

# Moveable Transactions (Scotland) Bill

[AS PASSED]

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**Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.**

# Moveable Transactions (Scotland) Bill

## [AS PASSED]

An Act of the Scottish Parliament to make provision in relation to the assignment of claims; to establish a register for assignment documents in respect of such claims; to make provision in relation to the granting of security in the form of a pledge over corporeal and incorporeal moveable property; to establish a register of statutory pledges; and to end the creation of agricultural charges.

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### PART 1

#### ASSIGNATION

#### CHAPTER 1

##### ASSIGNATION OF CLAIMS, PROTECTION OF DEBTORS AND RELATED MATTERS

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##### *Assignment of claims*

#### **1 Assignment of claims: general**

- (1) The assignment of a claim requires the execution or authentication of a document assigning the claim (an “assignment document”) by the person assigning it.
- (2) The assignment document must identify the claim.
- (3) But an assignment document which assigns a number of claims need not identify each claim separately provided that the document identifies the claims in terms of their constituting an identifiable class.
- (4) It is competent to assign a claim which, at the time the assignment document is granted, is not held by the assignor (whether or not the claim yet exists at that time).
- (4A) For the purposes of subsection (2), the ways in which the claim can be identified in the assignment document include by making reference in the assignment document to another document, the terms of which are not reproduced.
- (5) Nothing in this Part applies to the assignment of a claim as part of a financial collateral arrangement, within the meaning of regulation 3(1) of the Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226).

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**2 Assignment of claim subject to a condition**

- (1) The assignment of a claim may be subject to a condition which must be satisfied before the claim is transferred.
- (2) Any such condition must be specified in the assignment document.
- 5 (3) The condition may, for example—
- (a) be the occurrence of a particular date,
  - (b) depend on something happening (whether or not it is certain that the thing will happen), or
  - (c) depend on a period of time elapsing during which something must not happen
- 10 (whether or not it is certain that the thing will happen at some time).
- (4) For the purposes of subsection (2), the ways in which the condition can be specified in the assignment document include by making reference in the assignment document to another document, the terms of which are not reproduced.

**3 Transfer of claims**

- 15 (1) A claim in respect of which an assignment document is granted is transferred on the requirements mentioned in subsection (2) all being met.
- (2) Those requirements are that—
- (a) the assignor is the holder of the claim,
  - (b) either—
- 20 (i) intimation of the assignment is effected under section 8(1), or
- (ii) the assignment document is registered,
- (c) the claim is identifiable as a claim to which the assignment document relates, and
- (d) if the assignment is subject to a condition which must be satisfied before the claim is transferred, the condition is satisfied.
- 25 (3) For the purposes of subsection (1), if the claim is a claim such as is mentioned in section 1(4)—
- (a) the requirement mentioned in subsection (2)(a) is met when the assignor becomes the holder of the claim, and
  - (b) any rule of law as to accretion does not apply in relation to the claim.
- 30 (4) Subsection (2)(b)(ii) is subject to section 25 (effective registration of assignment document) and, accordingly, the requirement of that subsection—
- (a) is not met if the registration of the assignment document is ineffective in accordance with section 25(1), and
  - (b) is met if and when that registration becomes effective in accordance with section
- 35 25(3).
- (5) Subsection (6) applies where—
- (a) an assignor grants more than one assignment document in respect of the same claim,



- (b) each of the purported assignments of the claim is to a different person, and
- (c) the requirements of subsection (2) are all met in relation to each of the purported assignments at the same time by virtue of—
  - (i) the assignor becoming the holder of the claim,
  - (ia) the claim becoming identifiable as a claim to which the assignment document relates, or
  - (ii) where each of the purported assignments is subject to a condition which must be satisfied before the claim is transferred, those conditions being satisfied at the same time.

(6) The claim transfers under subsection (1) to the person to whom it is assigned by whichever of the purported assignments of the claim first met the requirement of subsection (2)(b).

(7) This section is subject to section 4 (assignment of claims: insolvency).

(8) The Scottish Ministers may by regulations prescribe types of claim in relation to which sub-paragraph (i) of subsection (2)(b) is to be disregarded.

#### **4 Assignment of claims: insolvency**

(1) This section applies where—

(a) an assignment document is granted in respect of a claim such as is mentioned in section 1(4), and

(b) after the document is granted, the assignor becomes insolvent.

(2) The assignment is ineffective in relation to the claim if the assignor becomes the holder of the claim after becoming insolvent.

(3) But subsection (2) does not apply in relation to a claim in respect of income from property in so far as that claim—

(a) is not attributable to anything agreed to by, or done by, the assignor after the assignor became insolvent, and

(b) relates to the use of property in existence at the time the assignor became insolvent.

(4) Subsection (5) applies where—

(a) but for subsection (3), the assignment would be ineffective by virtue of subsection (2), and

(b) the assignor is discharged—

(i) under section 137, 138 or 140 of the Bankruptcy (Scotland) Act 2016, or

(ii) by virtue of section 184(3) of that Act.

(5) The assignment is ineffective, in relation to the claim, if by the time of discharge the assignor has not become the holder of the claim.

(6) For the purposes of this section—

(a) an assignor 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 assignor’s estate is sequestrated,

(ii) the assignor grants a trust deed for creditors or makes a composition or arrangement with creditors,

(iii) the assignor is adjudged bankrupt,

(iv) a voluntary arrangement proposed by the assignor is approved,

(v) the assignor’s application for a debt payment programme is approved under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002, or

(vi) the assignor 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) an assignor other than is mentioned in paragraph (a) becomes insolvent when—

(i) a decision approving a voluntary arrangement entered into by the assignor has effect under section 4A of the Insolvency Act 1986 (the “1986 Act”),

(ii) the assignor 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 which includes the claim) of the property of the assignor,

(iv) the assignor 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 assignor comes into effect over all or part of the property of the assignor, or

(vi) the assignor 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.

(7) The Scottish Ministers may by regulations modify—

(a) subsection (4),

(b) subsection (5),

(c) subsection (6).

## 5 Assignment in part

(1) A claim may be assigned in whole or in part.

(2) But if the claim is not a monetary claim, the claim may be assigned in part only if the claim is divisible and either—

(a) the debtor consents, or

(b) the assignment is not likely to result in the obligation to which it relates becoming significantly more burdensome for the debtor.

- 5 (3) Except in so far as the debtor agrees otherwise with the assignor, or agreed otherwise with a person who was previously the holder of the claim (when that person was the holder), the assignor is liable to the debtor for any expense incurred by the debtor which is attributable to the claim's being assigned in part rather than in whole.

## 6 Limitations as to assignability: general

- 10 (1) Nothing in this Part affects any other enactment, or any rule of law, by virtue of which the assignment of a claim is of no effect.

- (2) But such an enactment or rule of law does not apply to an assignment if the grounds on which the assignment would be of no effect by virtue of that enactment or rule are grounds which this Part provides do not make the assignment of no effect.

- (3) The assignment, in whole or in part, of a claim is of no effect if and in so far as, before the assignment document in respect of the claim was granted—

15 (a) the debtor and the holder of the claim had agreed that the claim was not to be so assigned, or

(b) the person whose unilateral undertaking gives rise to the claim had stated that the claim was not to be so assigned.

- 20 (4) For the purposes of subsection (3)(a), it does not matter whether the holder of the claim became the holder of the claim after the agreement was made.

- (5) Nothing in subsection (3) affects the operation of any other enactment concerning the effect of an agreement or statement such as is mentioned in that subsection.

## 7 Claim in respect of wages or salary

- 25 (1) It is not competent for an individual to assign a claim in respect of wages or salary payable to the individual.

- (2) For the purposes of subsection (1), “wages” and “salary” include—

(a) any of the following which is referable to the individual's employment (whether or not payable under the individual's contract of employment)—

30 (i) a fee,

(ii) a bonus,

(iii) commission,

(iv) holiday pay, or

(v) any other emolument,

35 (b) any payment in respect of expenses incurred by the individual in carrying out that employment, and

(c) if the individual is dismissed from that employment by reason of redundancy, any payment referable to the redundancy.

- (3) Nothing in subsection (1) affects the operation of any other enactment allowing the assignment of a claim such as is mentioned in that subsection in particular circumstances.

**8 Intimation of the assignation of a claim**

- (1) For the purposes of section 3(2)(b)(i), intimation is effected only—
- (a) by the assignor or the assignee serving notice of the assignation on the debtor, or
  - (b) on the occurrence either—
    - (i) of the debtor acknowledging to the assignee that the claim is assigned, or
    - (ii) of intimation to the debtor, in judicial proceedings to which the debtor is a party, that the assignation is founded on in the proceedings.
- (2) Where there are co-debtors in respect of a claim, intimation as respects any one or more of them is, for the purposes of section 3(2)(b)(i), intimation to them all.
- (3) A notice served under subsection (1)(a)—
- (a) must—
    - (i) set out the name and address of both the assignor and the assignee,
    - (ii) provide details of the claim assigned, and
    - (iii) in the case of a claim assigned in part, provide details of the part assigned,
  - (b) must be in writing and consist of, or be contained within, one or more documents,
  - (c) need not be executed or authenticated, and
  - (d) if the claim is a monetary claim, may (but need not) be in such form (if any) as is prescribed for the purposes of this paragraph.
- (4) Where a notice is served as mentioned in subsection (5)(c), paragraph (a) of subsection (3) may be satisfied by providing an electronic link to a website, or to a portal, in which the information mentioned in that paragraph is set out.
- (5) For the purposes of subsection (1)(a), service of a notice must be by—
- (a) delivering the notice personally to the debtor,
  - (b) sending it—
    - (i) by postal services, or
    - (ii) by any other service which conveys postal packets from one place to another, either to the proper address of the debtor or to an address for postal communication provided to the assignor by the debtor, or
  - (c) transmitting it to an address for electronic communication so provided.
- (6) But a determination (a “determination as to method of service”) may be made in accordance with subsection (7) that, as respects the claim (either or both)—
- (a) only certain paragraphs and sub-paragraphs of subsection (5), as specified in the determination, are to apply for the purposes of section 3(2)(b)(i),
  - (b) subsection (5) is to apply as if for the closing words of paragraph (b) there were substituted a reference to a particular address as specified in the determination.
- (7) A determination as to method of service is made in accordance with this subsection where it is made—
- (a) by written agreement between the debtor and the holder of the claim, or

(b) where a unilateral undertaking gives rise to the claim, by a written statement (whether or not comprised within the undertaking) of the person whose undertaking it was.

5 (8) Where a determination as to method of service specifies an address as mentioned in subsection (6)(b)—

(a) the debtor may notify the holder of the claim of a different address to replace—

(i) the address so specified, or

(ii) an address previously notified under this paragraph, and

10 (b) an address notified under paragraph (a) is, until a further address is so notified, to be treated for the purposes of subsection (6)(b) as if it were specified in the determination.

(9) Where a notice is served—

(a) as mentioned in subsection (5)(b) (including, where relevant, as modified by subsection (6)(b)), and

15 (b) by being sent to an address in the United Kingdom,

it is to be taken to have been received 48 hours after it is sent unless it is shown to have been received earlier.

(10) Where a notice is served as mentioned in subsection (5)(c), it is to be taken to have been received 24 hours after it is transmitted unless it is shown to have been received earlier.

20 (11) In this section—

“holder of the claim” includes a person who becomes the holder of the claim after a determination is made,

25 “postal packet” and “postal services” have the meanings given by section 27(1) and (2) of the Postal Services Act 2011,

“proper address of the debtor” means—

(a) in the case of a body corporate, the address of the registered or principal office of the body,

30 (b) in the case of a partnership, the address of the principal office of the partnership, and

(c) in any other case, the last known address of the debtor.

(12) Any reference in this section to—

35 (a) a notice being served on the debtor is to be construed as including a reference to its being served on a person authorised to receive such a notice on behalf of the debtor,

(b) the proper address of the debtor is, where a notice is served on a person so authorised, to be construed as a reference to the proper address of that person.

## 9 Warrandice implied in the assignment of a claim

40 (1) Subsections (2) to (5) apply except in so far as the assignor and the assignee agree otherwise.

- (2) In granting, for value, an assignment document in respect of a claim, the assignor is taken to warrant to the assignee that—
- (a) the assignor is entitled to, or (in the case of any such claim as is mentioned in section 1(4)) will be entitled to, transfer the claim to the assignee,
  - 5 (b) the debtor is obliged to, or (when performance becomes due) will be obliged to, perform in full to the assignor, and
  - (c) the assignor has done nothing, and will do nothing, to prejudice the assignment.
- (3) In granting, other than for value, an assignment document in respect of a claim, the assignor is taken to warrant to the assignee that the assignor will do nothing to prejudice the assignment.
- 10 (4) In granting an assignment document in respect of a claim (whether or not for value), the assignor is not taken to warrant to the assignee that the debtor will perform to the assignee.
- 15 (5) Subsections (2) to (4) apply in relation to providing, in a contract or unilateral undertaking, for the assignment of a claim as they apply in relation to the granting of an assignment document in respect of a claim.

*Protection of debtors***10 Protection of debtor who performs in good faith**

- (1) Subsection (2) applies where, after a claim is transferred, the debtor, or any co-debtor, performs in good faith to the person last known to the debtor, or that co-debtor, to be the holder of the claim.
- (2) The debtor, or (where there are two or more co-debtors) each of the co-debtors, is discharged from the claim to the extent of the performance.
- (3) For the purpose of subsection (2), it is not to be taken that a debtor, or any co-debtor, has performed other than in good faith by reason only of (any or all of)—
- (a) an assignment document's having been registered,
  - (b) the application of section 8(9),
  - (c) the application of section 8(10).

**11 Further provision as to protection of debtor**

- (1) Subsection (2) applies where—
- (a) the holder of a claim purports to assign the claim (or the same part of the claim) by means of more than one assignment document, each in favour of a different person,
  - (b) the claim (or part) is transferred to one of those persons,
  - 35 (c) the debtor, or any co-debtor, receives notice of the purported assignment to the other (or, as the case may be, another) of those persons (the “purported assignee”),

from the person who granted the purported assignment or from the purported assignee, in the manner mentioned in section 8(1)(a) or (b)(ii), and

(d) by virtue of that notice, the debtor, or any co-debtor, performs in good faith to the purported assignee.

5 (2) The debtor, or (where there are two or more co-debtors) each of the co-debtors, is discharged from the claim (or part) to the extent of the performance.

(3) Section 10(3) applies for the purposes of subsection (2) as it applies for the purposes of section 10(2).

## 12 Performance in good faith where claim assigned cannot be transferred by intimation

10 (1) Subsection (2) applies where—

(a) by virtue only of being of a type prescribed under section 3(8), a claim in respect of which an assignment document is granted is not transferred, and

(b) the debtor, or any co-debtor, performs in good faith to the assignee.

15 (2) The debtor, or (where there are two or more co-debtors) each of the co-debtors, is discharged from the claim to the extent of the performance.

(3) For the purposes of subsection (1)(b), a debtor, or co-debtor, is not to be taken to perform in good faith where that debtor or co-debtor knows—

(a) that the assignment document has not been registered, and

(b) that transfer of the claim requires registration.

## 20 12A Performance in good faith where claim assigned subject to condition

(1) Subsection (2) applies where—

(a) a claim in respect of which an assignment document is granted is subject to a condition which must be satisfied before the claim is transferred,

25 (b) the claim has not yet been transferred by virtue only of the condition not yet being satisfied, and

(c) the debtor, or any co-debtor, performs in good faith to the assignee.

(2) The debtor, or (where there are two or more co-debtors) each of the co-debtors, is discharged from the claim to the extent of the performance.

30 (3) Section 10(3) applies for the purposes of subsection (2) as it applies for the purposes of section 10(2).

## 13 Asserting defence or right of compensation

35 (1) Except in so far as the debtor and the assignor agree otherwise before an assignment document is granted in respect of the claim, the debtor, or any co-debtor, may assert against the assignee any defence which the debtor, or co-debtor, would have had the right to assert against the assignor.

(4) Nothing in subsection (1) affects the operation of any other enactment which restricts or prevents the making of such an agreement.

- (6) For the purposes of any enactment or rule of law concerning compensation, set-off, retention, balancing of accounts or counterclaims, a debtor is not to be treated as receiving notice of the assignment of a claim only because an assignment document is registered in respect of the claim.

5 **14 Right to withhold performance until information as to assignment is provided**

- (1) A debtor on whom a notice of assignment of a claim is served under section 8(1)(a) by an assignee may request from the assignee reasonable evidence of the granting of an assignment document in respect of the claim.

- 10 (2) For the purposes of subsection (1), “reasonable evidence” includes, for example, the written confirmation of an assignor that the assignor granted the document.

- (3) Subsection (1) applies to a purported notice of assignment as it applies to a notice of assignment, and a reference in that subsection to an assignee includes a reference to a purported assignee.

- 15 (4) If evidence is requested under subsection (1), the debtor may withhold performance until—

(a) that evidence is received, or

(b) the debtor receives notification in writing from the purported assignee or the purported assignor that an assignment document has not been granted in respect of the claim.

- 20 (5) A debtor who, other than by virtue of section 8(1), has reasonable grounds to believe that an assignment document has been granted in respect of a claim may state those grounds to the supposed assignor and request that person to provide a written statement as to whether the document has been granted.

- 25 (6) If a written statement provided by virtue of subsection (5) is to the effect that the document has been granted, that statement must include the name and last known address of the assignee.

- (7) If a written statement is requested under subsection (5), the debtor may withhold performance until that statement (conforming, where it is a statement to the effect mentioned in subsection (6), with the requirements of that subsection) is received.

- 30 (8) A debtor who knows that an assignment document has been granted in respect of a claim may request the assignor or the assignee to provide a written statement as to whether (either or both)—

(a) the assignment of the claim is subject to a condition,

(b) any such condition has been satisfied.

- 35 (9) If a written statement is requested under subsection (8), the debtor may withhold performance until that statement is received.

- 40 (10) Where a debtor who makes a request under subsection (1), (5) or (8) is a co-debtor, the reference in subsection (4) or (as the case may be) (7) or (9) to the debtor is to the debtor who made the request and does not include a reference to any co-debtor of that debtor.



*Accessory security rights***15 Accessory security rights**

- (1) Subsections (2) and (3)—
- (a) apply, and apply only, in relation to any claim assigned in whole, but
- 5 (b) are subject to any express provision to the contrary in the assignment document.
- (2) Subject to anything which requires to be done under subsection (3), the assignee acquires, by virtue of the transfer of the claim, any security (in so far as the security is transferable) which relates to, and only to, the claim transferred.
- (3) Where the performance of some act by the assignor is necessary for the security to
- 10 transfer to the assignee, the assignor must—
- (a) perform that act, and
- (b) do so as soon as reasonably practicable after the claim is transferred.
- (4) In this section, “security” means both—
- (a) a right in security, and
- 15 (b) the correlative right in respect of a cautionary obligation.

*Abolition of certain rules of law***16 Abolition of certain rules of law**

- (1) The following rules of law are abolished insofar as they apply to an assignment of a claim to which this Part applies—
- 20 (a) any rule whereby a mandate may operate as an assignment of a claim,
- (b) any rule whereby an assignment is rendered ineffective by an instruction to the debtor by an assignee of a claim that the debtor perform to the assignor,
- (c) any rule whereby an assignee of a claim may sue in the name of an assignor, and
- (d) any rule as to warrandice to be implied—
- 25 (i) in assigning a claim, or
- (ii) in providing, in a contract or unilateral undertaking, for the assignment of a claim.
- (2) But subsection (1)(c) does not affect the application of any enactment, or any rule of law, as respects subrogation.

*Saving***17 Saving as respects International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015**

- (1) This Part is without prejudice to the application, as respects the assignment and acquisition of associated rights, of the International Interests in Aircraft Equipment
- 35 (Cape Town Convention) Regulations 2015 (S.I. 2015/912).

(2) In subsection (1)—

“assignment” has the meaning given by regulation 5, as read with regulation 35, of those regulations, and

“associated rights” has the meaning given by regulation 5 of those regulations.

5

## CHAPTER 2

### REGISTER OF ASSIGNATIONS

#### *Register of Assignations*

#### **18 The Register of Assignations**

(1) There is to be a public register known as the Register of Assignations.

10

(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—

15

(a) interference,

(b) unauthorised access, and

(c) damage.

#### *Structure and contents of the register*

#### **19 The parts of the register**

20

The Keeper must make up and maintain, as parts of the register—

(a) the assignments record, and

(b) the archive record.

#### **20 The assignments record**

(1) An entry in the assignments record is to comprise—

25

(a) the assignor’s name and address,

(b) where the assignor is an individual, the assignor’s date of birth,

(c) any identifying number which the assignor has and which, by virtue of RoA Rules, must be included in the entry,

(d) the assignee’s name and address,

30

(e) any identifying number which the assignee has and which, by virtue of RoA Rules, must be included in the entry,

(f) where the assignee is not an individual, an address (which may be an email address) to which any request for information regarding the assignment may be sent,

- (g) such description of the claim as is required, or permitted, for the purposes of this subsection by RoA Rules,
- (h) a copy of the assignment document,
- (i) the registration number allocated under section 23(1)(b) to the entry,
- (j) the date and time of registration of the assignment document,
- (k) any other information that is required under any other section of this Act, and
- (l) any other information that is specified for the purposes of this subsection by RoA Rules.

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

## **21 The archive record**

The archive record is the totality of—

- (a) all entries and copy documents transferred from the assignments record under section 28(1)(a) or (2)(c),
- (b) all copy documents included in the archive record under section 28(1)(c) or (2)(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 RoA Rules.

### *Registration process*

## **22 Application for registration**

- (1) An assignee may apply to the Keeper for registration of an assignment document.
- (2) The Keeper must deal with applications in the order in which they are received.
- (3) The Keeper must accept the application if—
  - (a) it is submitted with a copy of the assignment document,
  - (b) it contains all the information the Keeper requires in accordance with section 20 to be able to make up an entry for the assignment document under section 23(1),
  - (c) it conforms to such RoA 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.
- (4) If the requirements of subsection (3) are not satisfied, the Keeper must reject the application and inform the applicant accordingly.

## **22A Application for registration where claims assigned to different assignees**

- (1) Where an assignment document assigns different claims to different assignees, each assignee may apply to the Keeper for registration of the document only in so far as it assigns a claim to that assignee (“the applicant”).

- (2) A reference in this Part, in relation to an assignment document in respect of which such an application has been accepted by the Keeper, to—
- (a) the registration of the document is a reference to the registration of the document in so far as it assigns a claim to the applicant,
  - 5 (b) the assignee under the document is a reference to the applicant,
  - (c) a claim assigned by the document is a reference to a claim assigned by the document to the applicant.

### **23 Registration**

- (1) On accepting an application made under section 22, the Keeper must—
- 10 (a) make up an entry for the assignment document (from the assignment 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 assignments record.
- 15 (2) An assignment document is taken to be registered on the date and at the time entered for it for the purpose of section 20(1)(j).

### **24 Verification statement**

- (1) After the registration of an assignment document under section 23, the Keeper must issue a written statement verifying the registration to—
- 20 (a) the assignor, and
  - (b) the assignee,
- but only if and to the extent that the application made under section 22 contains an email address for those persons.
- (2) That statement must—
- 25 (a) include—
    - (i) the date and time of the registration, and
    - (ii) the registration number allocated to the entry made up for the assignment document, and
  - (b) conform to such RoA Rules as relate to the statement.
- 30 (3) Where a statement is issued under subsection (1) and is received by the assignee but not the assignor, the assignor may request a copy of it from the assignee.
- (4) Within 21 days beginning with the day a request is made under subsection (3), the assignee must supply the assignor with the copy requested.

*Effective registration*

**25 Effective registration of assignment document**

- (1) The registration of an assignment document is ineffective if—
- (a) the entry made up for the assignment document in the assignments record—
    - (i) does not include a copy of the assignment document, or
    - (ii) is, at the time of registration, seriously misleading as a result of an inaccuracy or inaccuracies in it, or
  - (b) the assignment document is invalid.
- (2) But subsection (1)(a)(ii) is subject to section 26(1)(c) and (d).
- (3) Where the registration of an assignment document is ineffective by virtue of subsection (1), it becomes effective if and when the entry is corrected.

**26 Seriously misleading inaccuracies in the assignments record**

- (1) In determining for the purpose of section 25(1)(a)(ii) whether an entry in the assignments 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 (5) 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 assignment document but is not replicated elsewhere in the entry,
  - (c) where the entry is seriously misleading in respect of only part of the assigned claim, that is not to be taken to affect the entry in its application to the rest of the claim,
  - (d) where the entry is seriously misleading in respect of a co-assignor or co-assignee but not in respect of both (or all) co-assignors or co-assignees, that is not to be taken to affect the entry in its application to a co-assignor or co-assignee in respect of whom the entry is not seriously misleading.
- (2) This subsection applies where—
- (a) the assignor is a person required by RoA Rules to be identified in the assignments 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 31, it would not disclose the entry.
- (3) This subsection applies where—
- (a) the assignor is not a person required by RoA Rules to be identified in the assignments 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 31, for—
    - (i) the assignor's proper name at the date the application for registration was made, or

(ii) the assignor’s proper name at that date together with the assignor’s month and year of birth,

it would not disclose the entry.

- (4) This subsection applies where the entry inaccurately reflects the assignee’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) there is a requirement, by virtue of section 20(1)(g), for an entry in the assignments record to specify the type of claim assigned, and
  - (b) the entry—
    - (i) describes the claim as being of a type that it is not, or
    - (ii) fails to allocate a type to the claim.
- (6) In the application of this section to co-assignors and co-assignees—
- (a) subsections (2) and (3) apply in relation to a co-assignor as they apply in relation to an assignor,
  - (b) subsection (4) applies in relation to a co-assignee as it applies in relation to an assignee.
- (7) 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 purpose of section 25(1)(a)(ii) and how that is to be determined.
- (8) In this section, the “proper name” of an assignor or assignee means the person’s name in the form determined in accordance with RoA Rules.

### *Corrections*

#### **27 Correction of the assignments record**

- (1) Where a court determines in any proceedings that the assignments 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) Where the Keeper becomes aware of a manifest inaccuracy in the assignments record, other than as a result of a direction under subsection (1)—
- (a) the Keeper must correct the record if what is needed to correct it is manifest,
  - (b) otherwise, the Keeper must note the inaccuracy on the entry in question.
- (3) There is an “inaccuracy” in the assignments record where—
- (a) the information included, by virtue of section 20(1), in an entry in the record is inaccurate or incomplete,
  - (b) an entry in the record—
    - (i) does not include a copy of the assignment document as required by paragraph (h) of that section, or

- (ii) includes such a copy but the document copied is invalid, or
  - (c) an entry has incorrectly been removed from the record.
- (4) A correction of the assignments record may involve—
- (a) the removal of an entry,
  - (b) the removal of information included in an entry,
  - (c) the amendment of, or an addition to, the information, or replacement of a copy document, included in an entry,
  - (d) the restoration of information, or of a copy document, to an entry,
  - (e) the restoration of an entry (whether or not by transferring it from the archive record to the assignments record).
- (5) 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.

## **28 Correction of the assignments record: procedure**

- (1) Where the Keeper corrects the assignments record by removing an entry from the assignments record, the Keeper must—
- (a) transfer the entry to the archive record,
  - (b) note on the transferred entry—
    - (i) the subsection of section 27 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.
- (2) 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.
- (3) Having corrected the record, 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 RoA Rules, and
  - (b) any other person who appears to the Keeper to be affected by it materially.
- (4) A failure to comply with subsection (1)(c), (2)(b) or (3) does not affect the validity of the correction of the record.

### **29 Proceedings involving the accuracy of the assignments 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 assignments record, or
  - (b) what is needed to correct an inaccuracy in the record,
- is put in question.

### **30 Power to make provision about applications for corrections**

- (1) The Scottish Ministers may by regulations modify this Part to make provision for or about applications to the Keeper for the correction of an entry in the assignments record.
- (2) Regulations under subsection (1) may, in particular—
  - (a) make provision about—
    - (i) the persons, or descriptions of persons, who are entitled to make an application,
    - (ii) the circumstances in which an application is to be accepted (which may include consideration of whether there has been payment of a fee), and
    - (iii) the steps to be taken where an application is accepted,
  - (b) modify the Keeper’s duty to act on becoming aware of a manifest inaccuracy in the assignments record to take account of the application process, and
  - (c) allow RoA Rules to make provision about the procedure in relation to applications for corrections.

#### *Searches and extracts*

### **31 Searching the assignments record**

- (1) The Keeper must provide a facility by which the assignments record may be searched.
- (2) That search facility must allow the assignments 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 assignors, which must be capable of being searched with and without the months and years of birth of assignors who are individuals,
    - (ii) the identifying numbers of assignors required by RoA Rules to be identified in the assignments record by such a number,
  - (b) registration numbers allocated, under section 23(1)(b), to entries in that record, or
  - (c) any other factor, or characteristic, specified for the purposes of this paragraph by RoA Rules.
- (3) Subject to any restrictions imposed under RoA Rules, a person may search the assignments 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.

(4A) But no fee is payable for a search of the assignments 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 (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).

### **32 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.

10 (2) In the absence of evidence to the contrary—

(a) where such a search result purports to show an entry in the assignments record, it is sufficient proof of—

(i) the registration of the assignment document to which the result relates,

15 (ii) where applicable, a correction of the entry in the assignments 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 assignments record, it is sufficient proof of an entry in the assignments record not being disclosed at the date and time of such search by means of the search carried out.

20

### **33 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

25 (b) arrangements satisfactory to the Keeper are made for payment of that fee.

(2A) 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.

(3) The Keeper may validate the extract as the Keeper considers appropriate.

30 (4) The Keeper may issue the extract as an electronic document unless the applicant requests that it be issued as a traditional document.

(5) The extract is to be accepted for all purposes as sufficient evidence of the contents of the entry as at—

35 (a) in the case of an extract requested as mentioned in subsection (2A), 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*

**34 Assignee's duty to respond to request for information**

- 5 (1) An entitled person may ask the person identified in an entry in the assignments record as the assignee (the “registered assignee”) to provide the entitled person with a written statement as to whether—
- (a) a claim specified by the entitled person is assigned by the assignment document,
- (aa) the registered assignee has granted a further assignment document in respect of the claim, or
- 10 (b) a condition specified by the entitled person and to which the assignment is subject has been satisfied.
- (2) The following are entitled persons for the purposes of this section—
- (a) in relation to a request under subsection (1), a person who (depending on who holds the claim) may have a right to execute diligence against the claim, or
- 15 (b) a person not mentioned in paragraph (a) but who has the consent of the person identified in the entry as the assignor to make a request under subsection (1).
- (3) For the purposes of subsection (2)(a), a person who may have a right to execute diligence against the claim includes a person authorised to execute a charge for payment who (depending on who holds the claim) may have a right to execute diligence against the claim if and when the days of charge expire without payment.
- 20 (4) The registered assignee 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 assignment of the claim to which the request relates,
- (b) in the case of a request made under subsection (1)(a), it is manifest from the entry for the assignment that the claim specified is not assigned by the assignment document,
- 25 (c) both—
- (i) the registered assignee has, within the period of 3 months ending with the day of receipt of the request, complied with a request under the same paragraph of subsection (1) from the same person and in relation to the same claim, and
- 30 (ii) the information contained in the statement issued in relation to the earlier request remains correct.
- (5) The registered assignee may recover from the entitled person any costs reasonably incurred in complying with the request.
- 35 (6) On the application of the registered assignee, the court may by order—
- (a) exempt the registered assignee 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 assignee must comply with the request by such number of days as it specifies in the order,
- 40 if satisfied that in all the circumstances it would be reasonable to do so.

- 5
- (7) If, on the application of the entitled person, the court is satisfied that the registered assignee has, without reasonable excuse, failed to comply with subsection (4), it may by order require the registered assignee 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.
- (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.

*Entitlement to compensation*

10 **35 Liability of Keeper**

- 15
- (1) A person is entitled to be compensated by the Keeper for loss suffered in consequence of—
- (a) an inaccuracy in the assignations 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 24(1), of a written statement which is incorrect,
- (c) the service, under section 28(3), of a notification which is incorrect,
- (ca) a search result which—
- 20
- (i) relates to a search of the assignations 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 assignations record at the time the search was made, and
- (iii) does not accurately reflect those contents,
- (d) the issue, under section 33, of an extract which is not a true extract,
- 25
- (e) an application being accepted or rejected in error,
- (f) 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
- (g) applications being dealt with otherwise than in the order in which they are received.
- 30
- (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.
- 35
- (3) For the avoidance of doubt, an inaccuracy in information included in an entry in the assignations record when that entry is made up under section 23(1)(a) or corrected under section 27 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.

5     **36     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 assignments record then, to the extent that it is not attributable to the Keeper, P is entitled to be compensated for that loss by—
    - 10           (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 34(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
  - 20           (c) where P suffers loss in consequence of a failure, without reasonable excuse, to comply with a request in accordance with section 34(4), 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)—
- 25           (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*

30     **37     Rules**

- (1) The Scottish Ministers may by regulations make rules (“RoA Rules”)—
- 35           (a) about the making up and keeping of the register,
  - (b) about the procedure in relation to applications for registration under section 22(1),
  - (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 assignments 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) RoA Rules under subsection (1) may, in particular, include provision—

(a) about the identification, in any application and in the register, of any person or claim, including—

(i) how the proper form of a person’s name is to be determined, and

(ii) where the person has an identifying number (whether of numerals or of letters and numerals) allocated to the person, whether that number must be used in identifying the person,

(b) about the nature of the address of the assignor or the assignee 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 an assignment document, need not be included in a copy of that document submitted with an application under section 22(1),

(e) about whether a signature contained in an assignment 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 33,

(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.

### CHAPTER 3

#### MISCELLANEOUS AND INTERPRETATION OF PART 1

##### *Miscellaneous*

#### **38A Repeal of Transmission of Moveable Property (Scotland) Act 1862**

The Transmission of Moveable Property (Scotland) Act 1862 is repealed.

##### *Interpretation of Part 1*

#### **39 Interpretation of Part 1**

(1) In this Part (except where the context requires otherwise)—

“the archive record” is to be construed in accordance with section 21,

“assignment” means assignment of a claim,

“assignment document” has the meaning given by section 1(1),

“the assignments record” is to be construed in accordance with section 20(2),

“assignee” means the person to whom a claim is assigned,

5 “assignor” means the person by whom a claim is assigned,

“claim”—

(a) means a right to the performance of an obligation (including an obligation not to do something), but

10 (b) does not include a non-monetary right relating to land or a negotiable instrument,

“correction”, in relation to the assignments record, is to be construed in accordance with section 27(4),

“debtor” means the person against whom a claim may be enforced,

15 “holder”, in relation to a claim, means the person who has the right to performance of an obligation under the claim,

“inaccuracy”, in relation to the assignments record, is to be construed in accordance with section 27(3),

“the register” means the Register of Assignations,

“right in security”—

20 (a) means a right in security over property (including a floating charge), but

(b) does not include a right to execute diligence,

“RoA Rules” has the meaning given by section 37(1).

(2) Where two or more persons are co-assignors or co-assignees in relation to a claim, any reference in this Act to the assignor or assignee (as the case may be) is, unless the context requires otherwise, a reference to all of those persons.

25

(3) A reference (however expressed) in this Part to—

(a) an assignment document having been granted in respect of a claim is to be construed as a reference to the document having been executed or authenticated,

30

(b) an assignment document being registered is to be construed as a reference to the Keeper’s carrying out, in respect of the document, the duties imposed on the Keeper by section 23(1)(a) and (b).

**PART 2**

SECURITY OVER MOVEABLE PROPERTY

**CHAPTER 1**

PLEDGE

5 *Pledge, secured obligation and encumbered property*

**40 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—
- 10 (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 45 or 46.
- 15 (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 45 or 46.
- (4) A pledge created by registration in accordance with section 45 or 46 is to be known as a "statutory pledge".
- 20 (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.

25 **41 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
- 30 (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).
- 35

*Possessory pledge*

**42 Delivery**

- (1) For the purposes of section 40(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 40(2)(a) or, as the case may be, (b).
- (3) In this section, “relevant person” means—
- (a) the secured creditor, or
  - (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.

*Statutory pledge*

**43 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.
- (4) 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.
- (5) 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.
- (6) For the purposes of subsections (2) and (4), 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.

**43A Competence of individual acting as provider of a statutory pledge**

- 5 (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—
- 10 (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.
- (2) For the purpose of subsection (1)(b), an asset is a “permitted asset” if—
- (a) it is (as the case may be)—
- 15 (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.
- 20 (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.
- 25 (4) For the purposes of this section—
- (a) “charity” means—
- 30 (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,
- 35 (b) a trustee of a charity is one of the persons having the general control and management of the administration of the charity.

#### **44 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,
  - 5 (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.
- 10 (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.
- 15 (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.

#### **45 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 43 on the requirements mentioned in subsection (2) all being met.
- 20 (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.
- 25 (3) Subsection (2)(b) is subject to section 89 (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 89(1), and
  - (b) is met if and when that registration becomes effective in accordance with section 89(3).
- 30 (4) This section is subject to section 47 (creation of statutory pledge: insolvency).

#### **46 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 56, a statutory pledge is created over the added property on the requirements mentioned in subsection (2) all being met.
- 35 (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 90 (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 90(1), and

(b) is met if and when that registration becomes effective in accordance with section 90(3).

(4) This section is subject to section 47 (creation of statutory pledge: insolvency).

#### **47 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
- (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).

*Property encumbered by statutory pledge: effect of transfer by provider*

**49 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—
  - (a) the consent mentioned in subsection (2) is obtained,
  - (b) the third party acquires the property unencumbered under any of sections 51 to 53, or
  - (c) the pledge is otherwise extinguished by the transfer, in whole or in relation to the transferred property, under section 50, 91 or 106.
- (2) The consent referred to in subsection (1)(a)—
  - (a) is the prior written consent of the secured creditor—
    - (i) to the particular transfer, and
    - (ii) to the property in question being transferred unencumbered by the pledge, and
  - (b) 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—
  - (a) modify subsection (2) (including by specifying further descriptions of consent by reference to which subsection (1) is to apply),
  - (b) modify this section so as to specify further matters relevant to the granting or withholding of consent.

**50 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 granting the consent mentioned in section 49(2), the statutory pledge under which the property (or part) was encumbered is extinguished.

**51 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 49(2) not having been obtained, if—
- 5       (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.

**52 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 49(2) not having been obtained, if—
- 15       (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.
- 20       (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).

**53 Acquisition in good faith of motor vehicles**

- 25       (1) Subsections (2) to (4) apply where—
- (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,
- 30       (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 49(2) not having been obtained.
- 35       (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 51 and 52 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).

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

**54 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.
- (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 41(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 111(1) of the Moveable Transactions (Scotland) Act 2023, and
- “secured obligation” is to be construed in accordance with section 41(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 111(1) of the Moveable Transactions (Scotland) Act 2023, and

“secured obligation” is to be construed in accordance with section 41(1) of the Moveable Transactions (Scotland) Act 2023.”.

- 5 (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—
- 10 (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—
- 15 “(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.”.
- 20 (9) The title of section 8 of the 1981 Act and section 108 of the 2004 Act becomes “**Interests of creditors**”.

*Assignment, amendment, restriction or extinction of statutory pledge*

**55 Assignment of statutory pledge**

- 25 (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.
- 30 (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).

**56 Amendment of statutory pledge**

- 35 (1) Subject to section 57(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.
- 40 (3) An amendment document which relates to the addition of property to the encumbered property must identify the property to be added.

(4A) 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.

(4B) 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.

(5A) 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 90), 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).

(5B) For the purposes of subsection (5A), an amendment increases the extent of the statutory pledge where—

- (a) the amendment adds property to the encumbered property, or
- (b) both—
  - (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.

(7) For the purposes of subsections (3) and (4A), 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.

## **57 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.

### *Ranking of pledges etc.*

## **58 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 89 and 90), the earlier having priority over the later.
- 5 (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.
- 10 (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
- (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.
- 15 (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.

## **59 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”—

- 20 (a) the words from “a heritable security” to “1970” become paragraph (a) of the definition, and
- (b) after that paragraph insert “; or
- 25 (b) a statutory pledge within the meaning given by section 111(1) of the Moveable Transactions (Scotland) Act 2023;”.

## **60 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.
- 30 (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—
- 35 (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.

*Enforcement of pledge*

**61 The expression “pledge” in sections 62 to 75**

In sections 62 to 75, 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).

**62 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 53(3), 63 and 64.

**63 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.

#### **64 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 65(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 62(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.

**65 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 64, 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.

(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.

**66 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 64, entitled to sell all or any of that property.
- 5 (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
- 10 (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 75.

**67 Sale: unencumbered acquisition**

- 15 (1) This section applies where a secured creditor sells property by virtue of section 66(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.
- 20 (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.

25 **68 Secured creditor’s right to let**

- (1) A secured creditor who, by virtue of section 66(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.
- 30 (3) Any rental income obtained by virtue of subsection (1) is to be held in trust by the secured creditor until applied under section 75.
- (4) The provider and the secured creditor may agree, whether before or after the pledge becomes enforceable by virtue of section 62(2), that subsection (1) is not to apply in relation to the corporeal property or some part of it.
- 35 (5) Any such agreement must be in writing.

**69 Secured creditor’s right to grant licence over intellectual property**

- (1) A secured creditor who, by virtue of section 66(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.
- 5 (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 75.
- 10 (4) The provider and the secured creditor may agree, whether before or after the pledge becomes enforceable by virtue of section 62(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.

**70 Secured creditor’s right to protect and manage the property**

- 15 (1) A secured creditor who, by virtue of section 66(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—
- 20 (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 62(2)) may be taken by the secured
- 25 creditor.
- (3) Subsection (1) is without prejudice to section 65(2)(b).

**71 Secured creditor’s right to appropriate**

- 30 (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 72 or (as the case may be) 73 in satisfaction, in whole or in part, of the secured obligation.
- (2) But it is not competent to appropriate by virtue of subsection (1)—
- (b) corporeal property, unless that property is in the possession of the secured creditor, or
  - (c) property with a value which exceeds the total of—
- 35 (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 75.

## **72 Appropriation with prior agreement**

- 5 (1) A provider and a secured creditor may, before a pledge becomes enforceable by virtue of section 62(2), agree that the secured creditor is entitled to appropriate by virtue of section 71(1)—
- (a) the encumbered property, or
  - (b) any part of that property.
- 10 (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.
- 15 (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,
  - 20 (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  
25 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.
- 30 (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—
- 35 (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
  - 5 (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—
    - 10 (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,
  - 15 (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).

### **73 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 72(1).
- 20 (2) Property may only be appropriated by virtue of section 71(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 71(1), the secured creditor must serve a notice on—
- 25 (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—
- 30 (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.
- 35 (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).

#### **74 Appropriation: unencumbered acquisition**

Where a secured creditor appropriates property by virtue of section 71(1), the secured creditor acquires the property unencumbered by any right in security or any diligence.

#### **75 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 65(2) or 70), 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,
- 5 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—
- 10
- (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)—
- 15
- (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—
- 20
- (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.
- 25
- (9) In a case where—
- (a) all or any of the property is let by the secured creditor by virtue of section 68(1), or
  - (b) the secured creditor grants a licence over all or any of it by virtue of section 69(1),
- 30 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).

**76 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 94(1) for removal of the entry for the statutory pledge from the statutory pledges record.

*Liability for loss due to enforcement*

**77 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 62 to 76.
- (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.

*Service of documents for purposes of this Chapter*

**78 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.

## CHAPTER 2

### REGISTER OF STATUTORY PLEDGES

#### *Register of Statutory Pledges*

#### **79 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.
- 10 (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,
- 15 (b) unauthorised access, and
- (c) damage.

#### *Structure and contents of the register*

#### **80 The parts of the register**

The Keeper must make up and maintain, as parts of the register—

- 20 (a) the statutory pledges record, and
- (b) the archive record.

#### **81 The statutory pledges record**

- (1) An entry in the statutory pledges record is to comprise—
- 25 (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,
- 30 (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,
- 35 (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 85(1)(b) to the entry,
- (j) where the statutory pledge has been amended in pursuance of section 56(5), a copy of the amendment document,
- 5 (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
- 10 (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.

## **82 The archive record**

The archive record is the totality of—

- 15 (a) all entries and copy documents transferred from the statutory pledges record under section 100(2)(a) or (3)(c) or by virtue of section 93(1)(a),
- (b) all copy documents included in the archive record under section 100(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
- 20 (d) any other information that is specified for the purposes of this section by RSP Rules.

### *Registration process*

## **83 Order in which applications are to be dealt with**

The Keeper must deal with—

- 25 (a) applications for registration of a statutory pledge under section 84, and
- (b) applications for registration of an amendment to a statutory pledge under section 86,

in the order in which they are received.

## **84 Application for registration of statutory pledge**

- 30 (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 81 to be able to make up an entry for the statutory pledge under section 85(1),
  - 35 (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.

### **85 Registration of statutory pledge**

(1) On accepting an application made under section 84, 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 81(1)(k)(i).

### **86 Application for registration of amendment**

(1A) 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 56(5B).

(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 81 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.

### **87 Registration of amendment**

(1) On accepting an application made under section 86, 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 81(1)(k)(ii).

**88 Verification statement as to registration of statutory pledge or amendment**

(1) After the registration of a statutory pledge under section 85 or an amendment to a statutory pledge under section 87, the Keeper must issue a written statement verifying the registration to—

- 5 (a) the secured creditor, and  
(b) the provider,

but only if and to the extent that the application made under section 84 or (as the case may be) section 86 contains an email address for those persons.

(2) That statement must—

- 10 (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.

15 (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*

20 **89 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  
25 (b) the constitutive document is invalid.

(2) But subsection (1)(a)(ii) is subject to section 92(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.

30 **90 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  
35 inaccuracy or inaccuracies in it, or  
(b) the amendment document is invalid.

- (2) But subsection (1)(a)(ii) is subject to section 92(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.

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

- 5 (1) Subsection (2) 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
  - 10 (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.
- (1A) 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.
- 15 (1B) 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.
- 20 (1C) 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 102, it would not disclose the
  - 25 entry.
- (2) On the acquisition, the statutory pledge is extinguished in relation to the acquired property.
- (3) 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
- 30 to carry out a search of the statutory pledges record in respect of the acquisition.

## **92 Seriously misleading inaccuracies in the statutory pledges record**

- (1) In determining for the purposes of sections 89(1)(a)(ii), 90(1)(a)(ii) and 91(1B) whether an entry in the statutory pledges record is seriously misleading as a result of an inaccuracy or inaccuracies in it—
  - 35 (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 102, 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 102, 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 89(1)(a)(ii) and 90(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 102, it would not disclose the entry.
- (6) This subsection applies where—
- (a) there is a requirement, by virtue of section 81(1)(g), for an entry in the statutory pledges record to specify the type of property encumbered, and
- (b) the entry—
- (ia) does not describe the property as being of a type that it is, or
- (ii) fails to allocate a type to the property.

- (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 89(1)(a)(ii), 90(1)(a)(ii) and 91(1B) 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*

### **93 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*

### **94 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

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

**95 Correction of record in response to application under section 94**

- 5 (1) On accepting an application made under section 94, 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,10 but only if and to the extent that the application contains an email address for those persons.
- (3) That statement must—
  - (a) include—
    - 15 (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.
- 20 (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.

**96 Demand that application for correction be made under section 94**

- 25 (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 94 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
  - 30 (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.
- 35 (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 (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.

10 **97 Response to application for correction under section 96(6)**

- (1) The Keeper must accept an application made under section 96(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
    - 15 (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 96(6), the Keeper must—
- 20 (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
    - 25 (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.
- 30 (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.
- 35 (4A) 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.

(5) 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 96(6), or

(b) if satisfied that the correction is justified in whole or in part, direct that the record be corrected accordingly.

(6) But the court is not to make a direction under subsection (5) 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.

(7) 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.

(8) In this section, “registered creditor” has the same meaning as in section 96.

## **98 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 94(1) or 96(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.

## **99 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.

#### **100 Correction of the statutory pledges record: procedure**

- (1) This section applies where the Keeper corrects the statutory pledges record by virtue of section 95(1), 97(5)(b) or (7) or 98(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 95(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.

### **101 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*

### **102 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 85(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.
- (4A) 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).

**103 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—
- 5 (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,
- 10 (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.
- 15

**104 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
- 20 (b) arrangements satisfactory to the Keeper are made for payment of that fee.
- (2A) 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.
- (3) The Keeper may validate the extract as the Keeper considers appropriate.
- 25 (4) The Keeper may issue the extract as an electronic document unless the applicant requests that it be issued as a traditional document.
- (5) The extract is to be accepted for all purposes as sufficient evidence of the contents of the entry as at—
- 30 (a) in the case of an extract requested as mentioned in subsection (2A), 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*

**105 Secured creditor’s duty to respond to request for information**

- 5 (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,
- 10 (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
- 15 (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,
- 20 (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).
- 25 (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,
- 30 (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
- (d) 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
- 35 (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.

#### **106 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 105—
- (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).

#### *Entitlement to compensation*

#### **107 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 88(1) or 95(2), of a written statement which is incorrect,
  - (c) the service, under section 100(4), of a notification which is incorrect,

(ca) 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,

(d) the issue, under section 104, of an extract which is not a true extract,

(e) an application being accepted or rejected in error,

(f) 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

(g) 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 85(1)(a), revised under section 87(1) or corrected by virtue of section 95(1), 97(5)(b) or (7) or 98(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.

## **108 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 105(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 105(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*

#### **109 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 84(1) or 86(1), or

(ii) applications for corrections under section 94(1) or 96(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 84(1) or 86(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 104,
- (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.

### CHAPTER 3

#### MISCELLANEOUS AND INTERPRETATION OF PART 2

##### *Miscellaneous*

#### **110 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).

##### *Interpretation of Part 2*

#### **111 Interpretation of Part 2**

- (1) In this Part (except where the context requires otherwise)—

“amendment document” has the meaning given by section 56(1),

“the archive record” is to be construed in accordance with section 82,

“corporeal moveable property” does not include money,

“correction”, in relation to the statutory pledges record, is to be construed in accordance with section 99(2),

“encumbered property” has the meaning given by section 41(2),

“inaccuracy”, in relation to the statutory pledges record, is to be construed in accordance with section 99(1),

“money” has the meaning given by section 175(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007,

“pledge”, in sections 62 to 75, is to be construed in accordance with section 61,

“pledge enforcement notice” has the meaning given by section 63(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 109(1),

“secured creditor”—

- (a) means the person in whose favour a pledge is granted, and
- (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 41(1),

“statutory pledge” has the meaning given by section 40(4), and

“the statutory pledges record” is to be construed in accordance with section 81(2).

(1A) 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.

(2) 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 85(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 87(1).

### PART 3

#### MISCELLANEOUS AND GENERAL

##### *Computer system*

#### **112 Automated computer system**

- (1) The Keeper may, by means of an automated computer system under the Keeper’s management and control, carry out the duties imposed on the Keeper under Chapter 2 of Part 1 and Chapter 2 of Part 2.
- (2) The power under subsection (1) includes, for example, the power to enable—
  - (a) the electronic generation and communication of applications under this Act,

- (b) automated registration under this Act, and
  - (c) the creation of electronic documents.
- (3) The Keeper may impose reasonable conditions for using any computer system provided for the purposes of subsection (1).

5 *Registration of electronic documents*

**112A Competence of registration of electronic documents**

Section 9G(1)(d) of the Requirements of Writing (Scotland) Act 1995 (registration and recording of electronic documents) does not apply in relation to the registration of a document by the Keeper under this Act.

10 *Good faith*

**113 Good faith**

- 15
- (1) This section applies in relation to any provision made in this Act as respects good faith.
  - (2) If there is a dispute as to whether a person was in (or acted in) good faith, the burden of proof lies on whoever asserts that the person was not in (or did not act in) good faith.

*Review of the Act*

**113B Review of Act**

- 20
- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of the review period—
    - (a) undertake a review of the operation of this Act, and
    - (b) prepare a report on that review.
  - (2) The report must, in particular, set out—
    - (a) an assessment of—
      - 25 (i) the impact of allowing the debtor to waive the right to assert defences as provided for in section 13(1), and
      - (ii) how well the provisions regarding statutory pledges are working in relation to sole traders and small businesses, and
    - (b) the steps (if any) that the Scottish Ministers propose to take as a result of the findings of the review.
  - 30 (3) The Scottish Ministers must, as soon as reasonably practicable after preparing the report—
    - (a) publish the report, and
    - (b) lay the report before the Scottish Parliament.
  - 35 (4) For the purposes of this section, “the review period” is the period of 5 years beginning with the day on which sections 1 and 40 come into force or, if they come into force on different days, the earlier of those days.

*General***114 Regulations**

- (1) Any power of the Scottish Ministers to make regulations under this Act includes the power to make—
- 5 (a) incidental, supplementary, consequential, transitional, transitory or saving provision,  
(b) different provision for different purposes.
- (2) Regulations under any of the following sections are subject to the affirmative procedure: section 3(8), 4(7), 26(7), 30(1), 34(8), 43A(3), 44(3), 47(4), 49(4), 52(3), 53(8), 63(4), 65(8), 72(9)(a), 73(7)(a), 75(10), 92(8), 93(1), 105(8) or 116(1B).
- 10 (3) Regulations under section 72(9)(b), 73(7)(b) or 115 which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.
- (4) Any other regulations under this Act are subject to the negative procedure.
- (5) This section does not apply to regulations under section 117.

**115 Ancillary provision**

- 15 (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.
- (2) Regulations under this section may modify any enactment (including this Act).

**116 Interpretation of Act**

- 20 (1) In this Act (except where the context requires otherwise)—
- “court” means Court of Session or sheriff,  
“electronic document” has the meaning given by section 9A of the Requirements of Writing (Scotland) Act 1995,  
25 “electronic signature” has the meaning given by section 12(1) of the Requirements of Writing (Scotland) Act 1995,  
“the Keeper” means the Keeper of the Registers of Scotland,  
“prescribed” means prescribed by regulations made by the Scottish Ministers,  
“registration number” means a unique identifier consisting of numerals or of letters  
30 and numerals, and  
“traditional document” has the meaning given by section 1A of the Requirements of Writing (Scotland) Act 1995.
- (1A) In this Act, a reference (however expressed) to—
- 35 (a) the authentication of a document by a person is a reference to the electronic signature of that person—
- (i) being incorporated into, or logically associated with, the electronic document, and  
(ii) having been created by that person,



(b) the execution of a document is a reference to the document's being subscribed as a traditional document in compliance with section 2(1) of the Requirements of Writing (Scotland) Act 1995.

5 (1B) The Scottish Ministers may by regulations modify (either or both) paragraph (a) or paragraph (b) of subsection (1A).

(2) Where, under or by virtue of a provision of this Act, however expressed, a person ("P") is required or permitted to proceed in some way, the provision is to be construed as if any reference in it to P includes a reference to any person authorised by P to proceed in such a way on P's behalf.

10 **117 Commencement**

(1) This section and sections 114, 115 and 118 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

15 (3) Regulations under this section may—

(a) include transitional, transitory or saving provision,

(b) make different provision for different purposes.

**118 Short title**

The short title of this Act is the Moveable Transactions (Scotland) Act 2023.

# **Moveable Transactions (Scotland) Bill**

[AS PASSED]

An Act of the Scottish Parliament to make provision in relation to the assignation of claims; to establish a register for assignation documents in respect of such claims; to make provision in relation to the granting of security in the form of a pledge over corporeal and incorporeal moveable property; to establish a register of statutory pledges; and to end the creation of agricultural charges.

Introduced by: Keith Brown  
Supported by: Tom Arthur  
On: 25 May 2022  
Bill type: Government Bill

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