

Mr Stuart McMillan MSP
Convener of the Delegated Powers and Law Reform Committee
T1.01
Chamber Office
EDINBURGH
EH99 1SP

By email: DPLR.Committee@parliament.scot

24 October 2022

Dear Mr McMillan,

I am writing in response to your letter dated 6 October to Dr Jonathan Hardman (convener of the Society's Banking, Company & Insolvency Law sub-committee), following his evidence session to the Delegated Powers and Law Reform Committee on 4 October on the Moveable Transactions (Scotland) Bill.

We are pleased to provide the following comments on the matters raised in your correspondence.

Question 1

We consider that the possible options to further protect consumers from the statutory pledge aspects included in the Bill are:

1. removing consumers from the ability to grant statutory pledges under the Bill;
2. excluding household goods from the grant of statutory pledges under the Bill;
3. raising the financial threshold for items which might be the subject of a statutory pledge granted by a consumer under the Bill; or
4. any other potential option.

It is the view of our Banking, Company & Insolvency Law, and Consumer Law sub-committees that the Bill already includes a number of protections for consumers, and we are of the opinion that consumers should be included in the Bill. We consider that most, if not all of the consumer lending in relation to statutory pledges, is likely to be regulated by the FCA, which could intervene if consumer hardship emerged in the vehicle finance sector.

We note section 48(5)(b) of the Bill provides that the Scottish Ministers may by regulations, "*modify this section so as to specify types of property which encumbered property may not include or consist of for the purposes of this section.*" This could be invoked if consumer prejudice emerged in the vehicle finance sector for example.

We believe that to support giving consumers the ability to grant a statutory pledge, personal and household items that are reasonably required by a consumer should be excluded from being the subject(s) of a statutory pledge, and that our preferred way to achieve this would be to have a limit on the value of the goods that can be used for a statutory pledge. We would be supportive of a limit of £5000, rather than the £1000 limit that is currently specified in section 48(3) of the Bill.

In consideration of the four options, our preference is therefore option 3 (raising the financial threshold for items which might the subject of a statutory pledge granted by a

consumer under the Bill), which is subject to raising the financial threshold to a suitable level, and for the reasons given by the Scottish Law Commission.

We consider that removing consumers entirely from the statutory pledge regime would be inadvisable, as consumers would benefit from the changes and treating them as a homogenous group and denying consumers the ability to raise finance in this way does not seem sensible.

Question 2

In respect of the inclusion of shares in the Moveable Transactions (Scotland) Bill, we note that the Scottish Law Commission were of the view that it was competent to include them for the reasons set out in paragraphs 1.43 and 1.50 of their Moveable Transactions Report in 2017. The Bill's Policy Memorandum states the view that the Scottish Government has reached the view that it cannot include financial collateral such as shares within the Bill either for assignation or statutory pledge. It does not provide a basis for this conclusion. Without seeing the basis for this conclusion we cannot comment on the decision to exclude financial collateral from the Bill itself.

The Bill has been certified within the competence of the Scottish Parliament by the Scottish Minister in charge of the Bill and by the Presiding Officer.

Given these statutory safeguards have been complied with it is not the Society's place to comment on the competence of the Bill. You raise however an important issue relating to the purpose of the Bill, and whether the Bill is concerned with financial services, including financial instruments [shares] which are reserved on the one hand or the transfer of moveable property, which is devolved on the other. This may be a matter which the Committee would wish to raise with the Minister.

We do remain of the view that it is very important that the regime established by the Bill applies to shares, whether by way of inclusion within the Bill (should it be competent to do so), or co-operation with the UK Government through the statutory mechanisms.

I hope the above responses are helpful, and if you have further questions, please do not hesitate to contact me.

Yours sincerely,

Gavin Davies
Policy Executive