



Moveable Transactions (Scotland) Act 2023

2023 asp 3

PART 2

SECURITY OVER MOVEABLE PROPERTY

CHAPTER 1

PLEDGE

Enforcement of pledge

PROSPECTIVE

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—

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 74. (See end of Document for details)

- (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

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

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 74.