



# Moveable Transactions (Scotland) Act 2023

2023 asp 3

## PART 2

### SECURITY OVER MOVEABLE PROPERTY

#### 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.

###### *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.

### 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,
  - (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.

### 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.

### *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.

## **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.

## **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\(1\)\(k\)\(i\)](#).

## **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—
  - (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.

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- (3) If the requirements of [subsection \(2\)](#) are not satisfied, the Keeper must reject the application and inform the applicant accordingly.

## **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\(1\)\(k\)\(ii\)](#).

## **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.
- (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.

### *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.

## **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.

## **93 Supervening inaccuracies: protection of third parties**

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

## **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—

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- (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,
  - (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—
- (a) the provider is a person required by RSP Rules to be identified in the statutory pledges record by an identifying number, and
  - (b) 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—
- (a) the provider is not a person required by RSP Rules to be identified in the statutory pledges record by an identifying number, and
  - (b) if a search of the record were to be carried out, using the search facility provided under section 104, for—
    - (i) the provider’s proper name, or
    - (ii) 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—
- (a) for the purposes of sections 91(1)(a)(ii) and 92(1)(a)(ii) only, and
  - (b) 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—
- (a) the encumbered property is or includes property required by RSP Rules to be identified in the statutory pledges record by an identifying number, and
  - (b) 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—
- (a) 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
  - (b) the entry—
    - (i) does not describe the property as being of a type that it is, or
    - (ii) fails to allocate a type to the property.

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- (7) In the application of [this section](#) to co-providers and co-secured creditors—
  - (a) subsections (2) and (3) apply in relation to a co-provider as they apply in relation to a provider,
  - (b) [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.
- (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.

### *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.

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

## **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.

## **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
    - (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.



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- (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.

## **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—
  - (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.

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- (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](#).

## **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—
  - (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.

## **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,

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- (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](#).

## **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.
- (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.

## **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.

*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,
    - (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).

**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

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- (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.

## **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).

### *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,

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- (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 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](#).

## **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](#)—
- (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,

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- 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).

#### *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.
- (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.

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- (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.

## 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.

### 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.