

# **MOVEABLE TRANSACTIONS (SCOTLAND) ACT 2023**

---

## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2 – Security over Moveable Property**

##### *Chapter 1 - Pledge*

#### **Enforcement of pledge**

##### *Section 74 – Appropriation with prior agreement*

320. Subsections (1) and (2) allow the provider and the secured creditor to agree in writing, in advance of any enforcement of the secured obligation, that the creditor may appropriate the encumbered property (subject to certain conditions).
321. An agreement to appropriate may only have effect as respects property in respect of which the agreement sets out a method of easily determining a reasonable market price (see subsection (3)). That might include, for example, an agreement in relation to appropriation of used cars which states that an average of the prices listed in a specified used car guide is to be used to determine the value on appropriation.
322. Under subsection (4), appropriation occurs only at the market value, as determined in accordance with that agreement, on the date of appropriation. If the value of the item is more than the secured debt, section 73(2)(b) will apply and the balance must be held in trust and applied in accordance with the provisions of the Act.
323. Subsection (5) requires notice of the intended appropriation to be given to the parties it will affect. The list is self-explanatory, though it should be noted that it may be expanded by regulations under subsection (9)(a)(i). There are also exemptions under subsection (6) where the secured creditor does not know, and cannot reasonably be expected to know, of the existence of certain persons. These can be expanded by regulations under subsection (9)(a)(ii) where a similar exemption is appropriate in respect of someone added to the list by regulations under subsection (9)(a)(i).
324. Subsection (7) sets out that the notice of intended appropriation must identify the property to be appropriated, and specify both the amount owing to the secured creditor and the amount expected to be obtained by the appropriation. It is recognised that in cases where the asset is insufficient to meet the full value of the debt, the exact amount to be obtained by the appropriation may not be known in advance since the asset's value is to be based on the date of appropriation. The notice must also give the parties notice of their right to object (where applicable) and explain the consequences of such an objection being received within the relevant time limit.
325. Subsection (8) gives a number of the parties on whom the notice is served a right to veto the appropriation, provided that their objection is received by the secured creditor within 14 days beginning with the day of receipt of the notice of the intended appropriation.

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

However, the provider and the debtor are excluded from having a right of veto because the section is concerned with cases where the provider has expressly entered into a prior agreement allowing appropriation. Where the appropriation is vetoed, the secured creditor must inform the other recipients of the notice of the intended appropriation that it is no longer going ahead.

326. Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides for a number of assumptions as to when documents will be received if they are sent in certain ways. While these presumptions can be rebutted by evidence to the contrary, they are likely to be relevant to a party objecting when calculating if it is likely that the objection will be received in sufficient time.
327. Subsection (9)(b) allows the Scottish Ministers by regulations to modify this section so as to replace the requirements as to what the notice must contain with a requirement to instead use a form laid out by Ministers in regulations. It also allows them to modify any such form from time to time.