



Moveable Transactions (Scotland) Act 2023 2023 asp 3

PART 2

SECURITY OVER MOVEABLE PROPERTY

CHAPTER 1

PLEDGE

Property encumbered by statutory pledge: effect of transfer by provider

51 Property encumbered by statutory pledge: transfer by provider

- (1) If the provider of a statutory pledge transfers the encumbered property (or any part of it) to a third party, the transferred property remains encumbered by the pledge unless—
 - (a) the consent mentioned in [subsection \(2\)](#) is obtained,
 - (b) the third party acquires the property unencumbered under any of sections [53](#) to [55](#), or
 - (c) the pledge is otherwise extinguished by the transfer, in whole or in relation to the transferred property, under section [52](#), [93](#) or [108](#).
- (2) The consent referred to in [subsection \(1\)\(a\)](#)—
 - (a) is the prior 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 before the day of the particular transfer.
- (3) Whether to grant or withhold the consent mentioned in [subsection \(2\)](#) must remain at the discretion of the secured creditor (that is, the secured creditor may not agree in advance how that discretion will be exercised).

- (4) The Scottish Ministers may by regulations—
- (a) modify [subsection \(2\)](#) (including by specifying further descriptions of consent by reference to which [subsection \(1\)](#) is to apply),
 - (b) modify [this section](#) so as to specify further matters relevant to the granting or withholding of consent.

52 Extinction of statutory pledge where dealings inconsistent with a fixed security

If a secured creditor acquiesces, expressly or impliedly, in a provider's transfer of encumbered property (or any part of it) to a third party, other than by means of granting the consent mentioned in [section 51\(2\)](#), the statutory pledge under which the property (or part) was encumbered is extinguished.

53 Acquisition in good faith from seller acting in ordinary course of business

- (1) A purchaser of corporeal property which is encumbered property under a statutory pledge acquires it unencumbered by the statutory pledge, despite the consent mentioned in [section 51\(2\)](#) 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.

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

- (1) An individual who acquires corporeal property which is encumbered property under a statutory pledge acquires it unencumbered by the statutory pledge, despite the consent mentioned in [section 51\(2\)](#) not having been obtained, if—
 - (a) the property is wholly or mainly acquired for personal, domestic or household purposes,
 - (b) the acquirer gives value for the property acquired, and
 - (c) at the time of acquisition, the acquirer is in good faith.
- (2) For the purposes of [subsection \(1\)\(c\)](#), an acquirer is not to be taken to be other than in good faith by reason only of the statutory pledge having been registered.
- (3) The Scottish Ministers may by regulations modify [subsection \(1\)](#) so as to—
 - (a) limit its application to cases where the value of all that is acquired does not, at the time of acquisition, exceed a specified amount, and
 - (b) modify the amount for the time being specified there by virtue of [paragraph \(a\)](#).

55 Acquisition in good faith of motor vehicles

- (1) [Subsections \(2\) to \(4\)](#) apply where—
 - (a) there is a sale agreement (including a conditional sale agreement) or a hire-purchase agreement in respect of a motor vehicle,
 - (b) the motor vehicle is encumbered property under a statutory pledge,

- (c) at the time of entering into the agreement, the purchaser or hirer is not a person carrying on a business described in section 29(2) of the Hire-Purchase Act 1964, and
 - (d) the purchaser or hirer is, at that time, in good faith.
- (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 51\(2\)](#) not having been obtained.
- (3) And the statutory pledge is not to be enforced against the motor vehicle before the motor vehicle is transferred to the purchaser or hirer in accordance with the agreement.
- (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) Where the secured creditor receives a sum under [subsection \(4\)](#)—
 - (a) the provider’s liability to the secured creditor under the secured obligation is reduced by the same amount, but
 - (b) the transferor has a right of relief against the provider in respect of the sum.
- (6) For the purposes of [subsection \(1\)\(d\)](#), 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.
- (7) In [this section](#), “conditional sale agreement”, “hire-purchase agreement” and “motor vehicle” have the meanings given by section 29(1) of the Hire-Purchase Act 1964.
- (8) The Scottish Ministers may by regulations specify classes of motor vehicles to which [subsections \(1\) to \(7\)](#) do not apply.
- (9) Regulations under [subsection \(8\)](#) may modify sections 53 and 54 to provide that either or both of those sections do not apply to some or all of the classes of motor vehicle specified under [subsection \(8\)](#).