



Moveable Transactions (Scotland) Act 2023

2023 asp 3

PART 2

SECURITY OVER MOVEABLE PROPERTY

CHAPTER 1

PLEDGE

Enforcement of pledge

PROSPECTIVE

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

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Section 77. (See end of Document for details)

- (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
 - (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

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

Status:

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Changes to legislation:

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