

MOVEABLE TRANSACTIONS (SCOTLAND) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Security over Moveable Property

Chapter 1 - Pledge

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

Section 56 – Occupancy and other rights in family home following grant of statutory pledge

258. The Matrimonial Homes (Family Protection) (Scotland) Act 1981 gives spouses who are not named in the title deeds or on the lease etc. (“non-entitled spouses”) occupancy rights in their matrimonial home, and in some circumstances the right to use furniture and plenishings in the home. Section 22 of the 1981 Act defines “matrimonial home” to include a caravan or houseboat. It defines “furniture and plenishings” to mean any article in the home that is owned or the subject of a hire-purchase arrangement and which is reasonably necessary to enable the home to be used as a family residence. Either of these types of moveable corporeal property could be encumbered property for the purposes of a statutory pledge.
259. The Civil Partnership Act 2004 makes the equivalent provision for civil partners as the 1981 Act does for spouses. In both cases, the measures in those Acts apply where one spouse or partner is entitled (or permitted by a third party) to occupy the home, and the other is not, provided that the property is not one which has been made available specifically for one spouse or partner to reside in separately from the other.
260. Section 2 of the 1981 Act and section 102 of the 2004 Act confer ancillary and consequential rights on non-entitled spouses and partners. Subsection (2) of section 56 extends this to include the right to make any payment due by the entitled spouse or partner in respect of a secured obligation relating to the family home, so that the non-entitled spouse or partner can continue to exercise occupancy rights without the secured creditor attempting to call in the security.
261. Under section 3 of the 1981 Act and section 103 of the 2004 Act, the non-entitled spouse or partner may apply to the court for possession or use of furniture and plenishings. Subject to certain provisos, such an order is not to prejudice the rights of a third party who has rights to performance of an obligation under an agreement such as a hire-purchase agreement. Subsection (3) of section 56 extends this so that such an order is also not to prejudice the rights of a secured creditor. Subsections (4) and (5) simply insert definitions for the purpose of subsection (3).

*These notes relate to the Moveable Transactions (Scotland)
Act 2023 (asp 3) which received Royal Assent on 13 June 2023*

262. Section 6 of the 1981 Act and section 106 of the 2004 Act provide that the continued exercise of the rights conferred on a non-entitled spouse or partner by those Acts will (subject to certain exceptions) not be prejudiced by a dealing of the entitled spouse or partner relating to the home. The effect of subsection (6) is that a dealing will for that purpose include the grant of a statutory pledge over a moveable home, such as a caravan or houseboat.
263. Section 8 of the 1981 Act and section 108 of the 2004 Act provide that the rights of a third party with an interest in the home as a creditor under a secured loan will not be prejudiced by reason only of the rights of a non-entitled spouse or partner under those Acts, and allow the creditor to apply to the court for the occupying non-entitled spouse or partner to be required to make the payments that are due under the loan. However, this only applies where the creditor is in good faith and in each case had obtained either:
- (a) a declaration from the entitled spouse or partner that there were no occupancy rights at the time the security was granted, or
 - (b) a renunciation of occupancy rights, or a consent to the granting of the security, by the non-entitled spouse or partner.
264. The effect of subsections (7) to (9) is to provide for how the application of those rules to the grant of a statutory pledge over a moveable home is to operate. Specifically, they make provision about what “the time of granting a security” means in the case of a statutory pledge. This is relevant because the explanation set out in the paragraph immediately above only applies to secured loans granted after 30 December 1985. While it should be self-evident that a statutory pledge could not have been granted before that date, defining the time of granting is consistent with the approach taken in those Acts in relation to heritable securities.