STATUTORY INSTRUMENTS

2025 No. 275 (S. 1)

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

FINANCIAL SERVICES AND MARKETS

The Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025

Made - - - -	*5th March 2025*
Laid before Parliament	*6th March 2025*
Coming into force - -	*1st April 2025*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(2), 113(3), 113(4) and 113(5) of the Scotland Act 1998(**a**).

PART 1

Introductory

Citation, commencement and extent

1.—(1) This Order may be cited as the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025.

(2) This Order comes into force on 1st April 2025.

(3) This Order extends to Scotland only.

Interpretation

2. In this Order—

"the Act" means the Moveable Transactions (Scotland) Act 2023(**b**);

"amendment document" has the meaning given by section 113(1) of the Act;

"assignation document" has the meaning given by section 41(1) of the Act;

"claim" has the meaning given by section 41(1) of the Act;

(**a**) 1998 c. 46. There have been amendments to sections 104, 112 and 113 which are not relevant to this Order.
(**b**) 2023 asp 3.

"collateral-taker", "financial collateral arrangement", "financial collateral", "financial instruments", "security financial collateral arrangement" and "title transfer financial collateral arrangement", and references to control or possession of financial collateral or a financial instrument, are to be construed in accordance with regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003(**a**);

"constitutive document" is to be construed in accordance with section 45 of the Act;

"encumbered property" has the meaning given by section 113(1) of the Act;

"pledge enforcement notice" has the meaning given by section 113(1) of the Act;

"provider" has the meaning given by section 113(1) of the Act;

"right in security" has the meaning given by section 113(1) of the Act;

"secured creditor" has the meaning given by section 113(1) of the Act;

"statutory pledge" has the meaning given by section 113(1) of the Act;

"unregistered statutory pledge" means a pledge created under article 7(2) of this Order which has not been registered under section 48 or 49 of the Act.

PART 2

Financial collateral arrangements: assignation

Application of the Act to assignation as part of financial collateral arrangement

3. Part 1 of the Act (assignation) applies to the assignation of a claim as part of a financial collateral arrangement subject to article 4.

Transfer of claim assigned as part of financial collateral arrangement

4.—(1) Paragraph (2) applies where an assignation document constitutes a security financial collateral arrangement or a title transfer financial collateral arrangement in respect of a claim.

(2) The claim is transferred either—

(a) as mentioned in section 3(1) of the Act (transfer of claims), or

(b) on the requirements mentioned in paragraph (3) all being met.

(3) Those requirements are that—

(a) the assignor is the holder of the claim,

(b) the financial collateral in question is in the possession, or under the control, of the collateral-taker or of a person authorised to act on the collateral-taker's behalf,

(c) the claim is identifiable as a claim to which the assignation document relates, and

(d) if the assignation is subject to a condition which must be satisfied before the claim is transferred, the condition is satisfied.

(4) If the claim is transferred by virtue of paragraph (2)(b)—

(a) the assignation document need not comply with the requirements of section 1(1) of the Act (assignation of claims: general) as to execution or authentication, and

(b) the means by which the assignation document may be created include, for example—

(i) writing transcribed by electronic or other means in a durable medium, or

(ii) sounds recorded in such a medium.

(**a**) S.I. 2003/3226.

(5) For the purposes of paragraph (2)(b), if the claim is a claim such as is mentioned in section 1(4) of the Act—

(a) the requirement mentioned in paragraph (3)(a) is met when the assignor becomes the holder of the claim, and

(b) any rule of law as to accretion does not apply in relation to the claim.

(6) Paragraph (7) applies where—

(a) an assignor grants more than one assignation document in respect of the same claim,

(b) at least one of the assignation documents is one mentioned in paragraph (1),

(c) each of the purported assignations of the claim is to a different person, and

(d) the requirements of paragraph (3) or, as the case may be, section 3(2) of the Act (transfer of claims) are all met in relation to each of the purported assignations at the same time by virtue of—

(i) the assignor becoming holder of the claim,

(ii) the claim becoming identifiable as a claim to which the assignation document relates, or

(iii) where each of the purported assignations is subject to a condition which must be satisfied before the claim is transferred, those conditions being satisfied at the same time.

(7) The claim transfers under paragraph (2) or, as the case may be, section 3(1) of the Act to the person to whom it is assigned by whichever of the purported assignations of the claim first met the requirement of paragraph (3)(b) or, as the case may be, section 3(2)(b) of the Act.

(8) This article is subject to section 4 of the Act (assignation of claims: insolvency).

PART 3

Security over moveable property: financial instruments

Competence of creating statutory pledge over financial instrument

5.—(1) It is competent to create a statutory pledge over a financial instrument.

(2) It is also competent to create a pledge over a financial instrument in accordance with article 7; and a pledge so created is to be treated for all purposes as a statutory pledge.

(3) Part 2 of the Act (security over moveable property) applies to a pledge created by virtue of this article subject to articles 6 to 19.

Competence of individual acting as provider of statutory pledge over financial instrument

6.—(1) It is competent for an individual to act as a provider of a statutory pledge over a financial instrument.

(2) Section 46 of the Act (competence of individual acting as provider of a statutory pledge) does not apply to an individual acting as a provider of a statutory pledge over a financial instrument.

Creation of pledge over financial instrument other than by registration

7.—(1) Paragraph (2) applies where a constitutive document, or an amendment document, constitutes a security financial collateral arrangement in respect of a financial instrument.

(2) A pledge is created over the financial instrument on the requirements mentioned in paragraph (3) all being met.

(3) Those requirements are that—

(a) the instrument is the property of the provider,

(b) the instrument is in the possession, or under the control, of the collateral-taker or of a person authorised to act on the collateral-taker's behalf, and

(c) the instrument is identifiable as an instrument to which the constitutive document or, as the case may be, amendment document relates.

(4) If a pledge is created by virtue of paragraph (2)—

(a) the requirements of section 45(2)(a) (constitutive document) or, as the case may be, 58(1) (amendment of statutory pledge) of the Act as to execution or authentication do not apply, and

(b) the means by which the pledge may be evidenced include, for example—

(i) writing transcribed by electronic or other means in a durable medium, or

(ii) sounds recorded in such a medium.

(5) This article is subject to section 50 of the Act (creation of statutory pledge: insolvency).

Acquisition of financial instrument encumbered by statutory pledge in the ordinary course of trading

8.—(1) On settlement of a protected transaction an acquirer of a financial instrument which is encumbered property under a statutory pledge acquires it unencumbered by the statutory pledge, despite the consent mentioned in section 51(2) of the Act (property encumbered by statutory pledge: transfer by provider) not having been obtained.

(2) For the purposes of paragraph (1), a "protected transaction" is one in which—

(a) the provider ceases to have title to the financial instrument on settlement of the transaction,

(b) the transaction is one—

(i) to which the Uncertificated Securities Regulations 2001(**a**) apply, and

(ii) in relation to which a properly authenticated dematerialised instruction has been duly given for the purposes of regulation 35 of those Regulations, and

(iii) the addressee of the properly authenticated dematerialised instruction—

(aa) did not have actual notice of the statutory pledge when the addressee received the properly authenticated dematerialised instruction, or

(bb) did have such notice but when the notice was received it was not practicable for the addressee to halt the process of the properly authenticated dematerialised instruction.

Assignation of unregistered statutory pledge over financial instrument

9.—(1) An unregistered statutory pledge may be assigned by means of an evidenced agreement between the collateral-taker and the assignee.

(2) Section 57(3) of the Act (assignation of statutory pledge) applies to such an agreement as it applies to an assignation document mentioned in section 57(2).

Amendment of unregistered statutory pledge over financial instrument

10.—(1) An unregistered statutory pledge may be amended by means of an evidenced agreement between the collateral-taker and the provider (and see article 7(4)(a) in relation to the application of section 58(1) of the Act (amendment of statutory pledge) to such a pledge).

(**a**) S.I. 2001/3755.

(2) Where an unregistered statutory pledge is amended solely for the purposes of adding property to the encumbered property it may be so amended by means of an evidenced statement by or on behalf of the provider.

Restriction, discharge or extinction of unregistered statutory pledge over financial instrument

11.—(1) An unregistered statutory pledge may be—

(a) restricted to only part of the encumbered property, or

(b) discharged,

by means of an evidenced statement by or on behalf of the collateral-taker.

(2) An unregistered statutory pledge is extinguished in relation to a financial instrument over which the pledge was created on the financial instrument ceasing to be in the possession, or under the control, of—

(a) the collateral-taker, or

(b) a person authorised to act on behalf of the collateral-taker.

(3) Section 52 of the Act (extinction of a statutory pledge where dealings inconsistent with a fixed security) does not apply to an unregistered statutory pledge where—

(a) two or more financial instruments are encumbered property under the pledge, and

(b) the pledge is extinguished in relation to one or more of those instruments under paragraph (2).

(4) Section 59 of the Act (restriction or discharge of statutory pledge) does not apply to an unregistered statutory pledge.

Further provision as regards evidenced agreements and evidenced statements

12. For the purposes of articles 9, 10 and 11, the means by which an agreement or, as the case may be, a statement may be evidenced include, for example—

(a) writing transcribed by electronic means or other means in a durable medium, or

(b) sounds recorded in such a medium.

Ranking of statutory pledges over financial instruments

13.—(1) This article applies where—

(a) a provider grants two or more statutory pledges over a financial instrument which is not the property of the provider at the time the pledges are granted, and

(b) at least one of those pledges was created under article 7(2).

(2) The priority in ranking of the pledges is determined according to the dates on which and times at which they—

(a) were registered effectively (see section 91 (effective registration of statutory pledge) and section 92 (effective registration of amendment to statutory pledge) of the Act), or

(b) first met the requirement of article 7(3)(b),

the earlier having priority over the later.

(3) Section 60(2) of the Act (ranking) does not apply where this article applies.

Whether court order required for enforcement

14.—(1) A court order is required for enforcing a pledge over a financial instrument only—

(a) where the provider is an individual, or

(b) where taking possession of, or steps in relation to, encumbered property in accordance with article 15(3) or (4).

(2) Section 66 of the Act (whether court action required for enforcement) does not apply to a pledge over a financial instrument.

Secured creditor's right to take possession of certificate of financial instrument

15.—(1) This article applies in relation to a certificated financial instrument in respect of which a secured creditor in a statutory pledge has served a pledge enforcement notice.

(2) Subject to any court order that is required under article 14, the secured creditor is entitled to take possession of the certificate of the instrument but only in accordance with paragraph (3) or, as the case may be, paragraph (4).

(3) Where the certificate is in the possession of a relevant person, the secured creditor may take possession under paragraph (2)—

(a) with the consent of the relevant person,

(b) with the consent of the court, through the agency of an authorised person, or

(c) personally, if authorised to do so by the court.

(4) Where the certificate is not in the possession of a relevant person, the secured creditor may take possession under paragraph (2)—

(a) with the consent of—

(i) the provider, given after the pledge becomes enforceable, and

(ii) any third party who for the time being either is in direct possession of, or has custody of, the certificate,

(b) through the agency of an authorised person, or

(c) personally, if authorised to do so by the court.

(5) For the purposes of paragraphs (3) and (4), a "relevant person" is a person who, in respect of the instrument—

(a) has a right in security which has priority in ranking over, or ranks equally with, the pledge to which the pledge enforcement notice relates, or

(b) has executed diligence which has priority in ranking over, or ranks equally with, that pledge.

(6) In this article, "authorised person" has the same meaning as in section 67(7) of the Act (secured creditor's right to take possession of, or steps in relation to, corporeal property).

Secured creditor's right to sell financial instrument

16.—(1) Paragraphs (2) and (3) apply where—

(a) a secured creditor is entitled to sell a financial instrument by virtue of section 68(1) of the Act (secured creditor's right to sell), and

(b) the instrument is of a kind admitted to trading in a public market in which the current market value is verifiable at the time of purchase.

(2) Section 68(3) of the Act does not apply to the instrument.

(3) The secured creditor is entitled to purchase the instrument but only—

(a) in that market and

(b) for market value.

Secured creditor's right to protect and manage financial instrument

17.—(1) Paragraph (2) applies where a secured creditor is entitled to sell a financial instrument by virtue of section 68(1) of the Act (secured creditor's right to sell).

(2) The secured creditor's right under subsection (1) of section 72 of the Act (secured creditor's right to protect and manage the property) includes, in addition to the things mentioned in subsection (2) of that section, the right to exercise any voting rights in relation to the financial instrument.

Secured creditor's right to appropriate financial instrument

18. In addition to the grounds set out in subsection (2) of section 73 of the Act (secured creditor's right to appropriate), it is not competent to appropriate by virtue of subsection (1) of that section a financial instrument payable to the bearer, unless that instrument is in the possession of the secured creditor.

Appropriation of financial instrument with prior agreement

19.—(1) This article applies where—

(a) a provider and a secured creditor have entered into an agreement under section 74(1) of the Act (appropriation with prior agreement), and

(b) any or all of the property to which the agreement relates is a financial instrument.

(2) Section 74(7)(d) and (8) of the Act does not apply in relation to the financial instrument.

Savings in relation to enforcement of statutory pledge over financial instrument

20. Nothing in this Order or in sections 63 to 78 of the Act is to be taken to derogate from such rights as a secured creditor may have by virtue of Part 4 of the Financial Collateral Arrangements (No. 2) Regulations 2003.

PART 4

Consequential modifications of the Act

Modification of Part 1 of the Act

21.—(1) Part 1 of the Act is amended as follows.

(2) In section 1 (assignation of claims: general), for subsection (6) substitute—

"(6) This Part applies to the assignation of a claim as part of a financial collateral arrangement, within the meaning of regulation 3(1) of the Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), only under and in accordance with the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025 (S.I. 2025/XXX).".

(3) In section 3 (transfer of claims), after subsection (8) insert—

"(9) See also article 4 (transfer of claim assigned as part of financial collateral arrangement) of the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025 (S.I. 2025/XXX).".

Modification of Part 2 of the Act

22.—(1) Part 2 of the Act is amended as follows.

(2) In section 42 (pledge), after subsection (5) insert—

"(6) See also Part 3 of the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025 (S.I. 2025/XXX).".

(3) In section 46 (competence of individual acting as provider of a statutory pledge), after subsection (1) insert—

"(1A) But see also article 6 (competence of individual acting as provider of statutory pledge over financial instrument) of the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025 (S.I. 2025/XXX).".

(4) In section 47 (competence of creating statutory pledge over certain kinds of property), after subsection (2) insert—

"(2A) But see also article 5 (competence of creating statutory pledge over financial instrument) of the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025 (S.I. 2025/XXX).".

(5) In section 51 (property encumbered by statutory pledge: transfer by provider), after subsection (1) insert—

"(1A) See also article 8 (acquisition of financial instrument encumbered by statutory pledge in the ordinary course of trading) of the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025 (S.I. 2025/XXX).".

(6) In section 52 (extinction of statutory pledge where dealings inconsistent with a fixed security), after "extinguished" insert "(but see also article 11(3) (restriction, discharge or extinction of unregistered statutory pledge over financial instrument) of the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025 (S.I. 2025/XXX))".

(7) In section 57 (assignation of statutory pledge), after subsection (3) insert—

"(4) See also article 9 (assignation of unregistered statutory pledge over financial instrument) of the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025 (S.I. 2025/XXX).".

(8) In section 58 (amendment of statutory pledge), after subsection (2) insert—

"(2A) See also article 10 (amendment of unregistered statutory pledge over financial instrument) of the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025 (S.I. 2025/XXX).".

(9) In section 59 (restriction or discharge of statutory pledge), after "creditor" insert "(but see also article 11 (restriction, discharge or extinction of unregistered statutory pledge over financial instrument) of the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025 (S.I. 2025/XXX))".

(10) In section 60 (ranking), after subsection (2) insert—

"(2A) But see also article 13 (ranking of statutory pledges over financial instruments) of the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025 (S.I. 2025/XXX).".

(11) In section 66 (whether court order required for enforcement), after subsection (1) insert—

"(1A) But see also article 14 (whether court order required for enforcement) of the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025 (S.I. 2025/XXX).".

(12) In section 68 (secured creditor's right to sell), after subsection (3) insert—

"(3A) But see also article 16 (secured creditor's right to sell financial instrument) of the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025 (S.I. 2025/XXX).".

(13) In section 72 (secured creditor's right to protect and manage the property), after subsection (2) insert—

"(2A) See also article 17 (secured creditor's right to protect and manage financial instrument) of the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025 (S.I. 2025/XXX).".

(14) In section 73 (secured creditor's right to appropriate), after subsection (2) insert—

"(3) See also article 18 (secured creditor's right to appropriate financial instrument) of the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025 (S.I. 2025/XXX).".

(15) In section 74 (appropriation with prior agreement), after subsection (8) insert—

"(8A) See also article 19 (appropriation of financial instrument with prior agreement) of the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025 (S.I. 2025/XXX).".

Ian Murray
Secretary of State
Office of the Secretary of State for Scotland

5th March 2025

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in consequence of the Moveable Transactions (Scotland) Act 2023 (asp 3) ("the Act") in relation to—

- the assignation of claims as part of a financial collateral arrangement (pursuant to the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226) ("the FCARs"));
- incorporeal moveable property in the form of financial instruments pursuant to the FCARs being capable of being used as collateral for a loan and therefore subject to a new form of security created under the Act called the statutory pledge.

The Order extends to Scotland only.

Article 2 defines many of the terms used throughout the Order. A number of defined terms are taken directly from the FCARs.

Article 4 provides for an alternative method for the transfer of a claim where the assignation evidences a financial collateral arrangement. Such a claim can transfer via either registration or intimation, or alternatively when all the conditions in paragraph (3) are met. Paragraph (4) removes the need for formality in relation to the execution or authentication of an assignation document in order to comply with the FCARs.

Article 5 makes it competent to create a statutory pledge over a financial instrument and additionally article 6 makes it competent for an individual to act as a provider of such a pledge.

Article 7 provides for statutory pledges over financial instruments in respect of a security financial collateral arrangement for the purposes of the FCARs. Such a statutory pledge can be created by registration, as like any other statutory pledge, or by the encumbered financial instrument coming into the possession or control of the collateral-taker. Paragraph (4) removes the need for formality in relation to the execution or authentication of a constitutive or amendment document in order to comply with the FCARs.

Article 8 provides for the circumstances where a financial instrument would be acquired unencumbered by a statutory pledge when so acquired in a protected transaction on the CREST settlement system.

Articles 9 and 10 make provision respectively in relation to the assignation and amendment of an unregistered statutory pledge over a financial instrument.

Article 11 makes provision in relation to the restriction, discharge or extinction of an unregistered statutory pledge. It has the effect that the statutory pledge is extinguished should the collateral-taker give up possession or control of the instrument and that a pledge may be restricted or discharged by means of an evidenced statement by the collateral-taker.

Article 12 provides that the use of evidenced agreements or statements for the purposes of the Order comply with the requirement of the FCARs that all formalities as to execution and authentication do not apply to such agreements.

Article 13 makes provision as to the ranking of multiple statutory pledges, whether they be created via registration or under article 7(2), over the same financial instrument that is not the property of the provider at the time the pledges are granted. The effect is the ranking is determined by which pledge is perfected first, with the earlier having priority over the later.

Article 14 provides that a court order will only be required to enforce a statutory pledge over a financial instrument where the provider is either an individual or where steps are taken towards taking possession of a certificated instrument in accordance with article 15.

Article 16 provides for the limited circumstances in which a secured creditor is entitled to sell the instrument for market value.

Article 17 provides that the secured creditor can take additional steps to those noted in the inexhaustive list in section 72(1) of the Act to manage and protect the instrument and its value.

Article 18 provides that a secured creditor cannot appropriate a financial instrument payable to the bearer unless already in their possession.

Article 19 provides for appropriation of a financial instrument with prior agreement. This has the effect that the instrument can be appropriated in accordance with said agreement and accordingly valued in line with the agreement's valuation methodology. This ensures compliance with regulation 18(1) of the FCARs and the requirement to value the instrument in a commercially reasonable manner.

Article 21 makes minor consequential amendments to Part 1 of the Act that signpost the application of the Order.

Article 22 makes minor consequential amendments to Part 2 of the Act that signpost the application of the Order.

A full Impact Assessment has not been prepared for this Order because the impacts were assessed and set out in a Business Regulatory Impact Assessment(**a**) prepared by the Scottish Law Commission in relation to the draft Bill contained in their Scottish Law Commission Report on Moveable Transactions 2017(**b**), which was implemented through the Act and this Order.

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(**a**) Business and Regulatory Impact Assessment – Report on Moveable Transactions (Report No 249) - https://www.scotlawcom.gov.uk/files/7415/1359/9231/Business_and_Regulatory_Impact_Assessment_-_Report_on_Moveable_Transactions_Report_No_249.pdf

(**b**) Scottish Law Commission Report on Moveable Transactions – Volume 3: Draft Bill - 19 December 2017 (Report No 249) - https://www.scotlawcom.gov.uk/files/4415/1361/1403/Report_on_Moveable_Transactions_-_Volume_3_Report_249.pdf

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