - (iv) a voluntary arrangement proposed by the provider is approved,
 - (v) the provider’s application for a debt payment programme is approved under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002, or
 - (vi) the provider becomes subject to any other order or arrangement analogous to any of those mentioned in sub-paragraphs (i) to (v) anywhere in the world, and
 - (b) a provider other than is mentioned in [paragraph \(a\)](#) becomes insolvent when—
 - (i) a decision approving a voluntary arrangement entered into by the provider has effect under section 4A of the Insolvency Act 1986 (“the 1986 Act”),
 - (ii) the provider is wound up under Part 4 or 5 of the 1986 Act or under section 367 of the Financial Services and Markets Act 2000,
 - (iii) an administrative receiver, as defined in section 251 of the 1986 Act, is appointed over all or part (being a part to which the constitutive document or any amendment document relates) of the property of the provider,
 - (iv) the provider enters administration (“enters administration” being construed in accordance with paragraph 1(2) of schedule B1 of the 1986 Act),
 - (v) an order under section 901F of the Companies Act 2006 sanctioning a compromise or arrangement entered into by the provider comes into effect over all or part of the property of the provider, or

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(vi) the provider becomes subject to any other order, appointment or arrangement analogous to any of those mentioned in sub-paragraphs (i) to (v) anywhere in the world.

(4) The Scottish Ministers may by regulations modify [subsection \(3\)](#).

Commencement Information

I9 S. 50 not in force at Royal Assent, see [s. 121\(2\)](#)

Property encumbered by statutory pledge: effect of transfer by provider

51 Property encumbered by statutory pledge: transfer by provider

- (1) If the provider of a statutory pledge transfers the encumbered property (or any part of it) to a third party, the transferred property remains encumbered by the pledge unless—
- the consent mentioned in [subsection \(2\)](#) is obtained,
 - the third party acquires the property unencumbered under any of sections [53](#) to [55](#), or
 - the pledge is otherwise extinguished by the transfer, in whole or in relation to the transferred property, under section [52](#), [93](#) or [108](#).
- (2) The consent referred to in [subsection \(1\)\(a\)](#)—
- is the prior written consent of the secured creditor—
 - to the particular transfer, and
 - to the property in question being transferred unencumbered by the pledge, and
 - does not include consent granted more than 14 days before the day of the particular transfer.
- (3) Whether to grant or withhold the consent mentioned in [subsection \(2\)](#) must remain at the discretion of the secured creditor (that is, the secured creditor may not agree in advance how that discretion will be exercised).
- (4) The Scottish Ministers may by regulations—
- modify [subsection \(2\)](#) (including by specifying further descriptions of consent by reference to which [subsection \(1\)](#) is to apply),
 - modify [this section](#) so as to specify further matters relevant to the granting or withholding of consent.

Commencement Information

I10 S. 51 not in force at Royal Assent, see [s. 121\(2\)](#)

52 Extinction of statutory pledge where dealings inconsistent with a fixed security

If a secured creditor acquiesces, expressly or impliedly, in a provider's transfer of encumbered property (or any part of it) to a third party, other than by means of

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granting the consent mentioned in [section 51\(2\)](#), the statutory pledge under which the property (or part) was encumbered is extinguished.

Commencement Information

I11 S. 52 not in force at Royal Assent, see [s. 121\(2\)](#)

53 Acquisition in good faith from seller acting in ordinary course of business

- (1) A purchaser of corporeal property which is encumbered property under a statutory pledge acquires it unencumbered by the statutory pledge, despite the consent mentioned in [section 51\(2\)](#) not having been obtained, if—
- (a) the person from whom the property is acquired is acting in the ordinary course of that person’s business, and
 - (b) at the time of acquisition, the purchaser is in good faith.
- (2) For the purposes of [subsection \(1\)\(b\)](#), a purchaser is not to be taken to be other than in good faith by reason only of the statutory pledge having been registered.

Commencement Information

I12 S. 53 not in force at Royal Assent, see [s. 121\(2\)](#)

54 Acquisition in good faith for personal, domestic or household purposes

- (1) An individual who acquires corporeal property which is encumbered property under a statutory pledge acquires it unencumbered by the statutory pledge, despite the consent mentioned in [section 51\(2\)](#) not having been obtained, if—
- (a) the property is wholly or mainly acquired for personal, domestic or household purposes,
 - (b) the acquirer gives value for the property acquired, and
 - (c) at the time of acquisition, the acquirer is in good faith.
- (2) For the purposes of [subsection \(1\)\(c\)](#), an acquirer is not to be taken to be other than in good faith by reason only of the statutory pledge having been registered.
- (3) The Scottish Ministers may by regulations modify [subsection \(1\)](#) so as to—
- (a) limit its application to cases where the value of all that is acquired does not, at the time of acquisition, exceed a specified amount, and
 - (b) modify the amount for the time being specified there by virtue of [paragraph \(a\)](#).

Commencement Information

I13 S. 54 not in force at Royal Assent, see [s. 121\(2\)](#)

55 Acquisition in good faith of motor vehicles

- (1) [Subsections \(2\)](#) to [\(4\)](#) apply where—

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- (a) there is a sale agreement (including a conditional sale agreement) or a hire-purchase agreement in respect of a motor vehicle,
 - (b) the motor vehicle is encumbered property under a statutory pledge,
 - (c) at the time of entering into the agreement, the purchaser or hirer is not a person carrying on a business described in section 29(2) of the Hire-Purchase Act 1964, and
 - (d) the purchaser or hirer is, at that time, in good faith.
- (2) On the motor vehicle being transferred to the purchaser or hirer in accordance with the agreement, that person acquires it unencumbered by the statutory pledge despite the consent mentioned in [section 51\(2\)](#) not having been obtained.
- (3) And the statutory pledge is not to be enforced against the motor vehicle before the motor vehicle is transferred to the purchaser or hirer in accordance with the agreement.
- (4) But if the transferor is, at the time the agreement is entered into, a person carrying on a business described in section 29(2) of the Hire-Purchase Act 1964, the secured creditor is entitled to receive from the transferor the lesser of—
- (a) the amount outstanding in respect of the secured obligation, and
 - (b) the amount received, or to be received, by the transferor in respect of the acquisition.
- (5) Where the secured creditor receives a sum under [subsection \(4\)](#)—
- (a) the provider’s liability to the secured creditor under the secured obligation is reduced by the same amount, but
 - (b) the transferor has a right of relief against the provider in respect of the sum.
- (6) For the purposes of [subsection \(1\)\(d\)](#), a purchaser or hirer is not to be taken to be other than in good faith by reason only of the statutory pledge having been registered.
- (7) In [this section](#), “conditional sale agreement”, “hire-purchase agreement” and “motor vehicle” have the meanings given by section 29(1) of the Hire-Purchase Act 1964.
- (8) The Scottish Ministers may by regulations specify classes of motor vehicles to which [subsections \(1\) to \(7\)](#) do not apply.
- (9) Regulations under [subsection \(8\)](#) may modify sections [53](#) and [54](#) to provide that either or both of those sections do not apply to some or all of the classes of motor vehicle specified under [subsection \(8\)](#).

Commencement Information

I14 S. 55 not in force at Royal Assent, see [s. 121\(2\)](#)

Rights relating to matrimonial or family home where relevant to a statutory pledge

56 Occupancy and other rights in family home following grant of statutory pledge

- (1) The Matrimonial Homes (Family Protection) (Scotland) Act 1981 (“the 1981 Act”) and the Civil Partnership Act 2004 (“the 2004 Act”) are amended in accordance with [this section](#).

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- (2) After section 2(8) of the 1981 Act and section 102(8) of the 2004 Act, insert—
- “(8A) In subsection (1)(a), “secured loan” includes secured obligation (construed in accordance with [section 43\(1\)](#) of the Moveable Transactions (Scotland) Act 2023).”.
- (3) In section 3 of the 1981 Act and section 103 of the 2004 Act, at the end of subsection (2) insert “or the rights of any secured creditor in relation to the non-performance of a secured obligation.”.
- (4) After section 3(8) of the 1981 Act, insert—
- “(9) In subsection (2)—
- “secured creditor” has the meaning given by [section 113\(1\)](#) of the Moveable Transactions (Scotland) Act 2023, and
- “secured obligation” is to be construed in accordance with [section 43\(1\)](#) of the Moveable Transactions (Scotland) Act 2023.”.
- (5) After section 103(9) of the 2004 Act, insert—
- “(10) In subsection (2)—
- “secured creditor” has the meaning given by [section 113\(1\)](#) of the Moveable Transactions (Scotland) Act 2023, and
- “secured obligation” is to be construed in accordance with [section 43\(1\)](#) of the Moveable Transactions (Scotland) Act 2023.”.
- (6) In section 6(2) of the 1981 Act and section 106(2) of the 2004 Act, in the definition of “dealing”, after the words “heritable security” insert “, the grant of a statutory pledge”.
- (7) In section 8 of the 1981 Act, after subsection (2B) insert—
- “(2C) For the purposes of subsection (2A) above, the time of granting a security, in the case of a statutory pledge, is—
- (a) the date of delivery of the constitutive document of the statutory pledge, or
- (b) where the statutory pledge is granted in an amendment document, the date of delivery of that document.”.
- (8) In section 108 of the 2004 Act, after subsection (4) insert—
- “(5) For the purposes of subsection (3), the time of granting a security, in the case of a statutory pledge, is—
- (a) the date of delivery of the constitutive document of the statutory pledge, or
- (b) where the statutory pledge is granted in an amendment document, the date of delivery of that document.”.
- (9) The title of section 8 of the 1981 Act and section 108 of the 2004 Act becomes “**Interests of creditors**”.

Commencement Information

I15 S. 56 not in force at Royal Assent, see [s. 121\(2\)](#)

Status: This version of this part contains provisions that are prospective.
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Assignment, amendment, restriction or extinction of statutory pledge

57 Assignment of statutory pledge

- (1) Except in so far as the provider and the secured creditor agree otherwise, a statutory pledge may be assigned.
- (2) A statutory pledge is assigned only by the secured creditor executing or authenticating a document assigning the pledge.
- (3) Subject to the provisions of that document, the assignment conveys to the assignee entitlement to the benefit of any notice served, or enforcement procedure commenced, by the assignor in respect of the statutory pledge before the assignment (to the effect that the assignee may proceed as if the assignee served that notice or commenced those procedures).

Commencement Information

I16 S. 57 not in force at Royal Assent, see [s. 121\(2\)](#)

58 Amendment of statutory pledge

- (1) Subject to [section 59\(a\)](#), a statutory pledge may be amended only by means of a document (an “amendment document”) executed or authenticated by the secured creditor and the provider.
- (2) But an amendment document which relates only to the addition of property to the encumbered property need not be executed or authenticated by the secured creditor.
- (3) An amendment document which relates to the addition of property to the encumbered property must identify the property to be added.
- (4) If the property to be added consists of more than one item, the amendment document must—
 - (a) identify each item separately, or
 - (b) identify the items in terms of their constituting an identifiable class.
- (5) The property identified (whether separately or as a class) as the property which is to be the added property may be either property of, or property to be acquired by, the provider.
- (6) Where an amendment increases the extent of the statutory pledge—
 - (a) the statutory pledge is amended to give effect to the increase only when the amendment is registered effectively (see section 92), and
 - (b) subject to any agreement to the contrary by the parties to the amendment document, any other amendments to the statutory pledge made by the amendment document also take effect at the time mentioned in paragraph (a).
- (7) For the purposes of subsection (6), an amendment increases the extent of the statutory pledge where—
 - (a) the amendment adds property to the encumbered property, or
 - (b) both—

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(i) the extent of the secured obligation is determinable from the terms alone of the entry for it in the statutory pledges record, and

(ii) the amendment increases that extent.

(8) For the purposes of subsections (3) and (4), the ways in which property added can be identified in the amendment document include by making reference in the amendment document to another document, the terms of which are not reproduced.

Commencement Information

I17 S. 58 not in force at Royal Assent, see [s. 121\(2\)](#)

59 Restriction or discharge of statutory pledge

A statutory pledge may be—

- (a) restricted to only part of the encumbered property, or
- (b) discharged,

by means of a written statement by the secured creditor.

Commencement Information

I18 S. 59 not in force at Royal Assent, see [s. 121\(2\)](#)

Ranking of pledges etc.

60 Ranking

(1) Subject to the provisions of [this section](#) and of any other enactment, the priority in ranking of—

- (a) any two pledges, or
- (b) a pledge and a right in security other than a pledge,

is determined according to their creation, the earlier created having priority over the later.

(2) Where a provider grants two or more statutory pledges over property which is not the property of the provider at the time the pledges are granted, the priority in ranking of the pledges is determined according to the dates on which and times at which they are registered effectively (see sections [91](#) and [92](#)), the earlier having priority over the later.

(3) Where property is subject both to a pledge and to a security arising by operation of law, the security arising by operation of law has priority over the pledge.

(4) The priority in ranking of a pledge is the same irrespective of whether the secured obligation is an obligation owed or is an obligation which will or may become owed.

(5) As between any two pledges, or as between a pledge and a right in security other than a pledge, the secured creditors or (as the case may be) the secured creditor and the holder of that other right may set out in a written agreement—

- (a) that there is no priority in ranking, or

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- (b) that any priority in ranking is to be determined in a way other than would be the case in the absence of such an agreement.
- (6) An agreement under [subsection \(5\)](#)—
 - (a) has effect only as between the parties to it and their successors, and
 - (b) is not registrable in the register.

Commencement Information

I19 S. 60 not in force at Royal Assent, see [s. 121\(2\)](#)

61 Amendment of Companies Act 1985 and Insolvency Act 1986

Both in section 486(1) of the Companies Act 1985 and in section 70(1) of the Insolvency Act 1986, in the definition of “fixed security”—

- (a) the words from “a heritable security” to “1970” become paragraph (a) of the definition, and
- (b) after that paragraph insert “; or
 - (b) a statutory pledge within the meaning given by [section 113\(1\)](#) of the Moveable Transactions (Scotland) Act 2023;”.

Commencement Information

I20 S. 61 not in force at Royal Assent, see [s. 121\(2\)](#)

62 Effect of diligence on pledge

- (1) [Subsection \(2\)](#) applies where diligence is executed in respect of property which is, or any part of which is, encumbered by a pledge.
- (2) The pledge has, in respect of the property or (as the case may be) the part, priority in ranking over the diligence except in relation to any part of the secured obligation which consists of a sum—
 - (a) advanced after execution of the diligence, and
 - (b) not required to be advanced by—
 - (i) a contractual agreement entered into before execution of the diligence, or
 - (ii) an undertaking entered into before execution of the diligence.
- (3) [Subsection \(4\)](#) applies where a pledge is created over property in respect of which, or in respect of part of which, diligence has been executed.
- (4) The diligence has, in respect of the property or (as the case may be) the part, priority in ranking over the pledge.

Commencement Information

I21 S. 62 not in force at Royal Assent, see [s. 121\(2\)](#)

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Enforcement of pledge

63 The expression “pledge” in sections 64 to 77

In sections 64 to 77, the expression “pledge” does not include a pledge as defined in section 189(1) of the Consumer Credit Act 1974 (that is to say, does not include a pawnee’s rights over an article taken in pawn).

Commencement Information

I22 S. 63 not in force at Royal Assent, see s. 121(2)

64 Enforcement of pledge: general

- (1) A pledge is enforceable only in accordance with the provisions of [this Part](#).
- (2) A pledge may be enforced—
 - (a) in such circumstances as are agreed between the provider and the secured creditor, or
 - (b) subject to any such agreement, where there has been a failure to perform the secured obligation.
- (3) Any agreement under [subsection \(2\)\(a\)](#) must be in writing.
- (4) In enforcing a pledge, a secured creditor must conform to reasonable standards of commercial practice.
- (5) [Subsection \(2\)](#) is subject to sections [55\(3\)](#), [65](#) and [66](#).

Commencement Information

I23 S. 64 not in force at Royal Assent, see s. 121(2)

65 Pledge enforcement notice

- (1) Before taking any other steps to enforce a pledge, the secured creditor must serve a notice in, or as nearly as may be in, the form prescribed for the purposes of [this subsection](#) (to be known as a “pledge enforcement notice”) on—
 - (a) the provider,
 - (b) the debtor in the secured obligation (if a person other than the provider),
 - (c) the holder of any other right in security over all or part of the encumbered property,
 - (d) any creditor who has executed diligence against all or part of the encumbered property, and
 - (e) in the case of a statutory pledge over property which is capable of being occupied, any occupier of all or part of the property (if a person other than the provider).
- (2) But—

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (a) [paragraph \(c\)](#) of [subsection \(1\)](#) is to be disregarded if the secured creditor does not know, and cannot reasonably be expected to know, of the right in security mentioned in that paragraph, and
 - (b) [paragraph \(d\)](#) of that subsection is to be disregarded if the secured creditor does not know, and cannot reasonably be expected to know, of the diligence executed as mentioned in that paragraph.
- (3) If, by virtue of subsection (1)(e) of section 87 of the Consumer Credit Act 1974, a default notice must be served on the provider, the requirements of that section and of section 88 of that Act must be satisfied before a pledge enforcement notice is served.
- (4) The Scottish Ministers may by regulations modify [this section](#) so as to specify—
- (a) further persons, or descriptions of persons, on whom the secured creditor must serve a pledge enforcement notice (being persons who have statutory duties in relation to the provider’s estate),
 - (b) cases when the requirement to serve a notice on a person specified by virtue of [paragraph \(a\)](#) is to be disregarded.

Commencement Information

I24 S. 65 not in force at Royal Assent, see [s. 121\(2\)](#)

66 Whether court order required for enforcement

- (1) A court order is required for enforcing a pledge only—
 - (a) as mentioned in [subsections \(2\)](#) and [\(3\)](#),
 - (b) where taking possession of, or steps in relation to, encumbered property in accordance with [section 67\(3\)](#) or [\(4\)](#).
- (2) In a case where the provider of a pledge is an individual, a court order is required for enforcing the pledge if the provider is a sole trader and enforcement is against property used wholly or mainly for the purposes of the provider’s business.
- (3) A court order is required for enforcing a statutory pledge in respect of property which is the sole or main residence of an individual unless, after the pledge becomes enforceable by virtue of [section 64\(2\)](#), the following persons agree in writing to its being enforced without such an order—
 - (a) the secured creditor,
 - (b) the provider, and
 - (c) the individual whose sole or main residence is the property in question (if a person other than the provider).
- (4) The court is not to grant an order required by [subsection \(3\)](#) unless satisfied that enforcement is reasonable having had regard to all the circumstances of the case.
- (5) Those circumstances include—
 - (a) the nature of, and reason for, the default by virtue of which authority to enforce is sought,
 - (b) whether the person in default has the ability to remedy the default within a reasonable time,
 - (c) whether the secured creditor has done anything to help the person in default remedy the default,

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (d) where it is, or was, appropriate for the person in default to take part in a debt payment programme approved under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002, whether that person is taking part, or has taken part, in such a programme, and
- (e) whether reasonable alternative accommodation is available for (or can be expected to be available for) the individual whose sole or main residence is the property in question.

Commencement Information

I25 S. 66 not in force at Royal Assent, see [s. 121\(2\)](#)

67 Secured creditor’s right to take possession of, or steps in relation to, corporeal property

- (1) [This section](#) applies in relation to corporeal property in respect of which a secured creditor in a statutory pledge has served a pledge enforcement notice.
- (2) Subject to any court order that is required under [section 66](#), the secured creditor is entitled to—
 - (a) take possession of the property, and
 - (b) take any reasonable steps necessary to ensure, whether or not by immobilising the property, that it is not disposed of or used in an unauthorised way, but only in accordance with [subsection \(3\)](#) or, as the case may be, [subsection \(4\)](#).
- (3) Where the property is in the possession of a relevant person, the secured creditor may take possession or steps under [subsection \(2\)](#)—
 - (a) with the consent of the relevant person,
 - (b) with the consent of the court, through the agency of an authorised person, or
 - (c) personally, if authorised to do so by the court.
- (4) Where the property is not in the possession of a relevant person, the secured creditor may take possession or steps under [subsection \(2\)](#)—
 - (a) with the consent of—
 - (i) the provider, given after the pledge becomes enforceable, and
 - (ii) any third party who for the time being either is in direct possession, or has custody, of the property,
 - (b) through the agency of an authorised person, or
 - (c) personally, if authorised to do so by the court.
- (5) For the purposes of [subsections \(3\)](#) and [\(4\)](#), a “relevant person” is a person who, in respect of the property or of any part of it—
 - (a) has a right in security which has priority in ranking over, or ranks equally with, the pledge to which the pledge enforcement notice relates, or
 - (b) has executed diligence which has priority in ranking over, or ranks equally with, that pledge.
- (6) In taking possession of the property under [subsection \(2\)\(a\)](#), the secured creditor is entitled to remove any individual from that property, but only through the agency of an authorised person.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (7) In [this section](#), “authorised person” means a messenger-at-arms or sheriff officer.
- (8) The Scottish Ministers may by regulations modify [this section](#) so as to specify further persons, or descriptions of persons, who are authorised persons for the purposes of [this section](#).

Commencement Information

I26 S. 67 not in force at Royal Assent, see [s. 121\(2\)](#)

68 Secured creditor’s right to sell

- (1) Where a pledge enforcement notice has been served in respect of property, the secured creditor is, subject to any court order that is required under [section 66](#), entitled to sell all or any of that property.
- (2) In selling property by virtue of [subsection \(1\)](#), the secured creditor must take all reasonable steps to ensure that the price obtained is the best reasonably obtainable.
- (3) The secured creditor is entitled to purchase all or any of the property but only—
 - (a) in a sale by public auction, and
 - (b) for a price no lower than one which bears a reasonable relationship to market value.
- (4) Any proceeds obtained by virtue of [subsection \(1\)](#) are to be held in trust by the secured creditor until applied under [section 77](#).

Commencement Information

I27 S. 68 not in force at Royal Assent, see [s. 121\(2\)](#)

69 Sale: unencumbered acquisition

- (1) [This section](#) applies where a secured creditor sells property by virtue of [section 68\(1\)](#) and transfers the property to the purchaser.
- (2) The purchaser acquires the property unencumbered by—
 - (a) the pledge which was the subject of the pledge enforcement notice, and
 - (b) any right in security, or any diligence, ranking equally with or postponed to the pledge.
- (3) The purchaser acquires the property unencumbered by—
 - (a) any right in security which has priority in ranking over the pledge, or
 - (b) any diligence which has priority in ranking over the pledge,only if the holder of the right in security or, as the case may be, the creditor who executed the diligence consented to the sale.

Commencement Information

I28 S. 69 not in force at Royal Assent, see [s. 121\(2\)](#)

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

70 Secured creditor's right to let

- (1) A secured creditor who, by virtue of [section 68\(1\)](#), is entitled to sell corporeal property is entitled to let all or any of that property.
- (2) In letting property by virtue of [subsection \(1\)](#), the secured creditor must take all reasonable steps to ensure that the income obtained is the best reasonably obtainable.
- (3) Any rental income obtained by virtue of [subsection \(1\)](#) is to be held in trust by the secured creditor until applied under [section 77](#).
- (4) The provider and the secured creditor may agree, whether before or after the pledge becomes enforceable by virtue of [section 64\(2\)](#), that [subsection \(1\)](#) is not to apply in relation to the corporeal property or some part of it.
- (5) Any such agreement must be in writing.

Commencement Information

I29 S. 70 not in force at Royal Assent, see [s. 121\(2\)](#)

71 Secured creditor's right to grant licence over intellectual property

- (1) A secured creditor who, by virtue of [section 68\(1\)](#), is entitled to sell intellectual property is entitled to grant a licence over all or any of that property, but only if and to the extent that the provider is entitled to grant such a licence.
- (2) In granting a licence by virtue of [subsection \(1\)](#), the secured creditor must take all reasonable steps to ensure that the income obtained is the best reasonably obtainable.
- (3) Any income obtained by virtue of [subsection \(1\)](#) is to be held in trust by the secured creditor until applied under [section 77](#).
- (4) The provider and the secured creditor may agree, whether before or after the pledge becomes enforceable by virtue of [section 64\(2\)](#), that [subsection \(1\)](#) is not to apply in relation to the intellectual property or some part of it.
- (5) Any such agreement must be in writing.

Commencement Information

I30 S. 71 not in force at Royal Assent, see [s. 121\(2\)](#)

72 Secured creditor's right to protect and manage the property

- (1) A secured creditor who, by virtue of [section 68\(1\)](#), is entitled to sell property is entitled to take reasonable steps to—
 - (a) protect, maintain and manage it, and
 - (b) preserve its value.
- (2) The right under [subsection \(1\)](#) includes, for example, the right of the secured creditor to—
 - (a) effect or maintain an insurance policy in relation to the property,

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Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (b) settle any liability in relation to the property,
- (c) bring, defend or continue legal proceedings in relation to the property,
- (d) take such other steps as the provider has agreed (whether before or after the pledge becomes enforceable by virtue of [section 64\(2\)](#)) may be taken by the secured creditor.

(3) [Subsection \(1\)](#) is without prejudice to [section 67\(2\)\(b\)](#).

Commencement Information

I31 S. 72 not in force at Royal Assent, see [s. 121\(2\)](#)

73 Secured creditor's right to appropriate

- (1) Where a pledge enforcement notice has been served, the secured creditor is entitled to appropriate any or all of the encumbered property in accordance with [section 74](#) or (as the case may be) [75](#) in satisfaction, in whole or in part, of the secured obligation.
- (2) But it is not competent to appropriate by virtue of [subsection \(1\)](#)—
 - (a) corporeal property, unless that property is in the possession of the secured creditor, or
 - (b) property with a value which exceeds the total of—
 - (i) the amount for the time being remaining due under the secured obligation, and
 - (ii) such expenses as have reasonably been incurred by the secured creditor in enforcing the pledge,unless a sum of money equivalent to the amount by which that total is exceeded is set aside by the secured creditor and held in trust until applied under [section 77](#).

Commencement Information

I32 S. 73 not in force at Royal Assent, see [s. 121\(2\)](#)

74 Appropriation with prior agreement

- (1) A provider and a secured creditor may, before a pledge becomes enforceable by virtue of [section 64\(2\)](#), agree that the secured creditor is entitled to appropriate by virtue of [section 73\(1\)](#)—
 - (a) the encumbered property, or
 - (b) any part of that property.
- (2) Any agreement under [subsection \(1\)](#) must be in writing.
- (3) Property may only be appropriated in accordance with that agreement if it is property in relation to which the provider and the secured creditor have, in the agreement, set out a method of readily determining a reasonable market price.
- (4) Property appropriated in accordance with that agreement is appropriated only for the value, at the date of appropriation, of the property's market price as determined as mentioned in [subsection \(3\)](#).

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (5) Before exercising a right to appropriate property by virtue of [subsection \(1\)](#), the secured creditor must serve a notice on—
- (a) the provider,
 - (b) the debtor in the secured obligation (if a person other than the provider),
 - (c) the holder of any other right in security over all or part of the property, and
 - (d) any creditor who has executed diligence against all or part of the property.
- (6) But—
- (a) [paragraph \(c\)](#) of [subsection \(5\)](#) is to be disregarded if the secured creditor does not know, and cannot reasonably be expected to know, of the right in security mentioned in that paragraph, and
 - (b) [paragraph \(d\)](#) of that subsection is to be disregarded if the secured creditor does not know, and cannot reasonably be expected to know, of the diligence executed as mentioned in that paragraph.
- (7) A notice under [subsection \(5\)](#) must—
- (a) identify the property to be appropriated,
 - (b) specify the amount for the time being remaining due under the secured obligation,
 - (c) specify the amount expected to be obtained by the appropriation, and
 - (d) state that—
 - (i) the recipient (if a person other than the provider or the debtor) may give a written statement to the secured creditor objecting to the appropriation, and
 - (ii) if such a statement is received by the secured creditor within 14 days beginning with the day that the person objecting received the notice, the appropriation is not to proceed.
- (8) If, within the period specified in [sub-paragraph \(ii\)](#) of [subsection \(7\)\(d\)](#), the secured creditor receives a written statement as mentioned in that subsection from a recipient of a notice other than the provider or the debtor—
- (a) the appropriation is not to proceed, and
 - (b) the secured creditor must, by written statement and without delay, inform each of the other recipients of the notice that the appropriation is not proceeding.
- (9) The Scottish Ministers may by regulations modify [this section](#) so as to—
- (a) specify—
 - (i) further persons, or descriptions of persons, on whom the secured creditor must serve a notice (being persons who have statutory duties in relation to the provider’s estate),
 - (ii) cases when the requirement to serve a notice on a person specified by virtue of [sub-paragraph \(i\)](#) is to be disregarded,
 - (b) require a notice under [subsection \(5\)](#) to be in, or as nearly as may be in, such form as is for the time being prescribed (and may in consequence remove any requirements in [this section](#) as to what such a notice must contain).

Commencement Information

I33 S. 74 not in force at Royal Assent, see [s. 121\(2\)](#)

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

75 Appropriation without prior agreement

- (1) **This section** applies in respect of property in relation to which the provider and the secured creditor have not reached agreement under **section 74(1)**.
- (2) Property may only be appropriated by virtue of **section 73(1)** if the amount obtained by the appropriation bears a reasonable relationship to the market value of the property appropriated on the date of the appropriation.
- (3) Before exercising a right to appropriate property by virtue of **section 73(1)**, the secured creditor must serve a notice on—
 - (a) the provider,
 - (b) the debtor in the secured obligation (if a person other than the provider),
 - (c) the holder of any other right in security over all or part of the property, and
 - (d) any creditor who has executed diligence against all or part of the property.
- (4) But—
 - (a) **paragraph (c)** of **subsection (3)** is to be disregarded if the secured creditor does not know, and cannot reasonably be expected to know, of the right in security mentioned in that paragraph, and
 - (b) **paragraph (d)** of that subsection is to be disregarded if the secured creditor does not know, and cannot reasonably be expected to know, of the diligence executed as mentioned in that paragraph.
- (5) Any notice served under **subsection (3)** must—
 - (a) identify the property to be appropriated,
 - (b) specify the amount for the time being remaining due under the secured obligation,
 - (c) specify the amount expected to be obtained by the appropriation, and
 - (d) state that—
 - (i) the recipient may give a written statement to the secured creditor objecting to the appropriation, and
 - (ii) if such a statement is received by the secured creditor within 14 days beginning with the day that the person objecting received the notice, the appropriation is not to proceed.
- (6) If, within the period specified in **sub-paragraph (ii)** of **subsection (5)(d)**, the secured creditor receives a written statement as mentioned in that subsection from a recipient of a notice—
 - (a) the appropriation is not to proceed, and
 - (b) the secured creditor must, by written statement and without delay, inform each of the other recipients of the notice that the appropriation is not proceeding.
- (7) The Scottish Ministers may by regulations modify **this section** so as to—
 - (a) specify—
 - (i) further persons, or descriptions of persons, on whom the secured creditor must serve a notice (being persons who have statutory duties in relation to the provider's estate),
 - (ii) cases when the requirement to serve a notice on a person specified by virtue of **sub-paragraph (i)** is to be disregarded,

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Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (b) require a notice under [subsection \(3\)](#) to be in, or as nearly as may be in, such form as is for the time being prescribed (and may in consequence remove any requirements in [this section](#) as to what such a notice must contain).

Commencement Information

I34 S. 75 not in force at Royal Assent, see [s. 121\(2\)](#)

76 Appropriation: unencumbered acquisition

Where a secured creditor appropriates property by virtue of [section 73\(1\)](#), the secured creditor acquires the property unencumbered by any right in security or any diligence.

Commencement Information

I35 S. 76 not in force at Royal Assent, see [s. 121\(2\)](#)

77 Application of proceeds from enforcement of pledge

- (1) Any proceeds arising from the enforcement of a pledge are to be applied—
- (a) firstly, in payment of all expenses reasonably incurred by the secured creditor in connection with the enforcement (including any incurred under [section 67\(2\)](#) or [72](#)), and
 - (b) secondly, in payment of the amount due to—
 - (i) the holder of any right in security over the property from which the proceeds arose, and
 - (ii) any creditor who has executed diligence against that property, and
 - (c) with the residue (if any) from the proceeds being paid to the provider.
- (2) Any payment made by virtue of [subsection \(1\)\(b\)](#) is to be made in conformity with the ranking of the right in security or, as the case may be, of the diligence.
- (3) But no such payment is to be made to—
- (a) the holder of a right in security which has priority in ranking over the pledge enforced, or
 - (b) any creditor who has executed diligence which has such priority, unless that holder or creditor consented to the enforcement in question.
- (4) Where payment falls to be made, by virtue of [subsection \(1\)\(b\)](#), to more than one person with the same ranking but the proceeds are inadequate to enable those persons to be paid in full, their payments are to abate in equal proportions.
- (5) Where a question arises regarding to whom a payment under [this section](#) is to be made, the secured creditor must—
- (a) consign the amount of the payment (so far as ascertainable) in court for the person appearing to have the best right to that payment, and
 - (b) lodge in court a statement of the amount consigned.
- (6) Where a consignment is made in pursuance of [subsection \(5\)\(a\)](#)—
- (a) it operates as a payment of the amount due, and

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Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (b) a certificate of the court is sufficient evidence of that payment.
- (7) The secured creditor must, as soon as reasonably practicable after applying the proceeds arising from the enforcement, issue the persons mentioned in [subsection \(8\)](#) with a written statement of how the proceeds have been applied under [this section](#).
- (8) The persons referred to in [subsection \(7\)](#) are—
- (a) the provider,
 - (b) the debtor in the secured obligation (if a person other than the provider), and
 - (c) any person who both—
 - (i) is mentioned in [subsection \(1\)\(b\)](#), and
 - (ii) has consented to the enforcement in question.
- (9) In a case where—
- (a) all or any of the property is let by the secured creditor by virtue of [section 70\(1\)](#), or
 - (b) the secured creditor grants a licence over all or any of it by virtue of [section 71\(1\)](#),
- [subsection \(7\)](#) applies in relation to any proceeds of the letting or licensing as if, for the words “as soon as reasonably practicable after applying the proceeds arising from the enforcement”, there were substituted “every month beginning with the month after the first proceeds arising from the enforcement are received”.
- (10) The Scottish Ministers may by regulations modify [this section](#) so as to specify further persons, or descriptions of persons, to whom the secured creditor must issue a written statement (being persons who have statutory duties in relation to the provider’s estate).

Commencement Information

I36 S. 77 not in force at Royal Assent, see [s. 121\(2\)](#)

78 Mandatory application for removal of an entry from the statutory pledges record

- (1) [This section](#) applies where a statutory pledge which has been registered is extinguished by virtue of—
- (a) the enforcement of the statutory pledge,
 - (b) the enforcement of another right in security over the encumbered property of the statutory pledge, or
 - (c) the enforcement of diligence against the encumbered property of the statutory pledge.
- (2) The secured creditor must, as soon as reasonably practicable after the enforcement of the statutory pledge or, as the case may be, becoming aware of the event mentioned in [paragraph \(b\)](#) or [\(c\)](#) of [subsection \(1\)](#), make an application under [section 96\(1\)](#) for removal of the entry for the statutory pledge from the statutory pledges record.

Commencement Information

I37 S. 78 not in force at Royal Assent, see [s. 121\(2\)](#)

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

Liability for loss due to enforcement

79 Liability for loss suffered by virtue of enforcement

- (1) A person (“P”) is entitled to be compensated by a secured creditor for loss suffered in consequence of the secured creditor’s failure to comply with any obligation imposed on the secured creditor by any provision of [sections 64 to 78](#).
- (2) But the secured creditor has no liability under [subsection \(1\)](#)—
 - (a) in so far as P’s loss could have been avoided had P taken measures which it would have been reasonable for P to take, or
 - (b) in so far as P’s loss was not reasonably foreseeable.

Commencement Information

I38 S. 79 not in force at Royal Assent, see [s. 121\(2\)](#)

Service of documents for purposes of this Chapter

80 Service of documents for purposes of this Chapter

- (1) In relation to the service of documents for the purposes of [this Chapter](#), the provider and the secured creditor may agree (either or both)—
 - (a) that the document may or must be served on a person by being sent to an address specified in the agreement (being an address other than is mentioned in subsection (4) of section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010),
 - (b) that service is to be by a method mentioned in subsection (2) of that section and specified in the agreement.
- (2) The agreement need not refer expressly to that section or to any provision of that section.
- (3) Any such agreement must be in writing.
- (4) Where there is such an agreement but service cannot be effected in accordance with it, the agreement is to be disregarded in applying section 26 of that Act of 2010 for the purposes of [this Chapter](#).

Commencement Information

I39 S. 80 not in force at Royal Assent, see [s. 121\(2\)](#)

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

CHAPTER 2

REGISTER OF STATUTORY PLEDGES

Register of Statutory Pledges

81 The Register of Statutory Pledges

- (1) There is to be a public register known as the Register of Statutory Pledges.
- (2) The register is to be under the management and control of the Keeper.
- (3) Subject to the provisions of this Act, the register is to be in such form as the Keeper thinks fit.
- (4) The Keeper must take such steps as appear reasonable to the Keeper to protect the register from—
 - (a) interference,
 - (b) unauthorised access, and
 - (c) damage.

Commencement Information

I40 S. 81 not in force at Royal Assent, see [s. 121\(2\)](#)

Structure and contents of the register

82 The parts of the register

- The Keeper must make up and maintain, as parts of the register—
- (a) the statutory pledges record, and
 - (b) the archive record.

Commencement Information

I41 S. 82 not in force at Royal Assent, see [s. 121\(2\)](#)

83 The statutory pledges record

- (1) An entry in the statutory pledges record is to comprise—
 - (a) the provider's name and address,
 - (b) where the provider is an individual, the provider's date of birth,
 - (c) any identifying number which the provider has and which, by virtue of RSP Rules, must be included in the entry,
 - (d) the secured creditor's name and address,
 - (e) any identifying number which the secured creditor has and which, by virtue of RSP Rules, must be included in the entry,

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- (f) where the secured creditor is not an individual, an address (which may be an email address) to which any request for information regarding the statutory pledge may be sent,
- (g) such description of the encumbered property as is required, or permitted, for the purposes of [this subsection](#) by RSP Rules,
- (h) a copy of the constitutive document of the statutory pledge,
- (i) the registration number allocated under [section 87\(1\)\(b\)](#) to the entry,
- (j) where the statutory pledge has been amended in pursuance of [section 58\(6\)](#), a copy of the amendment document,
- (k) the date and time of registration of—
 - (i) the statutory pledge, and
 - (ii) any amendment to the statutory pledge,
- (l) any other information that is required under any other section of this Act, and
- (m) any other information that is specified for the purposes of [this subsection](#) by RSP Rules.

(2) The statutory pledges record is the totality of all such entries.

Commencement Information

I42 S. 83 not in force at Royal Assent, see [s. 121\(2\)](#)

84 The archive record

The archive record is the totality of—

- (a) all entries and copy documents transferred from the statutory pledges record under [section 102\(2\)\(a\)](#) or [\(3\)\(c\)](#) or by virtue of [section 95\(1\)\(a\)](#),
- (b) all copy documents included in the archive record under [section 102\(2\)\(c\)](#) or [\(3\)\(b\)](#),
- (c) all copies of such other documents as the Keeper considers it appropriate to include in the archive record, and
- (d) any other information that is specified for the purposes of [this section](#) by RSP Rules.

Commencement Information

I43 S. 84 not in force at Royal Assent, see [s. 121\(2\)](#)

Registration process

85 Order in which applications are to be dealt with

The Keeper must deal with—

- (a) applications for registration of a statutory pledge under [section 86](#), and
- (b) applications for registration of an amendment to a statutory pledge under [section 88](#),

in the order in which they are received.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

Commencement Information

I44 S. 85 not in force at Royal Assent, see [s. 121\(2\)](#)

86 Application for registration of statutory pledge

- (1) A secured creditor may apply to the Keeper for registration of a statutory pledge.
- (2) The Keeper must accept the application if—
 - (a) it is submitted with a copy of the constitutive document,
 - (b) it contains all the information the Keeper requires in accordance with [section 83](#) to be able to make up an entry for the statutory pledge under [section 87\(1\)](#),
 - (c) it conforms to such RSP Rules as relate to the application, and
 - (d) either—
 - (i) such fee as is payable for the registration is paid, or
 - (ii) arrangements satisfactory to the Keeper are made for payment of that fee.
- (3) If the requirements of [subsection \(2\)](#) are not satisfied, the Keeper must reject the application and inform the applicant accordingly.

Commencement Information

I45 S. 86 not in force at Royal Assent, see [s. 121\(2\)](#)

87 Registration of statutory pledge

- (1) On accepting an application made under [section 86](#), the Keeper must—
 - (a) make up an entry for the statutory pledge (from the constitutive document, the information provided in the application and the circumstances of registration),
 - (b) allocate a registration number to the entry (based on the order in which applications are dealt with), and
 - (c) maintain the entry in the statutory pledges record.
- (2) A statutory pledge is taken to be registered on the date and at the time entered for it for the purposes of [section 83\(1\)\(k\)\(i\)](#).

Commencement Information

I46 S. 87 not in force at Royal Assent, see [s. 121\(2\)](#)

88 Application for registration of amendment

- (1) A secured creditor may apply to the Keeper for registration of an amendment to a statutory pledge to increase the extent of the statutory pledge within the meaning of [section 58\(7\)](#).
- (2) The Keeper must accept the application if—

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (a) it is submitted with a copy of the amendment document,
 - (b) it contains all the information the Keeper requires in accordance with [section 83](#) to be able to revise the entry to which the application relates,
 - (c) it conforms to such RSP Rules as relate to the application, and
 - (d) either—
 - (i) such fee as is payable for the registration is paid, or
 - (ii) arrangements satisfactory to the Keeper are made for payment of that fee.
- (3) If the requirements of [subsection \(2\)](#) are not satisfied, the Keeper must reject the application and inform the applicant accordingly.

Commencement Information

I47 S. 88 not in force at Royal Assent, see [s. 121\(2\)](#)

89 Registration of amendment

- (1) On accepting an application made under [section 88](#), the Keeper must revise the entry for the statutory pledge to which the application relates in accordance with the application.
- (2) An amendment to a statutory pledge is taken to be registered on the date and at the time entered for the amendment for the purposes of [section 83\(1\)\(k\)\(ii\)](#).

Commencement Information

I48 S. 89 not in force at Royal Assent, see [s. 121\(2\)](#)

90 Verification statement as to registration of statutory pledge or amendment

- (1) After the registration of a statutory pledge under [section 87](#) or an amendment to a statutory pledge under [section 89](#), the Keeper must issue a written statement verifying the registration to—
 - (a) the secured creditor, and
 - (b) the provider,
 but only if and to the extent that the application made under [section 86](#) or (as the case may be) [section 88](#) contains an email address for those persons.
- (2) That statement must—
 - (a) include—
 - (i) the date and time of the registration, and
 - (ii) the registration number allocated to the entry to which the application relates, and
 - (b) conform to such RSP Rules as relate to the statement.
- (3) Where a statement is issued under [subsection \(1\)](#) and is received by the secured creditor but not the provider, the provider may request a copy of it from the secured creditor.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (4) Within 21 days beginning with the day a request is made under [subsection \(3\)](#), the secured creditor must supply the provider with the copy requested.

Commencement Information

I49 S. 90 not in force at Royal Assent, see [s. 121\(2\)](#)

Effective registration

91 Effective registration of statutory pledge

- (1) The registration of a statutory pledge is ineffective if—
- (a) the entry made up for the statutory pledge in the statutory pledges record—
 - (i) does not include a copy of the constitutive document, or
 - (ii) is, at the time of registration, seriously misleading as a result of an inaccuracy or inaccuracies in it, or
 - (b) the constitutive document is invalid.
- (2) But [subsection \(1\)\(a\)\(ii\)](#) is subject to [section 94\(1\)\(c\)](#) and (d).
- (3) Where the registration of a statutory pledge is ineffective by virtue of [subsection \(1\)](#), it becomes effective if and when the entry is corrected.

Commencement Information

I50 S. 91 not in force at Royal Assent, see [s. 121\(2\)](#)

92 Effective registration of amendment to statutory pledge

- (1) The registration of an amendment to a statutory pledge is ineffective if—
- (a) the entry for the statutory pledge in the statutory pledges record—
 - (i) does not include a copy of the amendment document, or
 - (ii) is, in consequence of the amendment, seriously misleading as a result of an inaccuracy or inaccuracies in it, or
 - (b) the amendment document is invalid.
- (2) But [subsection \(1\)\(a\)\(ii\)](#) is subject to [section 94\(1\)\(c\)](#) and (d).
- (3) Where the registration of an amendment to a statutory pledge is ineffective by virtue of [subsection \(1\)](#), it becomes effective if and when the entry as amended is corrected.

Commencement Information

I51 S. 92 not in force at Royal Assent, see [s. 121\(2\)](#)

93 Supervening inaccuracies: protection of third parties

- (1) Subsection (5) applies where, at some time after a statutory pledge is registered effectively—

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (a) a person acquires, for value, in good faith and exercising reasonable care—
 - (i) property which is encumbered under the pledge, or
 - (ii) a right in such property, and
 - (b) at the time the person acquires that property or right (“the acquired property”), any one of condition A, condition B or condition C is met.
- (2) Condition A is that the entry for the pledge in the statutory pledges record has been incorrectly removed from the statutory pledges record (whether or not on transfer of that entry to the archive record) and remains incorrectly absent from the record.
- (3) Condition B is that—
- (a) the acquired property does not have an identifying number which, by virtue of RSP Rules, must be used in identifying it, and
 - (b) the entry for the pledge in the statutory pledges record is seriously misleading in respect of the acquired property.
- (4) Condition C is that—
- (a) the acquired property has an identifying number which, by virtue of RSP Rules, must be used in identifying it, and
 - (b) if a search of the statutory pledges record were to be carried out for that number using the search facility provided under section 104, it would not disclose the entry.
- (5) On the acquisition, the statutory pledge is extinguished in relation to the acquired property.
- (6) For the purposes of [subsection \(1\)\(a\)](#), the circumstances in which a person will not be taken to be in good faith and exercising reasonable care include where the person fails to carry out a search of the statutory pledges record in respect of the acquisition.

Commencement Information

I52 S. 93 not in force at Royal Assent, see [s. 121\(2\)](#)

94 Seriously misleading inaccuracies in the statutory pledges record

- (1) In determining for the purposes of sections [91\(1\)\(a\)\(ii\)](#), [92\(1\)\(a\)\(ii\)](#) and [93\(3\)](#) whether an entry in the statutory pledges record is seriously misleading as a result of an inaccuracy or inaccuracies in it—
- (a) the entry is seriously misleading where—
 - (i) any of subsections [\(2\)](#) to [\(6\)](#) apply, or
 - (ii) despite [sub-paragraph \(i\)](#) not being satisfied, the inaccuracy or inaccuracies are such that a reasonable person would be seriously misled by the entry,
 - (b) any inaccuracy is to be disregarded to the extent that it appears in the constitutive document, or in any amendment document, but is not replicated elsewhere in the entry,
 - (c) where the entry is seriously misleading in respect of only part of the encumbered property, that is not to be taken to affect the entry in its application to the rest of the property,

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (d) where the entry is seriously misleading in respect of a co-provider or co-secured creditor but not in respect of both (or all) co-providers or co-secured creditors, that is not to be taken to affect the entry in its application to a co-provider or co-secured creditor in respect of whom the entry is not seriously misleading.
- (2) **This subsection** applies where—
- the provider is a person required by RSP Rules to be identified in the statutory pledges record by an identifying number, and
 - if a search of the record were to be carried out for that number, using the search facility provided under [section 104](#), it would not disclose the entry.
- (3) **This subsection** applies where—
- the provider is not a person required by RSP Rules to be identified in the statutory pledges record by an identifying number, and
 - if a search of the record were to be carried out, using the search facility provided under [section 104](#), for—
 - the provider’s proper name, or
 - the provider’s proper name together with the provider’s month and year of birth,it would not disclose the entry.
- (4) **This subsection** applies—
- for the purposes of [sections 91\(1\)\(a\)\(ii\)](#) and [92\(1\)\(a\)\(ii\)](#) only, and
 - where the entry inaccurately reflects the secured creditor’s proper name at the date the application for registration was made in such a way that a reasonable person would be seriously misled.
- (5) **This subsection** applies where—
- the encumbered property is or includes property required by RSP Rules to be identified in the statutory pledges record by an identifying number, and
 - if a search of the record were to be carried out for that number, using the search facility provided under [section 104](#), it would not disclose the entry.
- (6) **This subsection** applies where—
- there is a requirement, by virtue of [section 83\(1\)\(g\)](#), for an entry in the statutory pledges record to specify the type of property encumbered, and
 - the entry—
 - does not describe the property as being of a type that it is, or
 - fails to allocate a type to the property.
- (7) In the application of **this section** to co-providers and co-secured creditors—
- subsections (2) and (3) apply in relation to a co-provider as they apply in relation to a provider,
 - [subsection \(4\)](#) applies in relation to a co-secured creditor as it applies in relation to a secured creditor.
- (8) The Scottish Ministers may by regulations modify **this section** to make provision about what does, and what does not, make an entry seriously misleading for the purposes of [sections 91\(1\)\(a\)\(ii\)](#), [92\(1\)\(a\)\(ii\)](#) and [93\(3\)](#) and how that is to be determined.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (9) In [this section](#), the “proper name” of a provider or secured creditor means the person’s name in the form determined in accordance with RSP Rules.

Commencement Information

I53 S. 94 not in force at Royal Assent, see [s. 121\(2\)](#)

Duration

95 Power of Scottish Ministers in relation to duration of statutory pledge

- (1) The Scottish Ministers may by regulations—
- (a) specify a period from the creation or renewal of an entry in the statutory pledges record at the end of which the statutory pledge to which the entry relates will be extinguished and the entry removed, unless during that period the entry has been—
 - (i) renewed by virtue of paragraph (b), or
 - (ii) removed, and
 - (b) enable an application to be made by the secured creditor for the renewal of an entry which would otherwise fall to be removed by virtue of [paragraph \(a\)](#).
- (2) Before laying a draft of a Scottish statutory instrument containing regulations under [subsection \(1\)](#) before the Scottish Parliament, the Scottish Ministers must consult the Keeper.

Commencement Information

I54 S. 95 not in force at Royal Assent, see [s. 121\(2\)](#)

Corrections

96 Application by secured creditor for correction of statutory pledges record

- (1) A relevant person may apply to the Keeper for an entry in the statutory pledges record to be corrected.
- (2) The Keeper must accept the application if—
- (a) it conforms to such RSP Rules as relate to the application, and
 - (b) either—
 - (i) such fee as is payable for the correction is paid, or
 - (ii) arrangements satisfactory to the Keeper are made for payment of that fee.
- (3) If the requirements of [subsection \(2\)](#) are not satisfied, the Keeper must reject the application and inform the applicant accordingly.
- (4) For the purposes of [subsection \(1\)](#), “relevant person”—
- (a) means the person who is the secured creditor in relation to the entry (whether or not identified as such in the entry), and

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Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (b) where the statutory pledge has been assigned, also includes the person who was the secured creditor before the assignment.

Commencement Information

I55 S. 96 not in force at Royal Assent, see [s. 121\(2\)](#)

97 Correction of record in response to application under [section 96](#)

- (1) On accepting an application made under [section 96](#), the Keeper must correct the entry in the statutory pledges record accordingly.
- (2) After the correction of an entry under [subsection \(1\)](#), the Keeper must issue a written statement verifying the correction to—
- (a) the applicant, and
 - (b) the provider,
- but only if and to the extent that the application contains an email address for those persons.
- (3) That statement must—
- (a) include—
 - (i) the date and time of the correction, and
 - (ii) the registration number allocated to the entry to which the correction relates, and
 - (b) conform to such RSP Rules as relate to the statement.
- (4) Where a statement is issued under [subsection \(2\)](#) and is received by the applicant but not the provider, the provider may request a copy of it from the applicant.
- (5) Within 21 days beginning with the day a request is made under [subsection \(4\)](#), the applicant must supply the provider with the copy requested.

Commencement Information

I56 S. 97 not in force at Royal Assent, see [s. 121\(2\)](#)

98 Demand that application for correction be made under [section 96](#)

- (1) A person may, where the conditions in [subsection \(2\)](#) or [\(3\)](#) are met, issue a demand to the person identified in an entry in the statutory pledges record as the secured creditor (the “registered creditor”) that the registered creditor apply to the Keeper under [section 96](#) for the entry to be corrected.
- (2) The conditions in [this subsection](#) are that the person—
- (a) is identified as the provider, or as a co-provider, of the statutory pledge in the entry, and
 - (b) either—
 - (i) claims not to be either the provider, or a co-provider, of the statutory pledge, or

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Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (ii) considers that all or part of the property identified as the encumbered property in the entry is not encumbered property.
- (3) The conditions in [this subsection](#) are that the person—
- (a) has a right in property identified as the encumbered property in the entry, and
 - (b) considers that all or part of the property is not encumbered property.
- (4) A demand issued under [subsection \(1\)](#) must—
- (a) be in a prescribed form, and
 - (b) specify a period (being a period of not less than 21 days after it is received) within which compliance with it is sought.
- (5) A registered creditor may not charge a fee for compliance with a demand under [subsection \(1\)](#).
- (6) If the registered creditor fails to comply with the demand within the period specified by virtue of [subsection \(4\)\(b\)](#), the person who made the demand may apply to the Keeper for the statutory pledges record to be corrected.

Commencement Information

I57 S. 98 not in force at Royal Assent, see [s. 121\(2\)](#)

99 Response to application for correction under [section 98\(6\)](#)

- (1) The Keeper must accept an application made under [section 98\(6\)](#) if—
- (a) it conforms to such RSP Rules as relate to the application, and
 - (b) either—
 - (i) such fee as is payable for the application is paid, or
 - (ii) arrangements satisfactory to the Keeper are made for payment of that fee.
- (2) If the requirements of [subsection \(1\)](#) are not satisfied, the Keeper must reject the application and inform the applicant accordingly.
- (3) On accepting an application made under [section 98\(6\)](#), the Keeper must—
- (a) serve a notice on the registered creditor stating that the Keeper intends to correct the statutory pledges record on a date specified in the notice (being a date no fewer than 21 days after the date of the notice),
 - (b) note on the entry to which the application relates that the application has been received and include in that note—
 - (i) the details of the correction sought, and
 - (ii) the date on which the application was received,
 - (c) issue a written statement to the applicant verifying that the application has been received, and
 - (d) notify the person identified in the entry as the provider (if a different person from the applicant) that the notice mentioned in [paragraph \(a\)](#) has been served on the registered creditor.
- (4) The registered creditor—

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Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (a) may, before the date specified under [subsection \(3\)\(a\)](#), apply to the court opposing the making of the correction, and
 - (b) on making any such application, must notify the Keeper accordingly.
- (5) Where the registered creditor is not the secured creditor in relation to the statutory pledge in the entry—
- (a) the registered creditor must, in so far as it is reasonable and practicable to do so, promptly notify the secured creditor of the notice received under [subsection \(3\)\(a\)](#), and
 - (b) [subsection \(4\)](#) applies to the secured creditor as it applies to the registered creditor.
- (6) On an application under [subsection \(4\)\(a\)](#), the court may—
- (a) if satisfied that the correction is not justified, direct that no change be made to the record in consequence of the application under [section 98\(6\)](#), or
 - (b) if satisfied that the correction is justified in whole or in part, direct that the record be corrected accordingly.
- (7) But the court is not to make a direction under [subsection \(6\)](#) unless satisfied that, before the date specified by virtue of [subsection \(3\)\(a\)](#), the Keeper received notification under [subsection \(4\)\(b\)](#) of the application to the court.
- (8) If the Keeper does not receive, before the date specified by virtue of [subsection \(3\)\(a\)](#), notification under [subsection \(4\)\(b\)](#) of an application to the court, the Keeper is on that date to make the correction.
- (9) In [this section](#), “registered creditor” has the same meaning as in [section 98](#).

Commencement Information

I58 S. 99 not in force at Royal Assent, see [s. 121\(2\)](#)

100 Correction of the statutory pledges record at instance of the court or the Keeper

- (1) Where a court determines in any proceedings that the statutory pledges record is inaccurate, the court—
- (a) must direct the Keeper to correct the record, and
 - (b) may give the Keeper any further direction it considers necessary in connection with the correction.
- (2) [Subsection \(3\)](#) applies where the Keeper becomes aware of a manifest inaccuracy in the statutory pledges record other than—
- (a) as a result of a direction under [subsection \(1\)](#),
 - (b) where an application has been made under [section 96\(1\)](#) or [98\(6\)](#) in respect of the inaccuracy, or
 - (c) where the Keeper considers that—
 - (i) such an application could reasonably be made in respect of the inaccuracy, and
 - (ii) the inaccuracy is not attributable to the Keeper.
- (3) The Keeper must—

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (a) correct the record if what is needed to correct it is manifest,
- (b) if what is needed to correct it is not manifest, note the inaccuracy on the entry in question.

Commencement Information

I59 S. 100 not in force at Royal Assent, see [s. 121\(2\)](#)

101 Meaning of “inaccuracy” and how a correction is made

- (1) There is an “inaccuracy” in the statutory pledges record where the record misstates what the position is, in law or in fact, in relation to a statutory pledge.
- (2) A correction of the statutory pledges record—
 - (a) may relate to an inaccuracy—
 - (i) which has existed since an entry in the record was made up, or
 - (ii) which has arisen due to circumstances that have occurred since the submission of the application in respect of which the entry was made up, and
 - (b) may involve—
 - (i) the removal of an entry,
 - (ii) the removal of information included in an entry,
 - (iii) the amendment of, or an addition to, the information, or replacement of a copy document, included in an entry,
 - (iv) the restoration of information, or of a copy document, to an entry,
 - (v) the restoration of an entry (whether or not by transferring it from the archive record to the statutory pledges record).
- (3) A correction is taken to be made on the date and at the time entered for it in the register in pursuance of a provision of [this Part](#).

Commencement Information

I60 S. 101 not in force at Royal Assent, see [s. 121\(2\)](#)

102 Correction of the statutory pledges record: procedure

- (1) [This section](#) applies where the Keeper corrects the statutory pledges record by virtue of section [97\(1\)](#), [99\(6\)\(b\)](#) or [\(8\)](#) or [100\(1\)\(a\)](#) or [\(3\)\(a\)](#).
- (2) Where the Keeper corrects the statutory pledges record by removing an entry from the statutory pledges record, the Keeper must—
 - (a) transfer the entry to the archive record,
 - (b) note on the transferred entry—
 - (i) the section by virtue of which the transfer is made, and
 - (ii) the details of the correction (including the date and time of the removal), and
 - (c) include in the archive record a copy of any document which discloses, or contributes to disclosing, the inaccuracy which is the subject of the correction.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (3) Where the Keeper corrects the record by restoring an entry, by restoring, removing or amending information included in an entry or by restoring or replacing a copy document, the Keeper must—
- (a) note on the entry that it has been corrected and the details of the correction (including the date and time of the correction),
 - (b) include in the archive record a copy of any document which discloses, or contributes to disclosing, the inaccuracy which is the subject of the correction, and
 - (c) in the case of the replacement of the copy document, transfer the replaced copy to the archive record.
- (4) Having corrected the record other than by virtue of section 97(1), the Keeper must notify the following persons (in so far as it is reasonable and practicable to do so) that the correction has been made—
- (a) every person specified for the purposes of [this subsection](#) by RSP Rules, and
 - (b) any other person who appears to the Keeper to be affected by it materially.
- (5) A failure to comply with [subsection \(2\)\(c\)](#), [\(3\)\(b\)](#) or [\(4\)](#) does not affect the validity of the correction of the record.

Commencement Information

I61 S. 102 not in force at Royal Assent, see [s. 121\(2\)](#)

103 Proceedings involving the accuracy of the statutory pledges record

The Keeper is entitled to appear and be heard in any civil proceedings, whether before a court or tribunal, in which—

- (a) the accuracy of the statutory pledges record, or
 - (b) what is needed to correct an inaccuracy in the record,
- is put in question.

Commencement Information

I62 S. 103 not in force at Royal Assent, see [s. 121\(2\)](#)

Searches and extracts

104 Searching the statutory pledges record

- (1) The Keeper must provide a facility by which the statutory pledges record may be searched.
- (2) That search facility must allow the statutory pledges record to be searched by reference to, and only by reference to—
- (a) any of the following information in the entries contained in that record—
 - (i) the names of providers, which must be capable of being searched with and without the months and years of birth of providers who are individuals,

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Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- (ii) the identifying numbers of providers required by RSP Rules to be identified in the statutory pledges record by such a number,
 - (iii) if RSP Rules require the encumbered property to be identified (whether by an identifying number or in some other way), by reference to such identification,
 - (b) registration numbers allocated, under [section 87\(1\)\(b\)](#), to entries in that record, or
 - (c) any other factor, or characteristic, specified for the purposes of [this paragraph](#) by RSP Rules.
- (3) Subject to any restrictions imposed under RSP Rules, a person may search the statutory pledges record using the search facility provided under [subsection \(1\)](#) provided that either—
- (a) such fee as is payable for the search is paid, or
 - (b) arrangements satisfactory to the Keeper are made for payment of that fee.
- (4) But no fee is payable for a search of the statutory pledges record which is carried out on behalf of an individual by a not-for-profit money adviser (being an adviser who does not charge individuals for the adviser’s services).
- (5) The Scottish Ministers may, by regulations, make further provision about the meaning of “not-for-profit money adviser” for the purposes of subsection (4).

Commencement Information

I63 S. 104 not in force at Royal Assent, see [s. 121\(2\)](#)

105 Admissibility and evidential status of search results

- (1) A copy of a search result (in printed or electronic form) which relates to a search carried out by means of a search facility provided by the Keeper is admissible in evidence.
- (2) In the absence of evidence to the contrary—
- (a) where such a search result purports to show an entry in the statutory pledges record, it is sufficient proof of—
 - (i) the registration of the statutory pledge, or an amendment to the entry in the statutory pledges record, to which the result relates,
 - (ii) where applicable, a correction of the entry in the statutory pledges record to which the result relates, and
 - (iii) the date and time of such registration or, as the case may be, correction, and
 - (b) where such a search result purports not to show an entry in the statutory pledges record, it is sufficient proof of an entry in the statutory pledges record not being disclosed at the date and time of such search by means of the search carried out.

Commencement Information

I64 S. 105 not in force at Royal Assent, see [s. 121\(2\)](#)

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

106 Extracts and their evidential status

- (1) A person may apply to the Keeper for an extract of an entry in the register.
- (2) The Keeper must issue the extract if—
 - (a) such fee as is payable for issuing it is paid, or
 - (b) arrangements satisfactory to the Keeper are made for payment of that fee.
- (3) But if, on application under subsection (1), the applicant requests an extract as at a specific date and time, the Keeper need comply with the request only to the extent that it is reasonably practicable to do so.
- (4) The Keeper may validate the extract as the Keeper considers appropriate.
- (5) The Keeper may issue the extract as an electronic document unless the applicant requests that it be issued as a traditional document.
- (6) The extract is to be accepted for all purposes as sufficient evidence of the contents of the entry as at—
 - (a) in the case of an extract requested as mentioned in subsection (3), the date and time to which the extract relates (being a date and time specified in the extract), and
 - (b) in any other case, the date on which and the time at which the extract is issued (being a date and time specified in the extract).

Commencement Information

I65 S. 106 not in force at Royal Assent, see [s. 121\(2\)](#)

Requests for information

107 Secured creditor’s duty to respond to request for information

- (1) An entitled person may ask the person identified in an entry in the statutory pledges record as the secured creditor (the “registered creditor”) to provide the entitled person with the following—
 - (a) if the registered creditor is the secured creditor, with a written statement as to whether or not property specified by the entitled person is, or is part of, the encumbered property,
 - (b) if the registered creditor is no longer the secured creditor, with—
 - (i) information to that effect,
 - (ii) the name and address of the person to whom the registered creditor assigned the statutory pledge, and
 - (iii) where relevant and in so far as known, the names and addresses of subsequent assignees, or
 - (c) if the registered creditor has never been the secured creditor, with information to that effect.
- (2) The following are entitled persons for the purposes of [this section](#)—
 - (a) a person who has a right in the property so specified,
 - (b) a person who has a right to execute diligence against the property so specified (or who is authorised to execute a charge for payment and will have the right to

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

- execute diligence against that property if and when the days of charge expire without payment), and
- (c) a person who is not mentioned in [paragraph \(a\)](#) or [\(b\)](#) but who has the consent of the person identified in the entry as the provider to make a request under [subsection \(1\)](#).
- (3) The registered creditor must, within 21 days beginning with the day of receiving a request under [subsection \(1\)](#), comply with it unless—
- (a) it is manifest that the registration is ineffective in relation to the statutory pledge to which the request relates,
- (b) it is manifest from the entry for the statutory pledge that the property specified under [subsection \(1\)](#) by the entitled person is not encumbered by the pledge, or
- (c) both—
- (i) the registered creditor has, within the period of 3 months ending with the day of receipt of the request, complied with a request under [subsection \(1\)](#) from the same person and in relation to the same property, and
- (ii) the information contained in the statement issued in relation to the earlier request remains correct.
- (4) The registered creditor may recover from the entitled person any costs reasonably incurred in complying with the request.
- (5) On the application of the registered creditor, the court may by order—
- (a) exempt the registered creditor from complying with a request under [subsection \(1\)](#) or such part of the request as it specifies in the order, or
- (b) extend the period within which the registered creditor must comply with the request by such number of days as it specifies in the order,
- if satisfied that in all the circumstances it would be reasonable to do so.
- (6) If, on the application of the entitled person, the court is satisfied that the registered creditor has, without reasonable excuse, failed to comply with [subsection \(3\)](#), it may by order require the registered creditor to comply with the request within 14 days or such other period (which may be longer or shorter than 14 days) as the court considers appropriate.
- (7) [This section](#) applies in relation to any person whose name and address have been provided to an entitled person by virtue of [subsection \(1\)\(b\)](#) as it applies to the registered creditor.
- (8) The Scottish Ministers may by regulations modify [this section](#) so as to specify further persons, or descriptions of persons, who are entitled persons for the purposes of [this section](#).

Commencement Information

166 S. 107 not in force at Royal Assent, see [s. 121\(2\)](#)

108 Acquisition of property confirmed by creditor not to be encumbered property

- (1) [Subsection \(2\)](#) applies where a person who is an entitled person for the purposes of [section 107](#)—

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- (a) makes a request under [subsection \(1\)](#) of that section,
 - (b) receives a response from the person of whom the request was made, in the form of a statement of the type mentioned in [paragraph \(a\)](#) of that subsection, advising that the property specified under that subsection by the entitled person is neither the encumbered property nor part of that property, and
 - (c) within 3 months beginning with the date of being so advised acquires in good faith—
 - (i) the property so specified (or any part of it), or
 - (ii) a right in that property (or part).
- (2) On that acquisition, the statutory pledge is extinguished in relation to the property (or part).

Commencement Information

I67 S. 108 not in force at Royal Assent, see [s. 121\(2\)](#)

Entitlement to compensation

109 Liability of Keeper

- (1) A person is entitled to be compensated by the Keeper for loss suffered in consequence of—
- (a) an inaccuracy in the statutory pledges record to the extent that it is attributable to the making up, maintenance or operation of the register (including an attempted correction of it),
 - (b) the issue, under [section 90\(1\)](#) or [97\(2\)](#), of a written statement which is incorrect,
 - (c) the service, under [section 102\(4\)](#), of a notification which is incorrect,
 - (d) a search result which—
 - (i) relates to a search of the statutory pledges record carried out by means of a search facility provided by the Keeper,
 - (ii) ought (as a result of the search terms used) to reflect accurately the contents of the statutory pledges record at the time the search was made, and
 - (iii) does not accurately reflect those contents,
 - (e) the issue, under [section 106](#), of an extract which is not a true extract,
 - (f) an application being accepted or rejected in error,
 - (g) an attempt to make an application, which the Keeper would otherwise have accepted, failing as a result of an error in the system the Keeper has for accepting applications, or
 - (h) applications being dealt with otherwise than in the order in which they are received.
- (2) But the Keeper has no liability under [subsection \(1\)](#)—
- (a) in so far as the person's loss could have been avoided had the person taken measures which it would have been reasonable for the person to take,
 - (b) in so far as the person's loss was not reasonably foreseeable, or
 - (c) for non-patrimonial loss.

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- (3) For the avoidance of doubt, an inaccuracy in information included in an entry in the statutory pledges record when that entry is made up under [section 87\(1\)\(a\)](#), revised under [section 89\(1\)](#) or corrected by virtue of [section 97\(1\)](#), [99\(6\)\(b\)](#) or [\(8\)](#) or [100\(1\)\(a\)](#) or [\(3\)\(a\)](#) does not fall within [subsection \(1\)\(a\)](#) to the extent that the Keeper—
- (a) has been misled into making the inaccuracy, and
 - (b) reasonably believed the information to be accurate.
- (4) For the purposes of [subsection \(3\)](#), the circumstances where the Keeper is entitled to reasonably believe information to be accurate include those where it is provided—
- (a) in connection with an application to which the entry relates, or
 - (b) by the court.

Commencement Information

I68 S. 109 not in force at Royal Assent, see [s. 121\(2\)](#)

110 Liability of certain other persons

- (1) A person (“P”) is entitled to be compensated in the following circumstances—
- (a) where P suffers loss in consequence of an inaccuracy in an entry in the statutory pledges record then, to the extent that it is not attributable to the Keeper, P is entitled to be compensated for that loss by—
 - (i) the person who made the application for registration which gave rise to the inaccurate entry if that person failed to take reasonable care in making it, or
 - (ii) where the inaccurate entry arises from the attempted correction of an apparent inaccuracy, the person who notified the Keeper of the apparent inaccuracy if that person failed to take reasonable care in doing so,
 - (b) where P suffers loss in consequence of an inaccuracy in information supplied in response to a request under [section 107\(1\)](#), P is entitled to be compensated for that loss by the person who supplied the information if that person failed to take reasonable care in supplying it, or
 - (c) where P suffers loss in consequence of a failure, without reasonable excuse, to comply with a request in accordance with [section 107\(3\)](#), P is entitled to be compensated for that loss by the person whose failure it was.
- (2) But a person has no liability under [subsection \(1\)](#)—
- (a) in so far as P’s loss could have been avoided had P taken measures which it would have been reasonable for P to take,
 - (b) in so far as P’s loss was not reasonably foreseeable, or
 - (c) for non-patrimonial loss.

Commencement Information

I69 S. 110 not in force at Royal Assent, see [s. 121\(2\)](#)

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

Rules

111 Rules

- (1) The Scottish Ministers may by regulations make rules (“RSP Rules”)—
 - (a) about the making up and keeping of the register,
 - (b) about the procedure in relation to—
 - (i) applications for registration under [section 86\(1\)](#) or [88\(1\)](#), or
 - (ii) applications for corrections under [section 96\(1\)](#) or [98\(6\)](#),
 - (c) about searches in the register and the results of those searches,
 - (d) about the required form and content of any document or information to be used in relation to the register,
 - (e) requiring there to be entered in the statutory pledges record or the archive record such information as is specified in the rules, or
 - (f) regarding other matters in relation to registration under [this Part](#), being matters for which the Scottish Ministers consider it necessary or expedient to provide in order to give full effect to the purposes of [this Part](#).
- (2) RSP Rules under [subsection \(1\)](#) may, in particular, include provision—
 - (a) about the identification, in any application and in the register, of any person or property, including—
 - (i) how the proper form of a person’s name is to be determined, and
 - (ii) where the person or property has an identifying number (whether of numerals or of letters and numerals) allocated to the person or property, whether that number must be used in identifying the person or property,
 - (b) about the nature of the address of the provider or the secured creditor to be included in an entry in the register,
 - (c) about the degree of precision with which time is to be recorded in the register,
 - (d) about information which, though contained in a constitutive document or amendment document, need not be included in a copy of that document submitted with an application under [section 86\(1\)](#) or [88\(1\)](#),
 - (e) about whether a signature contained in a constitutive document or amendment document need be included in a copy of that document so submitted,
 - (f) about information which, though contained in the register, is not to be—
 - (i) available to persons searching it, or
 - (ii) included in any extract issued under [section 106](#),
 - (g) about when the register is open for—
 - (i) registration,
 - (ii) searches.
- (3) Before laying a draft of a Scottish statutory instrument containing regulations under [subsection \(1\)](#) before the Scottish Parliament, the Scottish Ministers must consult the Keeper.

Commencement Information

170 S. 111 not in force at Royal Assent, see [s. 121\(2\)](#)

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Moveable Transactions (Scotland) Act 2023, Part 2. (See end of Document for details)

CHAPTER 3

MISCELLANEOUS AND INTERPRETATION OF PART 2

Miscellaneous

112 Competence of creating an agricultural charge

On the coming into force of [this section](#), it ceases to be competent to create an agricultural charge (“agricultural charge” having the meaning given by section 5 of the Agricultural Credits (Scotland) Act 1929).

Commencement Information

I71 S. 112 not in force at Royal Assent, see [s. 121\(2\)](#)

Interpretation of Part 2

113 Interpretation of Part 2

- (1) In [this Part](#) (except where the context requires otherwise)—
- “amendment document” has the meaning given by [section 58\(1\)](#),
 - “the archive record” is to be construed in accordance with [section 84](#),
 - “corporeal moveable property” does not include money,
 - “correction”, in relation to the statutory pledges record, is to be construed in accordance with [section 101\(2\)](#),
 - “encumbered property” has the meaning given by [section 43\(2\)](#),
 - “inaccuracy”, in relation to the statutory pledges record, is to be construed in accordance with [section 101\(1\)](#),
 - “money” has the meaning given by section 175(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007,
 - “pledge”, in sections [64](#) to [77](#), is to be construed in accordance with [section 63](#),
 - “pledge enforcement notice” has the meaning given by [section 65\(1\)](#),
 - “provider”—
 - (a) means the person who grants a pledge, and
 - (b) includes or, as the case may be, consists of any successor in title, or representative, of a provider (unless the successor or representative is a person who, by virtue of [Chapter 1](#), had acquired the encumbered property unencumbered by the statutory pledge in question),
 - “the register” means the Register of Statutory Pledges,
 - “right in security”—
 - (a) means a right in security over property (including a floating charge), but
 - (b) does not include a right to execute diligence,
 - “RSP Rules” has the meaning given by [section 111\(1\)](#),
 - “secured creditor”—
 - (a) means the person in whose favour a pledge is granted, and

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- (b) includes or, as the case may be, consists of any successor in title, or representative, of a secured creditor,
“secured obligation” is to be construed in accordance with [section 43\(1\)](#),
“statutory pledge” has the meaning given by [section 42\(4\)](#), and
“the statutory pledges record” is to be construed in accordance with [section 83\(2\)](#).
- (2) Where two or more persons are co-providers or co-secured creditors in relation to a statutory pledge, any reference in this Act to the provider or secured creditor (as the case may be) is, unless the context requires otherwise, a reference to all of those persons.
- (3) A reference in [this Part](#)—
- (a) to a statutory pledge being registered (however expressed) is to be construed as a reference to the Keeper’s carrying out, in respect of the pledge, the duties imposed on the Keeper by [section 87\(1\)\(a\)](#) and [\(b\)](#),
 - (b) to an amendment to a statutory pledge being registered (however expressed) is to be construed as a reference to the Keeper’s carrying out, in respect of the amendment, the duty imposed on the Keeper by [section 89\(1\)](#).

Commencement Information

I72 S. 113 not in force at Royal Assent, see [s. 121\(2\)](#)

Status:

This version of this part contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 2.