
Moveable Transactions (Scotland) Bill

[CONSULTATION DRAFT]

An Act of the Scottish Parliament to make new provision as regards the assignment of claims; to establish a register of such assignments; to make new provision as regards the granting of security over corporeal and incorporeal moveable property; to establish a register of statutory pledges; to end the creation of agricultural charges; and for connected purposes.

PART 1

ASSIGNATION

CHAPTER 1

ASSIGNATION OF CLAIMS, PROTECTION OF DEBTORS AND RELATED MATTERS

Assignment of claims

1 Assignment of claims: general

- (1) The assignment of a claim requires that a document assigning it (in this Act referred to as an “assignment document”) be executed or authenticated by the person by whom it is assigned.
- (2) In this Part the person—
 - (a) by whom a claim is assigned, is referred to as the “assignor”,
 - (b) to whom a claim is assigned, is referred to as the “assignee”, and
 - (c) against whom a claim may be enforced, is referred to as the “debtor”.
- (3) The assignment document must describe the claim.
- (4) An assignment document which assigns a number of claims need not describe each claim individually provided that the document describes the claims in terms of their constituting an identifiable class.
- (5) It is competent to assign a claim which, as at the time the assignment document is granted, is not held by the assignor (whether or not the claim yet exists at that time).
- (6) Subsection (1) is subject to section 4(2)(a).

2 Assignment of claim subject to a condition

- (1) An assignment of a claim may be subject to a condition which must be satisfied before the claim is transferred.
- (2) Subject to section 4(2)(a), any such condition must be specified in the assignment document.
- (3) Without prejudice to the generality of subsection (2), such specification may include making reference to another document the terms of which are not reproduced in the assignment document.

- (4) Without prejudice to the generality of subsection (1), the condition referred to in that subsection may be one which depends—
 - (a) on something happening (whether it is certain or not that the thing will happen), or
 - (b) on a period of time elapsing during which something must not happen (whether it is certain or not that the thing will happen at some time).

3 Transfer of claims

- (1) A claim is transferred—
 - (a) when—
 - (i) intimation of the assignation is effected under section 9(1), or
 - (ii) the assignation is registered,if, at the time of such intimation or registration, the claim is identifiable as a claim to which the assignation document relates, or
 - (b) when the claim becomes identifiable as a claim to which the assignation document relates if, at the time of such intimation or registration, the claim is not yet so identifiable.
- (2) In the case of a claim the assignation of which is subject to a condition such as is mentioned in section 2(1), the claim is not transferred unless and until the condition has been satisfied.
- (3) In the case of a claim such as is mentioned in section 1(5), transfer of the claim requires that the assignor has become holder of the claim.
- (4) Any rule of law as to accretion is to be disregarded in determining any matter which relates to the transfer of a claim such as is mentioned in section 1(5).
- (5) Subsection (1) is subject to subsection (6) and to section 4(2)(a); and subsection (1)(a)(ii) is subject to section 26.
- (6) Types of claim may be prescribed in relation to which both—
 - (a) sub-paragraph (i) of subsection (1)(a), and
 - (b) the references to “intimation” in the provisions of subsection (1) which follow that sub-paragraph,are to be disregarded.

4 Security financial collateral arrangements and title transfer financial collateral arrangements

- (1) Subsection (2) applies if the assignation document evidences a security financial collateral arrangement or a title transfer financial collateral arrangement.
- (2) The claim constituted by the relevant financial obligations owed to the collateral-taker is transferred either—
 - (a) on the financial collateral in question coming into the possession, or under the control, of the collateral-taker or of a person authorised to act on the collateral-taker’s behalf (in which case the requirements of section 1(1) as to execution or authentication and as the case may be of section 2(2) as to specification do not apply), or

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- (b) as mentioned in section 3(1)(a) or (b).
 - (3) In subsections (1) and (2)—
 - (a) “financial collateral”, “relevant financial obligations”, “security financial collateral arrangement” and “title transfer financial collateral arrangement” have the meanings given to those expressions by paragraph (1) of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226),
 - (b) “collateral-taker” has the same meaning as in paragraphs (1) to (2) of that regulation,
 - (c) “under the control of” has the same meaning as in paragraph (1) of that regulation, and
 - (d) “possession” is to be construed in accordance with paragraph (2) of that regulation.
 - (4) Without prejudice to the generality of subsection (1), for the purposes of that subsection the assignment document may, in the case of a claim transferred as mentioned in subsection (2)(a), be created—
 - (a) as writing transcribed by electronic or other means in a durable medium, or
 - (b) as sounds recorded in such a medium.

5 Assignment of claims: insolvency

- (1) Subsection (2) applies where the assignor of a claim becomes the holder of the claim on or after—
 - (a) the date of sequestration, in a case where sequestration of the assignor’s estate is awarded under section 22 of the Bankruptcy (Scotland) Act 2016,
 - (b) the date on which the deed was granted, in a case where a voluntary trust deed granted by the assignor over all or part of the assignor’s estate has protected status (“protected status” being construed in accordance with section 163 of that Act),
 - (c) the date of commencement of the winding up, in a case where the winding up of the assignor is commenced under Part 4 or 5 of the Insolvency Act 1986 or under section 367 of the Financial Services and Markets Act 2000,
 - (d) the date on which the appointment of the receiver takes effect, in a case where a receiver is appointed under section 51(1) or (2) of that Act of 1986 over all or part of the assignor’s property, or
 - (e) the date on which the appointment of the administrator takes effect, in a case where the assignor enters administration (“enters administration” being construed in accordance with paragraph 1(1) and (2) of schedule B1 of that Act of 1986).
- (2) The assignment is ineffective, as regards the claim to which it relates, in so far as that claim is in respect of—
 - (a) money paid,
 - (b) property or services supplied, or
 - (c) work done,by the assignor on or after the date mentioned in paragraph (a) of subsection (1) or, as the case may be, on or after the date mentioned in paragraph (b), (c), (d) or (e) of that subsection.

- (3) Subsection (4) applies where a person who has assigned a claim such as is mentioned in section 1(5) is discharged—
 - (a) under section 137, 138 or 140 of the Bankruptcy (Scotland) Act 2016, or
 - (b) by virtue of section 184(3) of that Act.
- (4) The assignation is ineffective, as regards the claim to which it relates, if by the time of discharge the assignor of the claim has not become the holder of the claim.
- (5) The Scottish Ministers may by regulations—
 - (a) amend—
 - (i) any paragraph of subsection (1) (including any paragraph added to that subsection by virtue of sub-paragraph (ii)), or
 - (ii) subsection (1) by adding to it paragraphs which specify further dates by reference to which subsection (2) is to apply, or
 - (b) amend subsections (3) and (4) by specifying further circumstances by reference to which an assignation is to be ineffective as regards a claim.

6 Assignment in part

- (1) A claim may be assigned in whole or in part.
- (2) But subsection (1) is subject to section 7(2).
- (3) And if the claim is not a monetary claim, the claim is only assignable in part where either—
 - (a) the debtor consents, or
 - (b) the claim—
 - (i) is divisible, and
 - (ii) assigning it in part does not result in the obligation to which it relates becoming significantly more burdensome for the debtor.
- (4) Except in so far as the debtor and the assignor otherwise agree, 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.

7 Limitations as to assignability

- (1) Section 1 is subject to any other enactment, or any rule of law, by virtue of which the assignation of a claim is of no effect.
- (2) The assignation of a claim is of no effect if and in so far as—
 - (a) the debtor and the holder of the claim had agreed, or
 - (b) the person whose unilateral undertaking gives rise to the claim had stated, that the claim was not to be assigned.
- (3) In subsection (2)(a), “holder of the claim” includes, without prejudice to the generality of that expression, a person who did not become holder of the claim until after the agreement had been made.
- (4) Subsection (2) is subject to any other enactment.

8 Claim in respect of wages or salary

- (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” are, without prejudice to the generality of those expressions, to be taken to include any—
 - (a) fee,
 - (b) bonus,
 - (c) commission,
 - (d) holiday pay, or
 - (e) other emolument,referable to the individual’s employment (whether payable under the individual’s contract of employment or otherwise).
- (3) Subsection (1) is without prejudice to any other enactment.

9 Intimation of the assignation of a claim

- (1) For the purposes of section 3(1)(a)(i), intimation may be effected (and may only be effected)—
 - (a) by there being served on the debtor, by the assignor or the assignee, notice of the assignation,
 - (b) by the debtor’s acknowledging to the assignee that the claim is assigned, or
 - (c) by it being intimated to the debtor, in judicial proceedings to which the debtor is a party, that the assignation is founded on in the proceedings.
- (2) Where in respect of any claim there are co-debtors, intimation so effected to any one or more of them is, for the purposes of section 3(1)(a)(i), intimation to them all.
- (3) A notice served under subsection (1)(a)—
 - (a) must—
 - (i) set out the name and address both of the assignor and of the assignee, and
 - (ii) provide details of the claim assigned (or, in the case of a claim assigned in part, both of the claim and of the part assigned),
 - (b) need not be executed or authenticated,
 - (c) if the claim is a monetary claim, may (but need not) be in a form prescribed for the purposes of this paragraph, and
 - (d) must consist of, or be contained within, a document (but that document need not be a single document).
- (4) 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.
- (5) In subsection (4)(b), “postal packet” and “postal services” have the meanings assigned to those expressions by section 27(1) and (2) of the Postal Services Act 2011.
- (6) For the purposes of subsection (4)(b), the “proper address” of the debtor is—
 - (a) in the case of a body corporate, the address of the registered or principal office of the body,
 - (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.
- (7) Where a notice is served—
 - (a) as mentioned in subsection (4)(b), or
 - (b) where there has been a determination under subsection (10)(b), as mentioned in that subsection as it applies by virtue of the determination,

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.
- (8) Where a notice is served as mentioned in subsection (4)(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.
- (9) A determination such as is mentioned in subsection (10) may be 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 written statement (whether or not comprised within the undertaking) of the person whose undertaking it was.
- (10) The determination is (either or both)—
 - (a) that only certain of the paragraphs and sub-paragraphs of subsection (4) (being paragraphs and sub-paragraphs specified in the determination) are, for the purposes of section 3(1)(a)(i), to apply as respects the claim,
 - (b) that, as respects the claim, subsection (4)(b) is to apply as if, for the reference to sending a notice “either to the proper address of the debtor or to an address for postal communication provided to the assignor by the debtor” there were substituted a reference to sending it to a particular address (being an address specified in the determination).
- (11) In subsection (9)(a), “holder of the claim” includes, without prejudice to the generality of that expression, a person who did not become holder of the claim until after the agreement had been made.
- (12) Any reference in the preceding provisions of this section to—
 - (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 to be construed as including a reference to the proper address of a person so authorised.

10 Warrandice implied in the assignation of a claim

- (1) Subsections (2) to (4) apply except in so far as the assignor and the assignee otherwise agree.
- (2) In assigning a claim—
 - (a) for value, the assignor is taken to warrant to the assignee that—
 - (i) the assignor is entitled to, or (in the case of any such claim as is mentioned in section 1(5)) will be entitled to, transfer the claim to the assignee,
 - (ii) the debtor is obliged to, or (when performance becomes due) will be obliged to, perform in full to the assignor, and
 - (iii) the assignor has done nothing, and will do nothing, to prejudice the assignation,
 - (b) other than for value, the assignor is taken to warrant to the assignee that the assignor will do nothing to prejudice the assignation.
- (3) In assigning a claim, whether for value or other than for value, the assignor is not taken to warrant to the assignee that the debtor will perform to the assignee.
- (4) Subsections (2) and (3) apply in relation to providing, in a contract or unilateral undertaking, for the assignation of a claim as they apply in relation to assigning a claim.

Protection of debtors

11 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 to the person last known to the debtor, or that co-debtor, to be the holder of the claim.
- (2) If the performance is in good faith, the debtor is discharged from the claim except that, if the performance is less than performance of the claim assigned, the debtor is discharged only to the extent of the performance.
- (3) It is not to be taken, by reason only of (any or all)—
 - (a) an assignation's having been registered,
 - (b) the application of section 9(7),
 - (c) the application of section 9(8),

that for the purposes of subsections (1) and (2) a debtor, or any co-debtor, has performed other than in good faith.

12 Further provision as to protection of debtor

- (1) Subsection (2) applies where—
 - (a) the holder of a claim purports to assign the claim (or one and the same part of the claim) by means of more than one assignation document, each in favour of a different person,

- (b) the claim (or part) is transferred under section 3(1), or by virtue of section 4(2)(a), to one of those persons,
 - (c) the debtor, or any co-debtor, receives notice from the other of those persons (or as the case may be from another of those persons), ostensibly by virtue of section 9(1)(a) or (c), of the purported assignation to that other person, and
 - (d) by virtue of such notice the debtor, or any co-debtor, performs to that other person.
- (2) If the performance is in good faith, the debtor is discharged from the claim (or part) except that, if the performance is less than performance of the claim purportedly assigned (or of the part purportedly assigned), the debtor is discharged only to the extent of the performance.
- (3) Subsection (3) of section 11 applies for the purposes of subsections (1) and (2) as it applies for the purposes of subsections (1) and (2) of that section.

13 Performance in good faith where claim assigned is of a prescribed type

- (1) Subsection (2) applies where—
 - (a) by virtue only of being of a type prescribed under section 3(6), a claim assigned is not transferred, and
 - (b) the debtor, or any co-debtor, performs in good faith to the assignee.
- (2) The debtor is discharged from the claim except that, if the performance is less than performance of the claim assigned, the debtor is discharged only to the extent of the performance.
- (3) For the purposes of subsection (1)(b) a debtor, or co-debtor, who knows—
 - (a) that the assignation has not been registered, and
 - (b) that transfer of the claim requires such registration,is not to be taken to perform in good faith.

14 Asserting defence or right of compensation

- (1) Except in so far as the debtor and the assignor otherwise agree, the debtor, or any co-debtor, may assert against the assignee—
 - (a) any defence which the debtor has the right to assert against the assignor,
 - (b) any right of compensation which, immediately before the time mentioned in subsection (2), was available to the debtor against the assignor.
- (2) That time is the time at which the debtor would no longer have been in good faith had the debtor performed to the assignor.
- (3) Subsection (3) of section 11 applies for the purposes of subsections (1) and (2) as it applies for the purposes of subsections (1) and (2) of that section.
- (4) In so far as it allows for an exception, subsection (1) is without prejudice to any other enactment.
- (5) Without prejudice to the generality of subsection (1)(b), for the purposes of this section a right of compensation includes a right of contractual set-off.

15 Right to withhold performance until evidence of, or statement as to, assignation is provided

- (1) A debtor—
 - (a) on whom a notice of assignation of a claim is served under section 9(1)(a) by an assignee, or
 - (b) to whom such intimation is given as is mentioned in section 9(1)(c),
 may request from the assignee sufficient evidence of the assignation and of any previous assignation of the same claim.
- (2) Without prejudice to the generality of subsection (1), for the purposes of that subsection “sufficient evidence” includes the written confirmation of an assignor that an assignation to which that assignor is party has taken place.
- (3) A debtor who, other than by virtue of section 9(1)(a) or (c), has reasonable grounds to believe that a claim has been assigned, may state those grounds to the supposed assignor and request that person to provide a written statement as to whether the claim has been assigned.
- (4) If a written statement provided by virtue of subsection (3) is to the effect that the claim has been assigned, that statement must include the name and address of the person to whom the debtor is to perform.
- (5) If—
 - (a) evidence is requested under subsection (1), the debtor may withhold performance until—
 - (i) that evidence is received, or
 - (ii) (whether or not in response to a request under subsection (3)) the debtor receives from the supposed assignor a written statement that the claim has not been assigned, or
 - (b) a written statement is requested under subsection (3), the debtor may withhold performance until that statement (conforming, where it is a statement to the effect mentioned in subsection (4), with the requirements of that subsection) is received.

Accessory security rights

16 Accessory security rights

- (1) This section—
 - (a) applies in relation to any claim assigned in whole, and
 - (b) does not apply in relation to any claim assigned in part,
 but is subject to any express provision to the contrary in the assignation document.
- (2) Without prejudice to subsection (3), the assignee acquires, by virtue of the assignation, any security (in so far as the security is transferable) which relates to, and only to, the claim assigned.
- (3) Where the performance of some act by the assignor is requisite for the transfer of the security to the assignee, the assignor must as soon as reasonably practicable perform that act.
- (4) In this section, “security” means both—

- (a) a right in security, and
- (b) the correlative right in respect of a cautionary obligation.

Abolition of certain rules of law

17 Abolition of certain rules of law

- (1) The following rules of law are abolished—
 - (a) any rule whereby a mandate may operate as an assignation of a claim,
 - (b) any rule whereby an assignation 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—
 - (i) in assigning a claim, or
 - (ii) in providing, in a contract or unilateral undertaking, for the assignation of a claim.
- (2) But subsection (1)(c) is without prejudice to the application of any—
 - (a) enactment, or
 - (b) rule of law,as respects subrogation.

Saving

18 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 (Cape Town Convention) Regulations 2015 (S.I. 2015/912).
- (2) In subsection (1)—
 - “assignment” has the meaning given to that expression by regulation 5, as read with regulation 35, of those regulations, and
 - “associated rights” has the meaning given to that expression by regulation 5 of those regulations.

CHAPTER 2

REGISTER OF ASSIGNATIONS

Register of Assignations

19 The Register of Assignations

- (1) There is to be a public register known as the Register of Assignations.
- (2) The Register of Assignations (in this Part referred to as “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.

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- (4) The Keeper is to take such steps as appear reasonable to the Keeper for protecting the register from—
 - (a) interference,
 - (b) unauthorised access, or
 - (c) damage.
 - (5) Section 110 of the Land Registration etc. (Scotland) Act 2012 (fees) applies in relation to the register as it applies in relation to any other register under the management and control of the Keeper.

Structure

20 The parts of the Register of Assignations

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

- (a) the assignations record, and
- (b) the archive record.

21 The assignations record

- (1) An entry in the assignations record is to include—
 - (a) the assignor's name and address,
 - (b) where the assignor is an individual, the assignor's date of birth,
 - (c) any number which the assignor bears and which, by virtue of RoA Rules, must be included in the entry,
 - (d) the assignee's name and address,
 - (e) any number which the assignee bears 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 e-mail address) to which any request for information regarding the assignation may be sent,
 - (g) such description of the claim as may be—
 - (i) required, or
 - (ii) permitted,for the purposes of this subsection by RoA Rules,
 - (h) a copy of the assignation document,
 - (i) the registration number allocated under section 23(4)(b) to the entry for the assignation,
 - (j) the date, and time of registration of the assignation, and
 - (k) such other data as may be required by virtue of any other section of this Act (including, without prejudice to the generality of this paragraph, such other data as may be specified for the purposes of this subsection by RoA Rules).
- (2) The assignations record is the totality of all such entries.

22 The archive record of the Register of Assignations

The archive record—

- (a) is the totality of all entries and copy documents transferred from the assignments record under section 28(3)(a) or (c) or 29(6), and
- (b) includes such other data as may be specified for the purposes of this section by RoA Rules.

Applications for registration

23 Application for registration of assignment

- (1) An application for registration of an assignment may be made to the Keeper by the assignee.
- (2) The Keeper must accept the application if—
 - (a) it—
 - (i) conforms to such RoA Rules as may relate to the application, and
 - (ii) is submitted with a copy of the assignment document,
 - (b) the Keeper has such data as the Keeper requires, by virtue of section 21(1), to make up an entry for the assignment, and
 - (c) 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 any requirement of paragraphs (a) to (c) of subsection (2) is not satisfied, the Keeper must reject the application and inform the applicant accordingly.
- (4) On accepting an application made under subsection (1), the Keeper—
 - (a) must—
 - (i) make up (from the assignment document, the data provided in the application and the circumstances of registration), and
 - (ii) maintain in the assignments record,
an entry for the assignment, and
 - (b) must allocate a registration number to the entry.

Verification statement and date and time of registration

24 Verification statement

- (1) The Keeper must, after the registration by virtue of an application made under section 23 of an assignment, issue to the assignee a written statement verifying the registration.
- (2) That statement must have a configuration, format and content prescribed by RoA Rules and in particular must include—
 - (a) the date and time of the registration, and
 - (b) the registration number allocated to the entry made up for the assignment.

25 Date and time of registration

- (1) An assignation is taken to be registered on the date and at the time which are entered for it by virtue of section 21(1)(j).
- (2) The Keeper must—
 - (a) deal with applications for the registration of assignations in the order in which they are received, and
 - (b) allocate registration numbers to the entries to which those applications relate accordingly.

*Effective registration***26 Effective registration of assignation**

- (1) Registering an assignation is ineffective if the entry made up for the assignation in the assignations record—
 - (a) does not include a copy of the assignation document, or
 - (b) contains an inaccuracy which, as at the time of registration, is seriously misleading.
- (2) But subsection (1) is subject to section 27(5) to (7).
- (3) A registration ineffective by virtue of subsection (1) becomes effective if and when the entry is corrected.

27 Seriously misleading inaccuracies in entries in the assignations record

- (1) For the purposes of section 26(1) (and without prejudice to the generality of that section), an inaccuracy in an entry in the assignations record is seriously misleading—
 - (a) where the assignor is not a person required by RoA Rules to be identified in that record by a unique number, if a search of that record in accordance with—
 - (i) section 32(2)(a)(i) for the assignor's proper name as at the date and time the entry was created, or
 - (ii) section 32(2)(a)(ii) for the assignor's proper name as at that date and time and the assignor's date of birth,using the search facility provided under section 33(1)(a), does not disclose the entry, or
 - (b) where the assignor is a person required by RoA Rules to be identified in that record by a unique number, if a search of that record—
 - (i) in accordance with section 32(2)(a)(iii) for that number as at the date and time the entry was created, and
 - (ii) using the search facility provided under section 33(1)(a), does not disclose the entry.
- (2) Subsection (1) applies in relation to a search for—
 - (a) a co-assignor's proper name as at the date and time the entry in the assignations record is created,

- (b) a co-assignor's proper name as at that date and time and a co-assignor's date of birth, or
 - (c) a unique number by which a co-assignor is identified as at that date and time,as it applies in relation to the searches mentioned in subsection (1).
- (3) Without prejudice to section 26(1), in determining whether an inaccuracy in an entry in the assignments record is seriously misleading no account is to be taken of the assignment document included in the entry.
- (4) An inaccuracy in an entry in the assignments record may be seriously misleading irrespective of whether any person has been misled.
- (5) Where an inaccuracy in an entry in the assignments record is seriously misleading in respect of only part of the assigned claim, that inaccuracy does not affect the entry in its application to the rest of the claim.
- (6) Where—
 - (a) the assignor consists of two or more co-assignors, and
 - (b) there is an inaccuracy in an entry in the assignments record, being an inaccuracy which is seriously misleading in respect of a co-assignor but not in respect of both (or all) the co-assignors,that inaccuracy does not affect the entry in its application to a co-assignor in respect of whom the inaccuracy is not seriously misleading.
- (7) Subsection (6) applies in relation to an assignee which consists of two or more co-assignees as it applies in relation to an assignor which consists of two or more co-assignors.
- (8) The Scottish Ministers may by regulations amend this section by specifying further instances in which, for the purposes of section 26(1), an inaccuracy in an entry is seriously misleading.
- (9) References—
 - (a) in subsection (1) to “the assignor’s proper name”, or
 - (b) in subsection (2) to “a co-assignor’s proper name”,are to the person’s name in the form determined in accordance with rules under section 40(1)(c)(i).

Corrections

28 Correction of the assignments record

- (1) This section applies where the Keeper becomes aware of a manifest inaccuracy in an entry in the assignments record.
- (2) The Keeper must correct the record if what is needed to correct it is manifest.
- (3) Where under subsection (2) the Keeper corrects the record by—
 - (a) removing the entry, the Keeper must transfer the entry to the archive record and note on the transferred entry—
 - (i) that the transfer is in consequence of a correction under that subsection, and
 - (ii) the date and time of the removal,

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- (b) removing or replacing data included in the entry or by replacing a copy document, the Keeper must note on the entry—
 - (i) that it has been corrected, and
 - (ii) the details of the correction (including, without prejudice to the generality of this paragraph, the date and time of the correction), or
 - (c) replacing a copy document, the replaced copy must be transferred to the archive record by the Keeper and there retained.
- (4) Where under subsection (2) the Keeper effects a correction, the Keeper must (in so far as it is reasonable and practicable to do so) notify—
- (a) every person specified for the purposes of this subsection by RoA Rules, and
 - (b) any other person whom the Keeper considers it appropriate to notify,
- that the correction has been effected.

29 Directions for, or in relation to, correction of the assignments record

- (1) This section applies where, in any proceedings, a court determines that the assignments record is inaccurate.
- (2) The court must direct the Keeper to correct the record.
- (3) In connection with any such correction, the court may give the Keeper such further direction (if any) as it considers requisite.
- (4) The Keeper must, on effecting a correction by virtue of subsection (2), notify (in so far as it is reasonable and practicable to do so), each person who either or both—
 - (a) was, immediately before the correction,
 - (b) is, immediately after it,identified in the entry as the assignor or assignee, that the correction has been effected.
- (5) On effecting in pursuance of a direction under subsection (2) a correction to data in an entry, the Keeper must note in the relevant entry—
 - (a) that it has been corrected, and
 - (b) the details of the correction (including, without prejudice to the generality of this paragraph, the date and time of the correction).
- (6) If an entry is removed from the assignments record in pursuance of a direction under subsection (2), the Keeper must transfer the entry to the archive record and note on the transferred entry—
 - (a) that the transfer is in consequence of the removal, in pursuance of the direction, of the entry from the assignments record, and
 - (b) the date and time of the removal.

30 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 before a tribunal, in which is put in question (either or both)—

- (a) the accuracy of the assignments record,

- (b) what is needed to correct an inaccuracy in that record.

31 Correction of assignments record: general

- (1) In this Act, any reference to “correction” includes (without prejudice to the generality of that expression and except in so far as the context otherwise requires)—
 - (a) the removal of data included in an entry,
 - (b) the removal of an entry from the assignments record and the transfer of that entry to the archive record,
 - (c) the replacement of data, or of a copy document, included in an entry,
 - (d) the restoration of data, or of a copy document, to an entry,
 - (e) the restoration of an entry (whether or not by removing it from the archive record and transferring it to the assignments record),and analogous expressions are to be construed accordingly.
- (2) A correction is taken to be made on the date and at the time which are entered for it in the register in pursuance of a provision of this Part of this Act.

Searches and extracts

32 Searching the assignments record

- (1) Any person may search the assignments record provided that—
 - (a) the search accords with—
 - (i) subsection (2), and
 - (ii) such RoA Rules as are made under section 40(1)(g), and
 - (b) either—
 - (i) such fee as is payable for the search is paid, or
 - (ii) arrangements satisfactory to the Keeper are made for payment of that fee.
- (2) The assignments record may be searched only—
 - (a) by reference to any of the following data in the entries contained in that record—
 - (i) the names of assignors,
 - (ii) the names and dates of birth of assignors who are individuals,
 - (iii) the unique numbers of assignors required by RoA Rules to be identified in the assignments record by such a number,
 - (b) by reference to the registration number allocated, under section 23(4)(b), to the entry for an assignment, or
 - (c) by reference to some other factor, or characteristic, specified for the purposes of this paragraph by RoA Rules.

33 Keeper’s duties and powers as regards the provision of search facilities

- (1) The Keeper—

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- (a) must for the purposes of this Act provide a search facility the search criteria of which are specified by RoA Rules, and
 - (b) may provide such other search facilities, with such other search criteria, as the Keeper thinks fit.
- (2) In subsection (1), “search criteria” means the criteria in accordance with which what is searched for must match data in an entry in order to retrieve that entry.

34 Printed search results and their evidential status

A printed search result which relates to a search carried out by means of a search facility provided by the Keeper and which purports to show an entry in the assignments record is admissible in evidence and, in the absence of evidence to the contrary, is sufficient proof of—

- (a) the registration of the assignment to which the result relates,
- (b) a correction of the entry in the assignments record to which the result relates, and
- (c) the date and time of such registration or correction.

35 Extracts and their evidential status

- (1) Any 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, if any, as is payable for issuing it is paid, or
 - (b) where a fee is so payable, arrangements satisfactory to the Keeper are made for payment of it.
- (3) The Keeper may validate the extract as the Keeper considers appropriate.
- (4) The Keeper may issue the extract as an electronic document if the applicant does not request 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 the date on which and the time at which the extract is issued (being a date and time specified in the extract).

Request for information

36 Assignee’s duty to respond to request for information

- (1) An entitled person may request the person identified in an entry in the assignments record as the assignee (the person so identified being in this section referred to as “IA”) 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, or
 - (b) a condition—
 - (i) so specified, and
 - (ii) to which the assignment is, under section 2(1), made subject, has been satisfied.
- (2) The following are entitled persons for the purposes of this section—

- (a) in relation to a request under—
 - (i) paragraph (a) of subsection (1), a person who (depending on who holds the claim specified under that paragraph) may have a right to execute diligence against that claim,
 - (ii) paragraph (b) of that subsection, a person who (depending on who holds the claim to which the condition specified under that paragraph relates) may have a right to execute diligence against that claim,or, in relation to a request under either of those paragraphs, a person who is authorised to execute a charge for payment and (depending on who holds the claim in question) may have the right to execute diligence against that claim if and when the days of charge expire without payment, or
- (b) a person who is not mentioned in paragraph (a) but—
 - (i) is prescribed under this paragraph, or
 - (ii) has the consent of the person identified in the entry as the assignor to make a request under paragraph (a) or (b) of subsection (1).
- (3) Subject to subsection (5), IA must, within 21 days after receiving a request by virtue of subsection (1), comply with that request unless subsection (7) applies.
- (4) IA may recover from the entitled person any costs reasonably incurred in complying with the request.
- (5) The court, if satisfied that in all the circumstances it would be unreasonable to require IA—
 - (a) to comply with the request (whether in whole or in part), may by order, on the application of IA, exempt IA from complying with—
 - (i) the request, or
 - (ii) such part of the request as it may specify in the order, or
 - (b) to comply with the request within the 21 days mentioned in subsection (3), may by order, on such application, extend by such number of days as it may specify in the order the period within which IA must comply with the request.
- (6) If the court is satisfied, on the application of the entitled person, that IA has, without reasonable excuse, failed to comply with subsection (3), it may by order require IA to comply with the request within 14 days.
- (7) This subsection applies—
 - (a) where it is manifest that the registration is ineffective as regards the assignment of the claim to which the request relates,
 - (b) in the case of a claim specified under subsection (1)(a) (and without prejudice to the generality of paragraph (a)), where it is manifest from the entry for the assignment that the claim is not assigned by the assignment, or
 - (c) where—
 - (i) IA has, within the 3 months immediately preceding IA's receipt of the request, complied with a request under the same paragraph of subsection (1), by the same person and in relation to the same claim, and
 - (ii) the information contained in the statement issued in relation to the earlier request is still correct.

Entitlement to compensation

37 Liability of Keeper

- (1) A person is entitled to be compensated by the Keeper for loss suffered in consequence of—
 - (a) an inaccuracy attributable to the Keeper—
 - (i) in the making up, maintenance or operation of the register, or
 - (ii) in an attempted correction of the register,
 - (b) the issue, under section 24(1), of a statement which is incorrect,
 - (c) the service, under section 28(4) or 29(4), of a notification which is incorrect, or
 - (d) the issue, under section 35, of an extract which is not a true extract.
- (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 is not reasonably foreseeable, or
 - (c) for non-patrimonial loss.

38 Liability of certain other persons

- (1) Where a person (in this section referred to as "P") suffers loss in consequence of—
 - (a) an inaccuracy in an entry in the register (not being an inaccuracy attributable to the Keeper), P is entitled to be compensated for that loss by the person who made the application which gave rise to the entry if, in making it, that person failed to take reasonable care,
 - (b) an inaccuracy in information supplied in response to a request under section 36(1), P is entitled to be compensated for that loss by the person who supplied the information if, in supplying it, that person failed to take reasonable care, or
 - (c) a failure, without reasonable cause, to comply with a request under section 36(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 is not reasonably foreseeable, or
 - (c) for non-patrimonial loss.

Service of notices

39 Service of notices for the purposes of certain provisions of this Chapter

In the application of section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 (service of documents) for the purposes of section 28(4), 29(4) or 36(1)—

- (a) subsection (4) of that section of that Act is to be construed as if, for paragraphs (a) to (c) of the subsection, there were substituted the words “the address given for the person in the entry in question”, and
- (b) where an e-mail address for the person identified as the assignee is contained in the entry in question, the demand, request or notice is to be taken to be served as mentioned in subsection (2)(c) of that section of that Act on being transmitted to the e-mail address.

RoA Rules

40 RoA Rules

- (1) The Scottish Ministers may by regulations make rules (in this Act referred to as “RoA Rules”)—
 - (a) as to the making up and keeping of the register,
 - (b) as to procedure in relation to applications—
 - (i) for registration, or
 - (ii) for corrections,
 - (c) as to the identification, in any such 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 bears a number (whether of numerals or of letters and numerals) unique to the person, whether that number must (or may) be used in identifying the person,
 - (d) as to the degree of precision with which time is to be recorded in the register,
 - (e) as to the manner in which an inaccuracy in the assignments record may be brought to the attention of the Keeper,
 - (f) as to information which, though contained in an assignment document, need not be included in a copy of that document submitted with an application under section 23,
 - (g) as to whether a signature contained in an assignment document need be included in a copy of that document so submitted,
 - (h) as to searches in the register,
 - (i) as to data 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 35,
 - (j) prescribing the configuration, formatting and content of—
 - (i) applications,
 - (ii) notices,
 - (iii) documents,
 - (iv) data, and
 - (v) statements,

- to be used in relation to the register,
- (k) as to when the register is open for—
 - (i) registration, and
 - (ii) searches,
 - (l) requiring there to be entered in the assignments record or the archive record such data as may be specified in the rules, or
 - (m) regarding other matters in relation to registration under this Act, 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 Act.
- (2) Before making RoA Rules the Scottish Ministers must consult the Keeper.

CHAPTER 3

MISCELLANEOUS AND INTERPRETATION OF PART 1

Miscellaneous

41 Repeal of Transmission of Moveable Property (Scotland) Act 1862

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

Interpretation of Part 1

42 Interpretation of Part 1

- (1) In this Part (except where the context otherwise requires)—
- “the archive record” is to be construed in accordance with section 22,
 - “assignment” means an assignment under section 1(1),
 - “assignment document” has the meaning given to that expression by section 1(1),
 - “the assignments record” is to be construed in accordance with section 21(2),
 - “assignee”—
 - (a) is to be construed in accordance with section 1(2)(b), and
 - (b) without prejudice to the generality of the expression, may consist of two or more co-assignees,
 - “assignor”—
 - (a) is to be construed in accordance with section 1(2)(a), and
 - (b) without prejudice to the generality of the expression, may consist of two or more co-assignors,
 - “the register” is to be construed in accordance with section 19(2), and
 - “RoA Rules” has the meaning given to that expression by section 40(1).
- (2) In this Part, a reference to a “claim”—
- (a) is to a right to the performance of an obligation, but
 - (b) does not include a reference to—
 - (i) a non-monetary right relating to land, or

- (ii) a negotiable instrument.
- (3) In this Part, “right in security”(except where the context otherwise requires)—
 - (a) means a right in security over property, and
 - (b) includes a floating charge.
- (4) Without prejudice to the generality of paragraph (a) of subsection (2), in that paragraph “performance” includes the fulfilment of an obligation not to do something.
- (5) Any reference, however expressed, in this Part to registering an assignation, is to be construed as a reference to the Keeper’s carrying out the duties imposed on the Keeper by section 23(4).
- (6) Any reference in this Part to the “proper name” of a person is to that person’s name in the form determined in accordance with rules under section 40(1)(c)(i).

PART 2

SECURITY OVER MOVEABLE PROPERTY

CHAPTER 1

PLEDGE

Pledge, secured obligation and secured property

43 Pledge

- (1) A pledge is a right in security over moveable property.
- (2) A pledge is created over—
 - (a) corporeal property, by delivery of the property to the person in whose favour the pledge is granted, or
 - (b) corporeal or incorporeal property (or property which is both corporeal and incorporeal), by registration in accordance with section 48.
- (3) A pledge created as mentioned in subsection (2)(b) is to be known as a “statutory pledge”.
- (4) In this Act—
 - (a) the person in whose favour the pledge is granted is referred to as the “secured creditor”, and
 - (b) the person who grants the pledge is referred to as the “provider”.
- (5) Nothing in subsection (2)(a) affects any rule of law in relation to a pledge over a negotiable instrument.

44 Secured obligation and secured property

- (1) The obligation secured by a pledge is referred to in this Act as the “secured obligation”.
- (2) The secured obligation—
 - (a) may be any obligation owed, or which will or may become owed,
 - (b) need not be an obligation owed—

- (i) by the provider, or
 - (ii) to the secured creditor, and
- (c) includes ancillary obligations owed (as for example to pay interest, damages and the reasonable expense of extra-judicial recovery of interest or damages).
- (3) The property over which a subsisting pledge has been created (and in respect of which that pledge subsists)—
 - (a) is referred to in this Act as the “secured property”, and
 - (b) except in so far as the provider and the secured creditor agree otherwise, includes the natural fruits, but not the civil fruits, of the property,
- (4) And that property must, at the time the pledge is created, be transferable (whether or not its transferability is restricted in some way).
- (5) Subsection (3)(b) is without prejudice to sections 76 and 77.

Possessory pledge

45 Delivery

- (1) For the purposes of section 43(2)(a), the corporeal moveable property delivered must be the property of the provider.
- (2) The delivery must be effected by—
 - (a) physically handing over the property to the secured creditor or to a person authorised to accept delivery on behalf of the secured creditor,
 - (b) giving control of the premises in which the property is located to the secured creditor or to a person so authorised,
 - (c) instructing a third party who has direct possession or custody of the property to hold the property on behalf of the secured creditor or of a person so authorised, or
 - (d) delivering a bill of lading, or other document, representing the property to the secured creditor or to a person so authorised (and where that bill or document is to the order of a particular person, by procuring the endorsement of the bill or document in favour of the secured creditor).
- (3) Property already in the direct possession or custody—
 - (a) of the secured creditor, or
 - (b) of a person authorised to hold the property on behalf of the secured creditor,
 when agreement on the creation of the pledge is reached between the provider and the secured creditor, is deemed to have been delivered in accordance with section 43(2)(a).
- (4) This section is without prejudice to section 2 of the Factors Act 1889.

Statutory pledge

46 Constitutive document

- (1) A statutory pledge requires a constitutive document.
- (2) The constitutive document must—
 - (a) be executed or authenticated by the provider, and

- (b) describe the property which is to be the secured property.
- (3) The property so described may either be property of, or property to be acquired by, the provider.
- (4) Without prejudice to section 53(a), if the secured property is to consist of more than one item the constitutive document need not describe each item individually provided that the document describes the items in terms of their constituting an identifiable class.
- (5) The Scottish Ministers may by regulations make provision as to description for the purposes of subsection (2)(b).

47 Competence of creating statutory pledge over certain kinds of property

- (1) It is not competent to create a statutory pledge over corporeal property if that property 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,
 - (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.
- (2) It is not competent to create a statutory pledge over incorporeal property unless that property is—
 - (a) intellectual property,
 - (b) an application for, or licence over, intellectual property,
 - (c) a financial instrument, or
 - (d) of such other kind as may be prescribed.

48 Creation of statutory pledge by registration: general

- (1) A statutory pledge over property which, at the time the statutory pledge is registered, is the property of the provider and is—
 - (a) identifiable as property to which the constitutive document relates, is created over that property on the statutory pledge's being registered,
 - (b) not yet so identifiable, is created over that property on the property's becoming so identifiable.
- (2) Subsection (1) is without prejudice to section 49(1).
- (3) This section is subject to sections 51(2)(a) and 95.

49 Addition to secured property of property which is property of the provider when an amendment document is registered

- (1) Subsection (2) applies where by means of an amendment document a statutory pledge is amended so as to add, to the secured property, property which at the time that document is registered is the provider's property.

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- (2) The statutory pledge is created over such of the added property as at the time that document is registered is—
 - (a) identifiable as property to which the document relates, on the document's registration,
 - (b) not yet so identifiable, on the property's becoming so identifiable.
 - (3) Subsection (1) is subject to section 96.

50 Property not property of provider when statutory pledge registered but described as secured property in constitutive or amendment document

- (1) Subsection (2) applies where, at the time a statutory pledge is registered, property which is not the provider's property is described in the constitutive document (or in an amendment document) as being, or as being part of, the secured property.
- (2) The statutory pledge is created over the property so described if and when that property becomes the provider's property.
- (3) Subsections (1) and (2)—
 - (a) are without prejudice to section 48(1), and
 - (b) are subject to section 52.

51 Creation of statutory pledge over financial instrument

- (1) Subsection (2) applies if the constitutive document evidences a security financial collateral arrangement in respect of a financial instrument.
- (2) A statutory pledge is created over the financial instrument either—
 - (a) on the financial instrument coming into the possession, or under the control, of the collateral-taker or of a person authorised to act on the collateral-taker's behalf, or
 - (b) by being registered as mentioned in section 48.
- (3) In subsection (2)—
 - (a) "security financial collateral arrangement" has the meaning given to that expression by paragraph (1) of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226),
 - (b) "collateral-taker" has the same meaning as in paragraphs (1) to (2) of that regulation,
 - (c) "under the control of" has the same meaning as in that paragraph, and
 - (d) "possession" is to be construed in accordance with paragraph (2) of that regulation.
- (4) Without prejudice to the generality of subsection (1), for the purposes of that subsection a constitutive document may be evidenced—
 - (a) in writing transcribed by electronic or other means in a durable medium, or
 - (b) in sounds recorded in such a medium.
- (5) Section 46(2)(a) does not apply as respects a statutory pledge created under subsection (2)(a).

52 Creation of statutory pledge: insolvency

- (1) Subsection (2) applies where property which, at the time a statutory pledge is registered, is not the provider's property is described in the constitutive document (or as the case may be in an amendment document) as being, or as being part of, the secured property becomes the provider's property on or after—
 - (a) the date of sequestration, in a case where sequestration of the provider's estate is awarded under section 22 of the Bankruptcy (Scotland) Act 2016,
 - (b) the date of protection, in a case where a voluntary trust deed granted by the provider over all or part of the provider's estate has protected status ("date of protection" and "protected status" being construed in accordance with section 163 of that Act),
 - (c) the date of commencement of the winding up, in a case where the winding up of the provider is commenced under Part 4 or 5 of the Insolvency Act 1986 or under section 367 of the Financial Services and Markets Act 2000,
 - (d) the date on which the appointment of the receiver takes effect, in a case where a receiver is appointed under section 51(1) or (2) of that Act of 1986 over all or part of the provider's property, or
 - (e) the date on which the appointment of the administrator takes effect, in a case where the provider enters administration ("enters administration" being construed in accordance with paragraph 1(1) and (2) of schedule B1 of that Act of 1986).
- (2) If and when the property so described becomes the provider's property the statutory pledge is not created over it.
- (3) The Scottish Ministers may by regulations amend—
 - (a) any paragraph of subsection (1) (including any paragraph added to that subsection by virtue of paragraph (b)),
 - (b) subsection (1) by adding paragraphs which specify further dates by reference to which that subsection is to apply.

53 Providers who are individuals

- (1) This section applies where the provider of a statutory pledge is an individual.
- (2) The secured property must consist only of assets individually identified in the constitutive document and either—
 - (a) owned by the provider as at the time the statutory pledge is granted, or
 - (b) acquired by the provider after that time if—
 - (i) the acquisition is financed by credit, and
 - (ii) an obligation to repay that credit is the secured obligation.
- (3) A corporeal asset so specified must, immediately before the statutory pledge is granted, have a monetary value exceeding £1,000 or such other amount as the Scottish Ministers may by regulations specify for the purposes of this subsection.
- (4) Except that where the provider is a sole trader, subsections (2) and (3) are to be disregarded as respects any assets used, or to be used, wholly or mainly for the purposes of the provider's business.

Restriction on freedom to deal with secured property encumbered by statutory pledge

54 Restriction on freedom to deal with secured property encumbered by statutory pledge

- (1) If the provider of a statutory pledge transfers the secured property (or any part of that property) to a third party other than with the consent mentioned in subsection (2), the secured property remains encumbered by the pledge.
- (2) The consent—
 - (a) is the 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—
 - (i) before the particular transfer, or
 - (ii) where the particular transfer is in pursuance of a contract, before the conclusion of the contract.
- (3) Whether to grant or withhold the consent mentioned in subsection (2) must be at the discretion of the secured creditor.
- (4) The statutory pledge is extinguished if the secured creditor acquiesces, expressly or impliedly, in the provider's transfer of the secured property (or any part of the secured property) to the third party other than with the consent mentioned in subsection (2).
- (5) The Scottish Ministers may by regulations—
 - (a) amend—
 - (i) any paragraph of subsection (2) (including any paragraph added to that subsection by virtue of sub-paragraph (ii)), or
 - (ii) that subsection by adding paragraphs which specify further descriptions of consent by reference to which subsection (1) is to apply, or
 - (b) amend subsection (3) by specifying further matters relevant to the granting or withholding of consent.
- (6) This section is subject to sections 55 to 58.

Acquisition of secured property unencumbered by statutory pledge

55 Acquisition in good faith in ordinary course of business

- (1) A purchaser of corporeal property which is secured property (or is any part of secured property) acquires it unencumbered by the statutory pledge, despite the consent mentioned in section 54(2) not having been obtained, if—
 - (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.

56 Acquisition in good faith for personal, domestic or household purposes

- (1) An individual who acquires property which is secured property (or is any part of secured property) acquires it unencumbered by the statutory pledge, despite the consent mentioned in section 54(2) not having been obtained, if—
 - (a) the value of all that is so acquired does not, as at the time of acquisition, exceed such amount (if any) as the Scottish Ministers may by regulations specify for the purposes of this subsection,
 - (b) at the time of acquisition, the acquirer is in good faith,
 - (c) the acquirer gives value for the property acquired, and
 - (d) the property is wholly or mainly acquired for personal, domestic or household purposes.
- (2) This section does not apply in respect of the acquisition of secured property (or any part of secured property) which consists of a motor vehicle.
- (3) For the purposes of subsection (1)(b), an acquirer is not to be taken to be other than in good faith by reason only of the statutory pledge having been registered.
- (4) In subsection (2), “motor vehicle” has the same meaning as in section 57.

57 Acquisition in good faith of motor vehicles

- (1) This section applies where—
 - (a) there is a sale agreement (or conditional sale agreement) or a hire-purchase agreement in respect of a motor vehicle,
 - (b) the motor vehicle is secured property,
 - (c) the purchaser or hirer is, at the time of entering into the agreement, in good faith, and
 - (d) at that time the purchaser or hirer is not a person carrying on a business described in section 29(2) of the Hire-Purchase Act 1964.
- (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 54(2) not having been obtained.
- (3) And the statutory pledge is not to be enforced against the motor vehicle—
 - (a) while the agreement is extant, and
 - (b) before the motor vehicle is transferred to the purchaser or hirer.
- (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) For the purposes of subsection (1)(c), 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.

- (6) In this section, “conditional sale agreement”, “hire-purchase agreement” and “motor vehicle” have the meanings given to those expressions by section 29(1) of the Hire-Purchase Act 1964.
- (7) The Scottish Ministers may by regulations specify—
 - (a) motor vehicles, or
 - (b) classes of motor vehicle,
 to which subsections (1) to (6) are not to apply.

58 Acquisition of certain financial instruments in ordinary course of trading

- (1) Subsection (2) applies where—
 - (a) a person, in the ordinary course of trading on a specified financial market, acquires a financial instrument of a specified kind, and
 - (b) that financial instrument is secured property.
- (2) The person acquires the instrument unencumbered by the statutory pledge, despite the consent mentioned in section 54(2) not having been obtained, provided that—
 - (a) at the time of acquisition the person does not know of the statutory pledge, and
 - (b) the acquisition takes place in accordance with the rules of the specified financial market.
- (3) In subsections (1)(a) and (2)(b), “specified” means specified, for the purposes of those provisions, by the Scottish Ministers by regulations.
- (4) Regulations under subsection (3) may specify different markets or descriptions of market in relation to different kinds of financial instrument.

Occupancy and other rights in matrimonial or family home following grant of statutory pledge

59 Occupancy and other rights in matrimonial or family home following grant of statutory pledge

- (1) The Matrimonial Homes (Family Protection) (Scotland) Act 1981 (in this section referred to as “the 1981 Act”) and the Civil Partnership Act 2004 (in this section referred to as “the 2004 Act”) are amended in accordance with this section.
- (2) Section 3 of the 1981 Act and section 103 of the 2004 Act are each amended in accordance with subsections (3) and (4).
- (3) At the end of subsection (2) there is added “or the rights of any secured creditor in relation to the non-performance of a secured obligation”.
- (4) After subsection (2) there is inserted—
 - “(2A) In subsection (2), “secured creditor” has the meaning given to that expression by section 43(4)(a) of the Moveable Transactions (Scotland) Act 2017 and “secured obligation” is to be construed in accordance with section 44(1) of that Act.”.
- (5) Section 6(2) of the 1981 Act and section 106(2) of the 2004 Act are each amended in accordance with subsection (6).
- (6) In the definition of “dealing”, after the words “heritable security” there is inserted “, the grant of a statutory pledge”.

- (7) In section 8 of the 1981 Act, after subsection (2B) there is inserted—
- “(2C) For the purposes of subsection (2A) above, the time of granting a security, in the case of a statutory pledge, is the date of delivery of the constitutive document of the statutory pledge.”.
- (8) In section 108 of the 2004 Act, after subsection (4) there is inserted—
- “(5) For the purposes of subsection (3), the time of granting a security, in the case of a statutory pledge, is the date of delivery of the constitutive document of the statutory pledge.”.
- (9) The title of section 8 of the 1981 Act becomes—
- “Interests of creditors”.**
- (10) The title of section 108 of the 2004 Act becomes—
- “Interests of creditors”.**

Assignment, amendment, restriction or extinction of statutory pledge

60 Assignment of statutory pledge

- (1) Except in so far as the provider and the secured creditor otherwise agree, a statutory pledge may be transferred by means of a document executed or authenticated by the secured creditor.
- (2) 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 assignment (to the effect that the assignee may proceed as if the assignee served that notice or commenced those procedures).
- (3) A statutory pledge which has been created under section 51(2)(a) but has not been registered, may be assigned by evidenced agreement between the collateral-taker and the assignee.

61 Amendment of statutory pledge

- (1) Subject to subsections (4) and (5), a statutory pledge—
- (a) may be amended, and
- (b) subject to section 62(1)(a), may only be amended,
- by means of a document (in this Act referred to as an “amendment document”) executed or authenticated by the secured creditor and the provider.
- (2) An amendment document which relates to the addition of property to the secured property must describe the property to be added.
- (3) The property so described may either be property of, or property to be acquired by, the provider.
- (4) An amendment document which relates only to the addition of property to the secured property need not be executed by the secured creditor.
- (5) Where a statutory pledge has been created under section 51(2)(a) but has not been registered, its constitutive document may be amended by evidenced agreement between the collateral-taker and the provider.

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- (6) Subject to section 96, where an amendment document relates to (either or both)—
- (a) the addition of property to the secured property,
 - (b) variation of the secured obligation,
- the statutory pledge is amended only on registration of that document.

62 Restriction or discharge of statutory pledge

- (1) A statutory pledge may be—
- (a) restricted to only part of the secured property, or
 - (b) discharged,
- by means of a written statement by the secured creditor or by registration.
- (2) Subsection (1) does not apply in relation to a statutory pledge which—
- (a) has been created under section 51(2)(a), but
 - (b) has not been registered.

63 Restriction or extinction of statutory pledge created under section 51(2)(a)

- (1) Subject to the provisions of this section, a statutory pledge created under section 51(2)(a)—
- (a) is extinguished in relation to the financial instrument over which the pledge is created on the financial instrument ceasing to be in the possession, or under the control—
 - (i) of the collateral-taker, or
 - (ii) of a person authorised to act on behalf of the collateral-taker, and
 - (b) may be—
 - (i) restricted to only part of the secured property, or
 - (ii) discharged,
- by means of an evidenced statement by or on behalf of the collateral-taker.
- (2) Subsections (3) and (4) apply where such possession or control as is mentioned in subsection (1)(a) is lost but before it is lost the collateral-taker registers the statutory pledge.
- (3) Subsection (1)(a) is to be disregarded.
- (4) And the priority in ranking of the pledge is to be determined as if the pledge had been created on being so registered.
- (5) Subsection (1) is to be construed as one with regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226).
- (6) Subsection (2) is subject to section 95.

64 Further provision as regards evidenced agreements and evidenced statements

Without prejudice to the generality of sections 60(3), 61(5) and 63(1)(b), for the purposes of those provisions an agreement, or as the case may be a statement, may be evidenced—

- (a) in writing transcribed by electronic or other means in a durable medium, or
- (b) in sounds recorded in such a medium.

Ranking of pledges etc.

65 Ranking

- (1) Subject to the provisions of this section or 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) Subsection (3) applies where a provider grants two or more statutory pledges over property which, as at the time the pledges are granted, is not owned by the provider.

- (3) The priority in ranking of any two of the pledges is determined according to the dates on which they are registered, the earlier registered having priority over the later.

- (4) 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.

- (5) 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.

- (6) As between—

- (a) any two pledges, the secured creditors, or
- (b) a pledge and a right in security other than a pledge, the secured creditor and the holder of that other right,

may set out in a written agreement that there is no priority in ranking or that any priority in ranking is determined in a way other than would be the case in the absence of such an agreement.

- (7) An agreement under subsection (6)—

- (a) has effect only as between the parties to it and their successors, and
- (b) is not registrable.

66 Amendment of Companies Act 1985 and of Insolvency Act 1986

- (1) In section 464(4) of the Companies Act 1985 (ranking of floating charges)—

- (a) in paragraph (a), at the beginning insert “except in the case of a statutory pledge,”, and

- (b) after that paragraph insert—

“(aa) a statutory pledge effectively registered before a floating charge has attached to all or any part of the property of the company has priority in ranking over that floating charge;”.

- (2) Both in section 486(1) of that Act and in section 70(1) of the Insolvency Act 1986 (interpretation), in the definition of “fixed security”—

- (a) the words from “a heritable security” to “1970” become paragraph (a) of the definition, and
- (b) after that paragraph insert—
 - “; or
 - (b) a statutory pledge (“statutory pledge” having the meaning given to that expression by section 43(3) of the Security over Moveable Property (Scotland) Act 2017);”.

67 Effect of diligence on pledge

- (1) Subsection (2) applies where diligence is executed in respect of property all or any part of which is encumbered by a pledge.
- (2) The pledge has, in respect of the property or as the case may be in respect of 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 a contractual agreement entered into before execution of the diligence.
- (3) Subsection (4) applies where a pledge is created over property in respect of all or any part of which diligence has been executed.
- (4) The diligence has, in respect of the property or as the case may be in respect of the part, priority in ranking over the pledge.

Enforcement of pledge

68 The expression “pledge” in sections 69 to 82

In sections 69 to 82 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).

69 Enforcement of pledge: general

- (1) A pledge is enforceable in no other way than in accordance with the provisions of this Part.
- (2) A pledge may be enforced—
 - (a) subject to any such agreement as is mentioned in paragraph (b), where there is default on the secured obligation, or
 - (b) in such circumstances as are agreed between the provider and the secured creditor.
- (3) Any agreement under subsection (2)(b) must be set out in writing.
- (4) In enforcing a pledge a secured creditor must conform with reasonable standards of commercial practice.
- (5) Subsection (2) is subject to sections 70 and 71.

70 Pledge Enforcement Notice

- (1) Before taking any other steps to enforce a pledge the secured creditor must serve—

- (a) on the provider, and
- (b) in the case of a statutory pledge, on any occupier of the secured property, or of any part of the secured property, (whether or not that occupier is also the provider),

a notice in, or as nearly as may be in, such form as may be prescribed for the purposes of this paragraph.

- (2) Different forms may be prescribed by virtue of subsection (1) for different categories of provider or occupier.
- (3) A notice served under subsection (1) is to be known as a “Pledge Enforcement Notice”.
- (4) 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.
- (5) In subsection (4), “default notice” has the meaning given to that expression by section 87(1) of that Act.

71 Whether court order required for enforcement of pledge

- (1) In a case where the provider of a pledge is an individual, a court order is required for enforcing the pledge unless—
 - (a) after the pledge becomes enforceable by virtue of section 69(2), the provider agrees in writing to its being enforced without such an order, or
 - (b) the provider being a sole trader, enforcement is against property used wholly or mainly for the purposes of the provider’s business.
- (2) And a court order is required for enforcing a statutory pledge in a case where the secured property consists of, or includes, the sole or main residence of an individual unless, after the pledge becomes enforceable by virtue of section 69(2)—
 - (a) the secured creditor,
 - (b) the provider, and
 - (c) (in any case where the individual is not the provider) the individual,agree otherwise in writing.
- (3) Other than is mentioned in subsection (1) or (2), a court order is not required for enforcing a pledge.
- (4) The court is not to grant an order required by subsection (2) unless satisfied that enforcement is reasonable in all the circumstances of the case.
- (5) Without prejudice to the generality of subsection (4), 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, or is part of, the secured property.
- (6) Subsection (3) is subject to section 72(3) and (7) and to section 73(2) and (5).

72 Secured creditor's right to take possession of corporeal property

- (1) Subsections (2) to (4) apply 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 subsection (3), the secured creditor is entitled—
 - (a) to take possession of the property, or
 - (b) to take any reasonable steps necessary—
 - (i) to ensure, whether or not by immobilising the property, that it is not disposed of or used in an unauthorised way, and
 - (ii) to afford it physical protection.
- (3) The secured creditor may take such possession, or such steps, personally if authorised to do so by the court but otherwise only—
 - (a) with the consent—
 - (i) of the provider, and
 - (ii) of any third party who either is in direct possession of, or has custody of, the property, or
 - (b) through the agency of an authorised person.
- (4) The secured creditor is entitled, in taking possession of the secured property under subsection (2)(a), to remove any individual from the secured property (but only through such agency as is mentioned in subsection (3)(b)).
- (5) Subsections (2) to (4) are subject to subsections (6) and (7).
- (6) The secured creditor has no entitlement under subsections (2) to (4) if the circumstances are that the property is in the possession of a person who, in respect of the property or of any part of the property—
 - (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.
- (7) But in the circumstances mentioned in subsection (6) the secured creditor may—
 - (a) with the consent of the person who has the right in security over, or has executed diligence against, the property,
 - (b) with the consent of the court, through such agency as is mentioned in subsection (3)(b), or
 - (c) personally, if authorised to do so by the court,

take possession of the property or take such steps as are mentioned in subsection (2)(b).

- (8) Subsection (4) applies in relation to taking possession under subsection (7) as it applies in relation to taking possession under subsection (2).
- (9) In subsection (3)(b), “authorised person” means—
 - (a) a messenger-at-arms or sheriff officer,
 - (b) a person qualified to act as an insolvency practitioner, or
 - (c) such other person as the Scottish Ministers may by regulations specify for the purposes of this section.
- (10) Paragraph (b) of subsection (9) is to be construed in accordance with section 390 of the Insolvency Act 1986 (persons not qualified to act as insolvency practitioners).
- (11) This section is subject to section 71.

73 Secured creditor’s right to take possession of certificate of financial instrument

- (1) Subsection (2) applies in relation to a certificated financial instrument in respect of which a secured creditor in a statutory pledge has served a Pledge Enforcement Notice.
- (2) The secured creditor is entitled to take possession of the certificate of the instrument—
 - (a) with the consent—
 - (i) of the provider, and
 - (ii) of any third party who for the time being either is in direct possession of, or has custody of, that certificate,
 - (b) through the agency of an authorised person, or
 - (c) personally, if authorised to do so by the court.
- (3) Subsection (2) is subject to subsection (4).
- (4) The secured creditor has no entitlement under subsection (2) if the certificate is for the time being in the possession of a person—
 - (a) who has a right in security over the instrument, being a right in security which has priority over, or ranks equally with, the pledge to which the Pledge Enforcement Notice relates, or
 - (b) who has executed diligence against the instrument and by virtue of that diligence has priority in ranking over, or ranks equally with, the secured creditor.
- (5) But in the circumstances mentioned in subsection (4) the secured creditor may—
 - (a) with the consent of the person who has the right in security over, or has executed diligence against, the instrument,
 - (b) with the consent of the court, through such agency as is mentioned in subsection (2)(b), or
 - (c) personally, if authorised to do so by the court,take possession of the certificate for the instrument.
- (6) In subsection (2)(b), “authorised person” has the meaning given to that expression by subsection (9) of section 72 (as read with subsection (10) of that section).
- (7) This section is subject to section 71.

74 Secured creditor's entitlement to sell

- (1) Where a Pledge Enforcement Notice has been served in respect of secured property, the secured creditor is entitled to sell all or any of that property.
- (2) The secured creditor, in selling property by virtue of subsection (1), 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) for a price which bears a reasonable relationship to market value, and
 - (b) if the sale is by public auction.
- (4) Any proceeds obtained by virtue of subsection (1) are to be held in trust by the secured creditor until applied under section 78.
- (5) This section is subject to section 71.

75 Sale effected by virtue of section 74(1): unencumbered acquisition

- (1) This section applies where a secured creditor sells secured property by virtue of section 74(1) and transfers the property to the purchaser.
- (2) The purchaser acquires the property unencumbered by—
 - (a) the pledge, and
 - (b) any right in security or any diligence ranking equally with, or postponed to, the pledge.
- (3) But the purchaser acquires the property unencumbered by any—
 - (a) right in security, 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.

76 Secured creditor's entitlement to let

- (1) A secured creditor who by virtue of section 74(1) is entitled to sell corporeal secured property is entitled to let all or any of that property.
- (2) The secured creditor, in letting property by virtue of subsection (1), must take all reasonable steps to ensure that the income obtained is the best reasonably obtainable.
- (3) Any rental income obtained by virtue of subsection (1) is to be held in trust by the secured creditor until applied under section 78.
- (4) The provider and the secured creditor may agree, whether before or after the pledge becomes enforceable by virtue of section 69(2), that subsection (1) is not to apply as regards the secured property or some part of the secured property.
- (5) The agreement must be set out in writing.

77 Secured creditor's entitlement to grant licence over intellectual property

- (1) A secured creditor who by virtue of section 74(1) is entitled to sell intellectual property is entitled to grant a licence over all or any of that property (but only if and to the extent that the provider is entitled to grant such a licence).
- (2) The secured creditor, in granting a licence by virtue of subsection (1), 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 78.
- (4) The provider and the secured creditor may, whether before or after the pledge becomes enforceable by virtue of section 69(2), agree that subsection (1) is not to apply as regards all or any of those rights.
- (5) The agreement must be set out in writing.

78 Application of proceeds arising 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, 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, or
 - (ii) any creditor who has executed diligence against that property.
- (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) No such payment is to be made—
 - (a) to the holder of a right in security which has priority in ranking over the pledge enforced, or
 - (b) to any creditor who has executed diligence which has such priority,unless that holder or creditor consented to the enforcement in question.
- (4) Any residue from the proceeds so arising is to be paid to the provider.
- (5) 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.
- (6) Subsections (7) to (9) apply where a question arises as to whom a payment under this section is to be made.
- (7) The secured creditor must—
 - (a) consign the amount of the payment (so far as ascertainable) in court for the person appearing to have the best right to that payment, and
 - (b) lodge in court a statement of the amount consigned.
- (8) A consignment made in pursuance of subsection (7)(a) operates as a payment of the amount due.
- (9) A certificate of the court is sufficient evidence of that payment.

- (10) Without prejudice to the generality of subsection (1)(a), the expenses mentioned in that subsection include any that may be incurred in taking possession of, preserving, repairing, maintaining, immobilising, insuring, licensing, selling or letting the property.
- (11) The secured creditor must, as soon as reasonably practicable, present—
- (a) the provider,
 - (b) the debtor in the secured obligation if a person other than the provider,
 - (c) any person who both—
 - (i) is mentioned in subsection (1)(b), and
 - (ii) has consented to the enforcement in question, and
 - (d) any person who has statutory duties in relation to the provider's estate and is prescribed under this paragraph

with a written statement of how the proceeds arising from the enforcement have been applied under this section.

- (12) In a case where, by virtue of—
- (a) section 76(1), all or any of the property is let by the secured creditor, or
 - (b) section 77(1), the secured creditor grants a licence over all or any of it,
- subsection (11) applies as regards any proceeds of the letting or licensing as if, for the words “as soon as reasonably practicable”, there were substituted “every six months after the first proceeds arising from the enforcement are received”.

79 Secured creditor's right to appropriate in satisfaction of part or all of secured obligation: general

- (1) Where a Pledge Enforcement Notice has been served in respect of property the secured creditor is entitled to appropriate any or all of that property in satisfaction, in whole or in part, of the secured obligation.
- (2) But it is not competent to appropriate by virtue of subsection (1)—
 - (a) the property of an individual unless that person is a sole trader and the appropriation is of assets used wholly or mainly for the purposes of the person's business,
 - (b) corporeal property, or a bond payable to bearer, unless that property or bond is in the possession of the secured creditor, or
 - (c) property the value of which exceeds the amount for the time being remaining due under the secured obligation.

80 Appropriation where no agreement reached under section 81(1)

- (1) Before exercising any right to appropriate property by virtue of section 79(1), the secured creditor must serve a notice on—
 - (a) the provider,
 - (b) the debtor in the secured obligation if a person other than the provider,
 - (c) the holder of any other right in security over all or part of the property,
 - (d) any person who has executed diligence against all or part of the property, and

- (e) any person who has statutory duties in relation to the provider's estate and is prescribed under this paragraph.
- (2) Any notice served under subsection (1) must—
 - (a) identify the property to be appropriated,
 - (b) specify—
 - (i) the amount for the time being remaining due under the secured obligation, and
 - (ii) the amount to be obtained by the appropriation, and
 - (c) state that, within 14 days after service of the notice, the recipient may object to the appropriation.
- (3) The appropriation is not to proceed unless the amount obtained by it bears a reasonable relationship to the market value of the property appropriated.
- (4) If within 14 days after receiving notice by virtue of subsection (1) a recipient, by means of a written statement to the secured creditor, objects to the appropriation—
 - (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 a notice under subsection (1) that the appropriation is not to proceed.
- (5) Subsections (1) to (4) are to be disregarded as respects property in relation to which the provider and the secured creditor have reached agreement under section 81(1).

81 Agreement as to appropriation by virtue of section 79(1)

- (1) The provider and the secured creditor may, before the pledge becomes enforceable by virtue of section 69(2), agree that the secured creditor is entitled to appropriate by virtue of section 79(1)—
 - (a) the secured property, or
 - (b) any part of that property.
- (2) Any agreement under subsection (1) must be set out in writing.
- (3) And property appropriated in accordance with that agreement—
 - (a) must be—
 - (i) a fungible asset that is traded on a specified market, being a market the prices on which are published and widely available (whether on payment of a fee or otherwise), or
 - (ii) if it is not such an asset so traded, property as regards which the provider and the secured creditor have, in the agreement, set out a method of readily determining a reasonable market price, and
 - (b) is appropriated only for the value, at the date of appropriation, of the property's market price—
 - (i) as so published, or
 - (ii) as the case may be, as so determined.

-
- (4) Before exercising any right to appropriate property by virtue of subsection (1), the secured creditor must serve a notice on—
 - (a) the provider,
 - (b) the debtor in the secured obligation if a person other than the provider,
 - (c) the holder of any other right in security over all or part of the property,
 - (d) any person who has executed diligence against all or part of the property, and
 - (e) any person who has statutory duties in relation to the provider's estate and is prescribed under this paragraph.
 - (5) A notice under subsection (4) must—
 - (a) identify the property to be appropriated,
 - (b) specify—
 - (i) the amount for the time being remaining due under the secured obligation, and
 - (ii) the amount to be obtained by the appropriation, and
 - (c) state that, within 14 days after service of the notice, the recipient (if a person other than the provider) may object to the appropriation.
 - (6) If within 14 days after receiving notice by virtue of any of paragraphs (b) to (e) of subsection (4) a recipient, by means of a written statement to the secured creditor, objects to the appropriation—
 - (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 a notice under subsection (4) that the appropriation is not to proceed.
 - (7) In subsection (3)(a)(i)—
 - (a) “fungible asset” means an asset of a nature to be dealt in without identifying the particular asset involved, and
 - (b) “specified” means specified, for the purposes of this section, by the Scottish Ministers by regulations.
 - (8) Regulations under subsection (7)(b) may specify different markets or descriptions of market in relation to different kinds of fungible asset.

82 Appropriation by virtue of section 79(1): unencumbered acquisition

- (1) This section applies where a secured creditor appropriates secured property by virtue of section 79(1).
- (2) The secured creditor acquires the property unencumbered by any right in security or any diligence.

83 Circumstances in which application must be made for removal of an entry from the statutory pledges record

- (1) Where a secured creditor (in this section referred to as “SC”) enforces a statutory pledge and by such enforcement—

- (a) SC recovers the whole amount due under the secured obligation, or
- (b) SC does not recover that whole amount but no secured property remains which SC, by virtue of the statutory pledge, might realise,

SC must, as soon as reasonably practicable, make an application under section 100(1) for removal of the entry for the statutory pledge from the statutory pledges record.

- (2) Subsection (3) applies where, by virtue of section 78, such enforcement as is mentioned in subsection (1) results in a person (in this section referred to as “OSC”) who holds a different statutory pledge receiving a payment out of the proceeds arising.
- (3) If by virtue of receiving the payment—
 - (a) OSC recovers the whole amount due under the secured obligation to which the statutory pledge held by OSC relates, or
 - (b) OSC does not recover that whole amount but no secured property remains which OSC, by virtue of that statutory pledge, might realise,

OSC must, as soon as reasonably practicable, make an application under section 100(1) for removal of the entry for the statutory pledge held by OSC from the statutory pledges record.

84 Sections 69 to 83: saving

Nothing in sections 69 to 83 is to be taken to derogate from such rights as a secured creditor may have by virtue of Part 4 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (2003 No. 3226) (right of use and appropriation).

Liability for loss suffered by virtue of enforcement

85 Liability for loss suffered by virtue of enforcement

- (1) A person (in subsection (2) referred to as “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 69 to 83.
- (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 certain 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 of Part 2

86 Service of documents for purposes of this Chapter of Part 2

- (1) In respect of the application of section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 (service of documents) for the purposes of this Chapter of Part 2, the provider and the secured creditor may agree (either or both)—
 - (a) that the reference in subsection (2)(b) of the section to the proper address of a person is to be construed as a reference to a specified address (being an address other than is mentioned in subsection (4) of the section),
 - (b) that service is to be as mentioned in a specified paragraph of subsection (2) of the section.

- (2) In subsection (1), “specified” means specified in the agreement.
- (3) The agreement must be set out 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 the Interpretation and Legislative Reform (Scotland) Act 2010 for the purposes of this Part.

CHAPTER 2

REGISTER OF STATUTORY PLEDGES

Register of Statutory Pledges

87 The Register of Statutory Pledges

- (1) There is to be a public register known as the Register of Statutory Pledges.
- (2) The Register of Statutory Pledges (in this Act referred to as “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 is to take such steps as appear reasonable to the Keeper for protecting the register from—
 - (a) interference,
 - (b) unauthorised access, or
 - (c) damage.
- (5) Section 110 of the Land Registration etc. (Scotland) Act 2012 (fees) applies in relation to the register as it applies in relation to any other register under the management and control of the Keeper.

Structure

88 The parts of the Register of Statutory Pledges

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

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

89 The statutory pledges record

- (1) An entry in the statutory pledges record is to include—
 - (a) the provider’s name and address,
 - (b) where the provider is an individual, the provider’s date of birth,
 - (c) any number which the provider bears and which, by virtue of RSP Rules, must be included in the entry,
 - (d) the secured creditor’s name and address,
 - (e) any number which the secured creditor bears 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 e-mail address) to which any request for information regarding the statutory pledge may be sent,
 - (g) such description of the secured property as may be—
 - (i) required, or
 - (ii) 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 91(4)(b) to the entry for the statutory pledge,
 - (j) where the statutory pledge has been amended in pursuance of section 61(6), a copy of the amendment document,
 - (k) any data superseded by virtue of an amendment to, or restriction of, the statutory pledge,
 - (l) the date and time of registration of—
 - (i) the statutory pledge, and
 - (ii) any amendment to, or restriction of, the statutory pledge, and
 - (m) such other data as may be required by virtue of any other section of this Act (including, without prejudice to the generality of this paragraph, such other information as may be specified for the purposes of this subsection by RSP Rules).
- (2) The statutory pledges record is the totality of all such entries.

90 The archive record of the Register of Statutory Pledges

The archive record—

- (a) is the totality of all entries transferred from the statutory pledges record—
 - (i) under section 92(5), 100(6), 101(8) or (10), 103(6) or 110(7), or
 - (ii) by virtue of section 99(1)(a), and
- (b) includes such other data as may be specified for the purposes of this section by RSP Rules.

Applications for registration

91 Application for registration of statutory pledge

- (1) An application for registration of a statutory pledge may be made to the Keeper by the secured creditor.
- (2) The Keeper must accept the application if—
 - (a) it—
 - (i) conforms to such RSP Rules as may relate to the application, and
 - (ii) is submitted with a copy of the constitutive document,

-
- (b) the Keeper has such data as the Keeper requires, by virtue of section 89, to make up an entry for the statutory pledge, and
 - (c) 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 paragraphs (a) to (c) of subsection (2) are not satisfied, the Keeper must reject the application and inform the applicant accordingly.
 - (4) On accepting an application made under subsection (1), the Keeper—
 - (a) must—
 - (i) make up (from the constitutive document of the statutory pledge, the data provided in the application and the circumstances of registration), and
 - (ii) maintain in the statutory pledges record, an entry for that statutory pledge, and
 - (b) must allocate a registration number to the entry.

92 Other applications for registration

- (1) A secured creditor may apply to the Keeper for registration of—
 - (a) an amendment to a statutory pledge—
 - (i) to add property to the secured property, or
 - (ii) to vary the secured obligation,
 - (b) a restriction of a statutory pledge, or
 - (c) the discharge of a statutory pledge.
- (2) The Keeper must accept the application if—
 - (a) it conforms to such RSP Rules as may relate to the application,
 - (b) in the case of an application under subsection (1)(a), it is submitted with a copy of the amendment document, and
 - (c) 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 paragraphs (a) to (c) of subsection (2) are not satisfied, the Keeper must reject the application and inform the applicant accordingly.
- (4) Subject to subsection (5), on accepting an application made under subsection (1) the Keeper must amend the entry for the statutory pledge accordingly.
- (5) If an application accepted by virtue of subsection (2) was for the discharge of a statutory pledge, the Keeper must remove the entry for the statutory pledge from the statutory pledges record, transfer it to the archive record and note on the transferred entry—
 - (a) that the transfer is in consequence of an application accepted by virtue of an application under subsection (1)(c), and
 - (b) the date and time of removal.

- (6) An application may be made under subsection (1)(c) whether or not the statutory pledge has been extinguished by means other than registration of its discharge.

Verification statement and date and time of registration

93 Verification statement

- (1) The Keeper must, after the registration, by virtue of an application made—
- (a) under section 91(1), of a statutory pledge,
 - (b) under section 92(1), of—
 - (i) an amendment to a statutory pledge,
 - (ii) a restriction of a statutory pledge, or
 - (iii) the discharge of a statutory pledge,
- issue to the applicant a written statement verifying the registration.
- (2) That statement must have a configuration, format and content prescribed by RSP Rules and in particular must include—
- (a) the date and time of the registration, and
 - (b) the registration number allocated to the entry to which the application relates.

94 Date and time of registration

- (1) A statutory pledge is taken to be registered on the date and at the time which are entered for it by virtue of section 89(1)(1)(i).
- (2) An amendment to, or restriction of, a statutory pledge is taken to be registered on the date and at the time which are entered for is by virtue of section 89(1)(1)(ii).
- (3) A discharge of a statutory pledge is taken to be registered on the date and at the time which are entered, by virtue of section 92(5), for its removal from the statutory pledges record.
- (4) The Keeper must—
- (a) deal with applications for the registration of statutory pledges in the order in which they are received, and
 - (b) allocate the unique registration numbers of the entries to which those applications relate accordingly.

Effective registration

95 Effective registration of statutory pledge

- (1) Registering a statutory pledge is ineffective if the entry made up for the statutory pledge in the statutory pledges record—
- (a) does not include a copy of the constitutive document, or
 - (b) contains an inaccuracy which, as at the time of registration, is seriously misleading.
- (2) But paragraph (b) of subsection (1) is subject to section 98(5) to (7).

- (3) A registration ineffective by virtue of subsection (1) becomes effective if and when the entry is corrected.

96 Effective registration of amendment to statutory pledge

- (1) Registering an amendment to a statutory pledge is ineffective if the entry, in the statutory pledges record, for the statutory pledge—
 - (a) does not include a copy of the amendment document, and
 - (b) that entry as amended contains an inaccuracy which, in consequence of the amendment, is seriously misleading.
- (2) But paragraph (b) of subsection (1) is subject to section 98(5) to (7).
- (3) A registration ineffective by virtue of subsection (1) becomes effective if and when the entry as amended is corrected.

97 Supervening inaccuracies: protection of third parties relying on the register

- (1) Subsection (2) applies where—
 - (a) a statutory pledge is created over property (not being property bearing a number which must or may, by virtue of section 114(1)(c)(ii), be used in identifying it),
 - (b) at some time after that creation, the statutory pledges record comes to contain an inaccuracy which is seriously misleading (whether or not in respect of all the secured property), and
 - (c) during the period in which the entry contains that inaccuracy, a person acquires, for value and in good faith—
 - (i) all or part of the secured property, or
 - (ii) a right in, or in part of, that property.
- (2) On the acquisition, the statutory pledge is extinguished as regards so much of the property acquired as is property in respect of which the inaccuracy is seriously misleading.

98 Seriously misleading inaccuracies in entries in the statutory pledges record

- (1) For the purposes of section 95(1)(b), 96(1)(b) or 97(1) (and without prejudice to the generality of those sections), an inaccuracy in an entry in the statutory pledges record is seriously misleading—
 - (a) where the provider is not a person required by RSP Rules to be identified in that record by a unique number, if a search of that record in accordance with—
 - (i) section 106(2)(a)(i) for the provider's proper name, or
 - (ii) section 106(2)(a)(ii) for the provider's proper name and the provider's date of birth,using the search facility provided under section 107(1)(a) does not disclose the entry,
 - (b) where the provider is a person required by RSP Rules to be identified in that record by a unique number, if a search of that record for that number—

- (i) in accordance with section 106(2)(a)(iii), and
 - (ii) using the search facility provided under section 107(1)(a),does not disclose the entry.
 - (c) in respect of so much of the secured property as bears a unique number which must, by virtue of RSP Rules, be included in the statutory pledges record if a search of that record for that number—
 - (i) in accordance with section 106(2)(b), and
 - (ii) using the search facility provided under section 107(1)(a),does not disclose the entry.
- (2) Subject to subsection (6), subsection (1) applies in relation to a search for—
- (a) a co-provider’s proper name,
 - (b) a co-provider’s—
 - (i) proper name, and
 - (ii) date of birth, or
 - (c) a unique number by which a co-provider is identified,
- as it applies in relation to the searches mentioned in subsection (1)(a) or (b).
- (3) Without prejudice to section 95(1)(a), in determining whether an inaccuracy in an entry in the statutory pledges record is seriously misleading no account is to be taken of the constitutive document, or of any amendment document, included in the entry.
- (4) An inaccuracy in an entry in the statutory pledges record may be seriously misleading irrespective of whether any person has been misled.
- (5) Where an inaccuracy in an entry in the statutory pledges record is seriously misleading in respect of only part of the secured property, that inaccuracy does not affect the entry in its application to the rest of the property.
- (6) Where—
- (a) the provider consists of two or more co-providers, and
 - (b) there is an inaccuracy in an entry in the statutory pledges record, being an inaccuracy which is seriously misleading in respect of a co-provider but not in respect of both (or all) the co-providers,
- that inaccuracy does not affect the entry in its application to a co-provider in respect of whom the inaccuracy is not seriously misleading.
- (7) Subsection (6) applies in relation to a secured creditor which consists of two or more co-secured creditors as it applies in relation to a provider which consists of two or more co-providers.
- (8) The Scottish Ministers may by regulations amend this section by specifying further instances in which, for the purposes of section 95(1)(b), 96(1)(b) or 97(1)(b) an inaccuracy in an entry is seriously misleading.
- (9) References—
- (a) in subsection (1)(a) to “the provider’s proper name”, or
 - (b) in subsection (2)(a) or (b) to “a co-provider’s proper name”,

are to the person's name in the form determined in accordance with rules under section 114(1)(c)(i).

Duration

99 Power of Scottish Ministers as regards duration of statutory pledge

- (1) The Scottish Ministers may by regulations—
 - (a) specify a period from the creation (or renewal by virtue of paragraph (b)) of an entry in the statutory pledges record, being a period at the end of which, unless the entry has during that period been—
 - (i) renewed (or as the case may be further renewed) by virtue of that paragraph, or
 - (ii) removed,
 the statutory pledge to which the entry relates will be extinguished and the entry removed, and
 - (b) enable 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) Different provision may be made by virtue of subsection (1) for different cases or for different classes of case.
- (3) Before exercising powers under this section, the Scottish Ministers must consult the Keeper.

Corrections

100 Application to Keeper by secured creditor for correction of statutory pledges record

- (1) An application may be made to the Keeper for the correction of the statutory pledges record in relation to an entry for a statutory pledge as regards which the applicant is the secured creditor (whether or not identified as such in the entry).
- (2) The Keeper must accept an application under subsection (1) provided that—
 - (a) the application conforms to what is prescribed, for the purposes of this section, in RSP Rules, and
 - (b) either—
 - (i) such fee as is payable for the correction in question is paid, or
 - (ii) arrangements satisfactory to the Keeper are made for payment of that fee.
- (3) If the requirements of paragraphs (a) and (b) of subsection (2) are not satisfied, the Keeper must reject the application and inform the applicant accordingly.
- (4) On accepting, by virtue of subsection (2), an application for the correction of the statutory pledges record, the Keeper must—
 - (a) correct the entry accordingly, and
 - (b) issue to the applicant a written statement verifying the correction.
- (5) The statement mentioned in subsection (4)(b) must—
 - (a) conform to such RSP Rules as may relate to the statement, and

- (b) include the date and time of the correction.
- (6) Where, under subsection (4), the Keeper corrects the record by—
 - (a) removing the entry, the Keeper must transfer the entry to the archive record and note on the transferred entry—
 - (i) that the transfer is in consequence of a correction under that subsection, and
 - (ii) the date and time of the removal.
 - (b) removing or replacing data included in the entry or by replacing a copy document, the Keeper must note on the entry—
 - (i) that it has been corrected, and
 - (ii) the details of the correction (including, without prejudice to the generality of this paragraph, the date and time of the correction), or
 - (c) replacing a copy document, the replaced copy must be transferred to the archive record by the Keeper and there retained.

101 Demand that application be made for a correction to the statutory pledges record by the removal of an entry or of data included in an entry

- (1) A person (in this section referred to as “D”)—
 - (a) identified as the provider, or as a co-provider, of a statutory pledge in an entry in the statutory pledges record, or
 - (b) with a right in property identified as the secured property in an entry in the statutory pledges record,

and who considers that the circumstances are as mentioned in subsection (2), may issue a demand in a prescribed form to the person identified in that entry as the secured creditor (the person so identified being in this section referred to as “ISC”), that ISC apply to the Keeper for the correction of the statutory pledges record.

- (2) Those circumstances are, that—
 - (a) D is neither the provider, nor a co-provider, of the statutory pledge, or
 - (b) all or part of the property identified in the entry as the secured property is not secured property.
- (3) A demand issued under subsection (1) is to specify a period (being a period of not less than 21 days after it is received) within which it is to be complied with.
- (4) ISC may not charge a fee for such compliance.
- (5) If ISC fails to comply with the demand within the period specified by virtue of subsection (3), D may apply to the Keeper for the correction of the statutory pledges record.
- (6) Any application under subsection (5) must conform to such RSP Rules as may relate to the application.
- (7) On an application under subsection (5) the Keeper must—
 - (a) serve a notice on ISC stating that, unless a court order under subsection (9)(a) is served on the Keeper within 21 days after the service of that notice, the Keeper will correct the record,
 - (b) note in the entry that the application has been received and include in that note—

- (i) the details of the correction sought, and
 - (ii) the date on which the application was received,
 - (c) issue to D a written statement verifying that the application has been received, and
 - (d) notify the person identified in the entry as the provider (if a different person from D) that the notice mentioned in paragraph (a) has been served on ISC.
- (8) If the 21 days mentioned in subsection (7)(a) elapse and no order under subsection (9)(a) has been served on the Keeper, the Keeper is to make the correction applied for.
- (9) At any time before the 21 days so mentioned elapse the court, on the application of ISC, may if satisfied that the demand—
- (a) is not justified, direct that no change is to be made to the record in consequence of the demand, or
 - (b) is justified in whole or in part, direct that the record be corrected accordingly.
- (10) Where under subsection (8) the Keeper corrects the record by—
- (a) removing the entry, the Keeper must transfer the entry to the archive record and note on the transferred entry—
 - (i) that the transfer is in consequence of a correction under that subsection, and
 - (ii) the date and time of the removal.
 - (b) removing or replacing data included in the entry or by replacing a copy document, the Keeper must note on the entry—
 - (i) that it has been corrected, and
 - (ii) the details of the correction (including, without prejudice to the generality of this paragraph, the date and time of the correction), or
 - (c) replacing a copy document, the replaced copy must be transferred to the archive record by the Keeper and there retained.
- (11) Where under subsection (8) the Keeper effects a correction, the Keeper must (in so far as it is reasonable and practicable to do so) notify—
- (a) every person specified for the purposes of this subsection by RSP Rules, and
 - (b) any other person whom the Keeper considers it appropriate to notify,
- that the correction has been effected.

102 Correction of the statutory pledges record

- (1) This section applies where the Keeper becomes aware of a manifest inaccuracy in an entry in the statutory pledges record.
- (2) The Keeper must correct the record if what is needed to correct it is manifest.
- (3) Where what is needed to correct it is not manifest, the Keeper must note the inaccuracy on the entry.
- (4) Where under subsection (2) the Keeper corrects the record by—
 - (a) removing the entry, the Keeper must transfer the entry to the archive record and note on the transferred entry—
 - (i) that the transfer is in consequence of a correction under that subsection, and

- (ii) the date and time of the removal.
 - (b) removing or replacing data included in the entry or by replacing a copy document, the Keeper must note on the entry—
 - (i) that it has been corrected, and
 - (ii) the details of the correction (including, without prejudice to the generality of this paragraph, the date and time of the correction), or
 - (c) replacing a copy document, the replaced copy must be transferred to the archive record by the Keeper and there retained.
- (5) Where under subsection (2) the Keeper effects a correction, the Keeper must (in so far as it is reasonable and practicable to do so) notify—
- (a) every person specified for the purposes of this subsection by RSP Rules, and
 - (b) any other person whom the Keeper considers it appropriate to notify,
- that the correction has been effected.

103 Directions in relation to correction by removal of entries from, or of data included in entries in, the statutory pledges record

- (1) This section applies where, in any proceedings, a court determines that the statutory pledges record is inaccurate.
- (2) The court must in so far as is appropriate direct the Keeper to correct the record.
- (3) In connection with any such correction, the court may give the Keeper such further direction (if any) as it considers requisite.
- (4) The Keeper must, on effecting a correction in pursuance of a direction under subsection (2), notify (in so far as it is reasonable and practicable to do so), each person who either or both—
 - (a) was, immediately before the correction,
 - (b) is, immediately after it,identified in the entry as the provider or the secured creditor that the correction has been effected.
- (5) On effecting a correction in pursuance of a direction under subsection (2) other than by the removal of the relevant entry from the statutory pledges record, the Keeper must note on the relevant entry—
 - (a) that it has been corrected, and
 - (b) the details of the correction (including, without prejudice to the generality of this paragraph, the date and time of the correction).
- (6) On effecting a correction in pursuance of a direction under subsection (2) by the removal of the relevant entry from the statutory pledges record, the Keeper must transfer the entry to the archive record and note on the transferred entry—
 - (a) that the transfer is in pursuance of a direction under subsection (2), and
 - (b) the date and time of the removal of the entry from the statutory pledges record.

104 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 before a tribunal, in which is put in question (either or both)—

- (a) the accuracy of the statutory pledges record,
- (b) what is needed to correct an inaccuracy in that record.

105 Correction of statutory pledges record: general

- (1) In this Part, any reference to “correction” includes (without prejudice to the generality of that expression and except in so far as the context otherwise requires)—

- (a) the removal of data included in an entry,
- (b) the removal of an entry from the statutory pledges record and the transfer of that entry to the archive record,
- (c) the replacement of data, or of a copy document, included in an entry,
- (d) the restoration of an entry (whether or not by removing it from the archive record and transferring it to the statutory pledges record), or
- (e) the restoration of data to an entry,

and analogous expressions are to be construed accordingly.

- (2) A correction is taken to be made on the date and at the time which are entered for it in the register in pursuance of a provision of this Part of this Act.

*Searches and extracts***106 Searching the statutory pledges record**

- (1) Any person may search the statutory pledges record provided that—

- (a) the search accords with—
 - (i) subsection (2), and
 - (ii) such RSP Rules as are made under section 114(1)(h), and
- (b) either—
 - (i) such fee as is payable for the search is paid, or
 - (ii) arrangements satisfactory to the Keeper are made for payment of that fee.

- (2) The statutory pledges record may be searched only—

- (a) by reference to any of the following data in the entries contained in that record—
 - (i) the names of providers,
 - (ii) the names and dates of birth, of providers who are individuals,
 - (iii) the unique numbers of providers required by RSP Rules to be identified in the statutory pledges record by such a number,
- (b) if RSP Rules require or permit the secured property to be identified by a number unique to that property or in some other way, by reference to such identification,

- (c) by reference to the registration number allocated, under section 91(4)(b), to the entry for a statutory pledge, or
- (d) by reference to some other factor, or characteristic, specified for the purposes of this paragraph by RSP Rules.

107 Keeper’s duties and powers as regards the provision of search facilities

- (1) The Keeper—
 - (a) must for the purposes of this Act provide a search facility the search criteria of which are specified by RSP Rules, and
 - (b) may provide such other search facilities, with such other search criteria, as the Keeper thinks fit.
- (2) In subsection (1), “search criteria” means the criteria in accordance with which what is searched for must match data in an entry in order to retrieve that entry.

108 Printed search results and their evidential status

A printed search result which relates to a search carried out by means of a search facility provided by the Keeper and which purports to show an entry in the statutory pledges record is admissible in evidence and, in the absence of evidence to the contrary, is sufficient proof of (as the case may be)—

- (a) the registration of—
 - (i) the statutory pledge,
 - (ii) an amendment to the entry in the statutory pledges record, or
 - (iii) a restriction of the statutory pledge,to which the result relates,
- (b) a correction of the entry in the statutory pledges record to which the result relates, and
- (c) the date and time of such registration or correction.

109 Extracts and their evidential status

- (1) Any 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, if any, as is payable for issuing it is paid, or
 - (b) where a fee is so payable, arrangements satisfactory to the Keeper are made for payment of it.
- (3) The Keeper may validate the extract as the Keeper considers appropriate.
- (4) The Keeper may issue the extract as an electronic document if the applicant does not request 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 the date on which and the time at which the extract is issued (being a date and time specified in the extract).

*Request for information***110 Secured creditor's duty to respond to request for information**

- (1) An entitled person may request the person identified in the entry for a statutory pledge as the secured creditor (the person so identified being in this section referred to as "ISC") to provide the entitled person—
 - (a) if ISC 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 secured property, or
 - (b) if ISC—
 - (i) is no longer the secured creditor, with information to that effect, with the name and address of the person to whom ISC assigned the statutory pledge and (as the case may be and in so far as known) with the names and addresses of subsequent assignees, or
 - (ii) 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,
 - (b) a person who has a right to execute diligence against the property so specified (or who is authorised by decree 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—
 - (i) is prescribed under this paragraph, or
 - (ii) has the consent of the person identified in the entry as the provider to make a request under paragraph (a) or (b) of subsection (1).
- (3) Subject to subsection (5), ISC must, within 21 days after receiving a request by virtue of subsection (1), comply with that request unless subsection (8) applies.
- (4) ISC may recover from the entitled person any costs reasonably incurred in complying with the request.
- (5) The court, if satisfied that in all the circumstances it would be unreasonable to require ISC—
 - (a) to comply with the request (whether in whole or in part), may by order, on the application of ISC, exempt ISC from complying with—
 - (i) the request, or
 - (ii) such part of the request as it may specify in the order, or
 - (b) to comply with the request within the 21 days mentioned in subsection (3), may by order, on such application, extend by such number of days as it may specify in the order the period within which ISC must comply with the request.
- (6) If the court is satisfied on the application of the entitled person that ISC, without reasonable excuse, failed to comply with subsection (3), it may—
 - (a) by order require ISC to comply with the request within 14 days, and
 - (b) if ISC does not so comply, may—

- (i) extinguish the statutory pledge, and
 - (ii) direct the Keeper to remove the entry for it from the statutory pledges record.
- (7) On removing an entry from the statutory pledges record in pursuance of a direction under subsection (6)(b)(ii), the Keeper must transfer the entry to the archive record and note on the transferred entry—
 - (a) that the transfer is in pursuance of a direction under that subsection, and
 - (b) the date and time of the removal of the entry from the statutory pledges record.
- (8) This subsection applies—
 - (a) where it is manifest that the registration is ineffective as regards the statutory pledge to which the request relates,
 - (b) where it is directly apparent from the entry for the statutory pledge that the property (or any part of the property) specified under subsection (1) by the entitled person is not encumbered by that pledge, or
 - (c) where—
 - (i) ISC has, within the 3 months immediately preceding ISC's receipt of the request, already complied with a request under subsection (1), by the same person and in relation to the same property, and
 - (ii) the information contained in the statement issued in relation to the earlier request is still correct.
- (9) Subsection (10) applies where an entitled person—
 - (a) makes a request under subsection (1),
 - (b) is informed by the secured creditor, in a response under paragraph (a) of that subsection to the request, that the property specified under that subsection by the entitled person is neither the secured property nor part of the secured property, and
 - (c) within 3 months after being so informed acquires in good faith—
 - (i) the property so specified (or any part of it), or
 - (ii) a right in that property (or part).
- (10) On that acquisition, the statutory pledge is extinguished as regards the property (or part).
- (11) This section applies in relation to any secured creditor whose name and address have, by virtue of subsection (1)(b), been provided to an entitled person by ISC as it applies to ISC.

Entitlement to compensation

111 Liability of Keeper

- (1) A person is entitled to be compensated by the Keeper for loss suffered in consequence of—
 - (a) an inaccuracy attributable to the Keeper—
 - (i) in the making up, maintenance or operation of the register, or
 - (ii) in an attempted correction of the register,

- (b) the issue, under section 93(1) or 100(4)(b), of a statement which is incorrect,
 - (c) the service, under section 101(11) or 103(4) of a notification which is incorrect, or
 - (d) the issue, under section 109, of an extract which is not a true extract.
- (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 certain measures which it would have been reasonable for the person to take,
 - (b) in so far as the person’s loss is not reasonably foreseeable, or
 - (c) for non-patrimonial loss.

112 Liability of certain other persons

- (1) Where a person (in this section referred to as “P”) suffers loss in consequence of—
- (a) an inaccuracy in an entry in the register (not being an inaccuracy attributable to the Keeper), P is entitled to be compensated for that loss by the person who made the application which gave rise to the entry if, in making it, that person failed to take reasonable care,
 - (b) an inaccuracy in information supplied in response to a request under section 110(1), P is entitled to be compensated for that loss by the person who supplied the information if, in supplying it, that person failed to take reasonable care,
 - (c) a failure, without reasonable cause, to comply with a request under section 110(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 certain measures which it would have been reasonable for P to take,
 - (b) in so far as P’s loss is not reasonably foreseeable, or
 - (c) for non-patrimonial loss.

Service of notices

113 Service of notices for the purposes of certain provisions of this Chapter

In the application of section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 (service of documents) for the purposes of section 101(1), (7)(a) or (c) or (11), 103(4) or 110(1)—

- (a) subsection (4) of that section of that Act is to be construed as if, for paragraphs (a) to (c) of the subsection, there were substituted the words “the address given for the person in the entry in question”, and
- (b) where an e-mail address for the person identified as the secured creditor is contained in the entry in question, the request or notice is to be taken to be served as mentioned in subsection (2)(c) of that section of that Act on being transmitted to that e-mail address.

*RSP Rules***114 RSP Rules**

- (1) The Scottish Ministers may by regulations make rules (in this Act referred to as “RSP Rules”)—
 - (a) as to the making up and keeping of the register,
 - (b) as to procedure in relation to applications—
 - (i) for registration, or
 - (ii) for corrections,
 - (c) as to the identification, in any such application and in the register, of any person or of property, including—
 - (i) how the proper form of a person’s name is to be determined, and
 - (ii) where the person or property bears a number (whether of numerals or of letters and numerals) unique to the person or property, whether that number must or may be used in identifying the person or property,
 - (d) as to the degree of precision with which time is to be recorded in the register,
 - (e) as to 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 91,
 - (f) as to whether a signature contained in a constitutive document or amendment document need be included in a copy of that document so submitted,
 - (g) as to searches in the register,
 - (h) as to data 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 109,
 - (i) prescribing the configuration, formatting and content of—
 - (i) applications,
 - (ii) notices,
 - (iii) documents,
 - (iv) data, and
 - (v) statements,to be used in relation to the register,
 - (j) as to when the register is open for—
 - (i) registration, and
 - (ii) searches,
 - (k) requiring there to be entered in the statutory pledges record or in the archive record such data as may be specified in the rules, or
 - (l) regarding other matters in relation to registration under this Act, 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 Act.

- (2) Before making RSP Rules the Scottish Ministers must consult the Keeper.

CHAPTER 3

MISCELLANEOUS AND INTERPRETATION OF PART 2

Miscellaneous

115 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 to that expression by section 5 of the Agricultural Credits (Scotland) Act 1929).

Interpretation of Part 2

116 Interpretation of Part 2

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

“amendment document” has the meaning given to that expression by section 61(1),

“the archive record” is to be construed in accordance with section 90,

“authorised person” is to be construed in accordance with sections 72(9) and 73(6),

“collateral-taker” is to be construed in accordance with section 51(3)(b),

“corporeal moveable property” does not include money,

“financial instrument” is to be construed in accordance with the definition of “financial instruments” in regulation 3(1) of the Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226),

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

“provider”—

(a) is to be construed in accordance with section 43(4)(b),

(b) without prejudice to the generality of the expression, may consist of two or more co-providers, and

(c) includes any successor in title, or representative, of a provider (unless the successor or representative is a person who, by virtue of Chapter 1 of this Part, had acquired the secured property unencumbered by the statutory pledge in question),

“the register” is to be construed in accordance with section 87(2),

“RSP Rules” has the meaning given to that expression by section 114(1),

“secured creditor”—

(a) is to be construed in accordance with section 43(4)(a),

(b) without prejudice to the generality of the expression, may consist of two or more co-secured creditors, and

(c) includes any successor in title, or representative, of a secured creditor,

“secured property” is to be construed in accordance with section 44(3), and
“the statutory pledges record” is to be construed in accordance with section 89(2).

- (2) In this Part, “right in security” (except where the context otherwise requires)—
- (a) means a right in security over property and includes a floating charge, but
 - (b) does not include a right to execute diligence.
- (3) Any reference in this Part to the “proper name” of a person is to that person’s name in the form determined in accordance with rules under section 114(1)(c)(i).

117 References in Part 2 to “registering”

Any reference (however expressed) in this Part to registering—

- (a) a statutory pledge, is to be construed as a reference to the Keeper’s carrying out the duties imposed on the Keeper by sections 89 and 91,
- (b) an amendment to, or restriction of, a statutory pledge, is to be construed as a reference to the Keeper’s carrying out the duties imposed on the Keeper (as respects an application under section 92(1)(a) or (b)) by section 92(2) and (4).
- (c) the discharge of a statutory pledge, is to be construed as a reference to the Keeper’s—
 - (i) removing the entry for it from the statutory pledges record, and
 - (ii) under section 92(5), 100(6)(a), 101(8) or (10)(a), 103(6) or 110(7) or by virtue of section 99(1)(a), transferring that entry to the archive record.

PART 3

INTERPRETATION OF THIS ACT AND GENERAL

Interpretation of this Act

118 Interpretation of this Act

- (1) In this Act (except where the context otherwise requires)—
- “authenticated” is to be construed in accordance with section 9B(2) of the Requirements of Writing (Scotland) Act 1995,
 - “court” means Court of Session or sheriff,
 - “executed” means subscribed as a traditional document in compliance with section 2(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, and
 - “registration number” means a unique identifier consisting of numerals or of letters and numerals.
- (2) Any reference in this Act to—
- (a) a “written agreement” (or to an agreement’s being set out “in writing”) is to an agreement,
 - (b) a “written confirmation” is to a confirmation,

- (c) “written consent” is to consent, or
 - (d) a “written statement” is to a statement,
set out either in a traditional document or in a document created as an electronic communication.
- (3) In subsection (2), “electronic communication” has the same meaning as in the Electronic Communications Act 2000.
 - (4) Where, under or by virtue of a provision of this Act, however expressed, a person (in this subsection referred to as “P”) may or must 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.
 - (5) The Scottish Ministers may by regulations modify the definition of “authenticated” in subsection (1).

General

119 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 of this Act.
- (2) Without prejudice to the generality of subsection (1), the Keeper may, under that subsection, 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 (as defined in section 9A of the Requirements of Writing (Scotland) Act 1995).
- (3) The Keeper may impose reasonable conditions for using any computer system provided for the purposes of subsection (1).

120 Good faith

- (1) Subsection (2) applies as respects 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.

121 Ancillary provision

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

122 Regulations

- (1) Regulations under section 3(6), 5(5), 36(2)(b)(i), 46(5), 47(2)(d), 52(3), 53(3), 54(5), 56(1)(a), 99(1), 118(5) or 121(1) are subject to the affirmative procedure.
- (2) Any other regulations under this Act, other than regulations under section 123(2), are subject to the negative procedure.

123 Commencement

- (1) This section and sections 121, 122 and 124 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.
- (3) Different days may, under subsection (2), be appointed for different purposes.

124 Short title

The short title of this Act is the Moveable Transactions (Scotland) Act 2017.