

MOVEABLE TRANSACTIONS (SCOTLAND) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Security over Moveable Property

Chapter 1 - Pledge

Enforcement of pledge

Section 68 – Secured creditor’s right to sell

305. This section sets out the standard remedy for the secured creditor following service of a pledge enforcement notice (and where appropriate the obtaining of a court order): a right to sell the property at the best reasonably attainable price (subsections (1) and (2)). The secured creditor will need to be able to convey the encumbered property to the purchaser, and may first require to take possession of the property under section 67 of the Act.
306. The secured creditor may also purchase the encumbered property themselves, but only in the limited circumstances set out in subsection (3).
307. Subsection (4) requires that the secured creditor holds the proceeds of sale in trust until they are distributed under section 77 of the Act. It is similar in effect to section 27 of the Conveyancing and Feudal Reform (Scotland) Act 1970, which provides for the proceeds of sale under a standard security over land. A standard security is another form of subordinate real right in security.