

MOVEABLE TRANSACTIONS (SCOTLAND) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Security over Moveable Property

Chapter 1 - Pledge

Enforcement of pledge

Section 77 – Application of proceeds from enforcement of pledge

335. This section provides for the distribution of any proceeds received by the secured creditor as a result of enforcing a possessory or statutory pledge.
336. Subsection (1) provides that the secured creditor must first pay the expenses of the enforcement, and then pay the sums due to secured creditors or creditors who have executed diligence (with subsection (2) providing that payments are to be made in accordance with the priority of their claims). Any residue is paid to the provider (see in that respect paragraph (b) of the definition of “provider” in section 113(1) of the Act).
337. Payments are to be abated in equal proportions where full payment is not possible (see subsection (4)).

Example

The encumbered property is sold for £100,000. There are two equal ranking rights in security. Jack is owed £200,000. Jill is owed £50,000. Jack is paid £80,000 and Jill £20,000, which is 40% of what is due to each of them.

338. Subsection (3), however, provides that no payment is to be made to creditors with a higher ranking security or diligence than the pledge being enforced unless they have consented to the enforcement. If they have not consented then their right still subsists, and that will affect the marketability of the encumbered property (see section 69(3) in that respect). It might mean, for example, that is only practicable for the secured creditor to lease the encumbered property.
339. Subsections (5) and (6) provide for the situation, likely to be uncommon, where it is unclear who is to be paid. The effect is that the secured creditor must consign an amount in court for the benefit of the person who appears to have the best right to the payment.
340. Subsections (7) and (8) provide for statements to be given to relevant parties as to how the proceeds as a whole have been distributed. Under subsection (10), the Scottish Ministers have a power to expand this list to include specified persons who have statutory duties in relation to the provider’s property (as is the case, for example, in an insolvency).

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

341. Subsection (9) applies the rule about statements to let or licenced property. In those cases, it will not just be a one-off statement that is required. As such, the rule is that a statement must be given every month, beginning with the month after the first enforcement proceeds are received.