



# Moveable Transactions (Scotland) Act 2023

2023 asp 3

## PART 2

### SECURITY OVER MOVEABLE PROPERTY

#### CHAPTER 1

##### PLEDGE

PROSPECTIVE

#### *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**

**II** 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

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- (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

**I2** 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—
  - (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

**I3** S. 65 not in force at Royal Assent, see [s. 121\(2\)](#)

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## 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,
  - (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

**I4** 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

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- (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.
- (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

**I5** 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

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- (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

**I6** 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

**I7** S. 69 not in force at Royal Assent, see [s. 121\(2\)](#)

### 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

**I8** S. 70 not in force at Royal Assent, see [s. 121\(2\)](#)

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## 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

**I9** 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,
  - (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

**I10** 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 \(1\)](#)—

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- (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

I11 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 \(3\)](#).
- (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,



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- (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

**I12** S. 74 not in force at Royal Assent, see [s. 121\(2\)](#)

## 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—



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- (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,
  - (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

**I13** 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

**I14** S. 76 not in force at Royal Assent, see [s. 121\(2\)](#)

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## 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
  - (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\(1\)](#),

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[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

**I15** 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

**I16** S. 78 not in force at Royal Assent, see [s. 121\(2\)](#)

**Status:**

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**Changes to legislation:**

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