

RESPONSE FORM

DISCUSSION PAPER ON MOVEABLE TRANSACTIONS

We hope that by using this form it will be easier for you to respond to the proposals or questions set out in the Discussion Paper. The form reproduces the proposals/questions as summarised at the end of the paper and allows you to enter comments in a box after each one. At the end of the form, there is also space for any general comments you may have.

Please ensure that, prior to submitting your comments, you read notes 1-2 on page ii of the Discussion Paper.

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Preliminary comments

1. The Faculty of Advocates welcomes the Law Commission's consultation paper as a significant and positive contribution to the development of the law in an important field. We are conscious of the scholarship that informs the paper and agree with many of the proposals that it makes.
2. However, in two particular respects we have concerns that we feel must be addressed before it is possible to answer certain of the specific questions posed. In this response, therefore, we set out those concerns in these preliminary comments, and do not make further specific comment in the answers to those questions.

(a) Ranking

3. The Faculty is concerned that the report has not addressed the law of insolvency. Many of the practical questions raised in the report are more directly related to the policy choices appropriate to the law of insolvency. For example, questions concerning the role and effect of the proposed new register (such as whether registration should complete title and the effect of registration on third parties acting in good faith) ultimately depend on policy decisions related to insolvency. Insolvency is, after all, the context in which the effects of the register and the new security are most likely to be tested.
4. The absence of discussion of the preferred order of ranking is a substantial practical limitation of the paper. That practical limitation is most acutely seen in the context of the floating charge, and the proposal that a 'floating lien' should be treated in the same way as a floating charge in the absence of "substantive reform of insolvency law" (para 22.17). The question is what practical benefit will follow from the introduction of a new form of security if (a) it is to exist side by side with the floating charge and (b) it is to have the same effect in the event of insolvency. Inevitably a period of uncertainty follows any law reform and it is to be expected that banks and other institutional lenders will remain with the floating charge, if only because they are mindful of the adage that they are better with the devil they know.
5. The lack of policy direction can be seen from another perspective. The great majority of any new securities are likely to be granted in favour of banks and other financial institutions. If the policy is to give those institutions the benefit of a 'strong' security, exceptions to its effect should be narrow. Such a policy would suggest primacy should be given to the contents of any register as the determinant of the security's effect. It would also suggest that an error in the registered details should not be fatal to validity if it would not mislead a reasonable person.
6. The obvious downside, however, is that consultation of the register would become a pre-requisite for any prudent person entering into a transaction. The effect could be significantly to inhibit the free movement of assets (whether commercial assets or otherwise). That is recognised by the paper in the number of exceptions it suggests to the effect of an entry in the register. There is a risk that the exceptions to the force of the register which would be necessary to maintain free movement of assets, will call into question the value of the register and any new security dependent upon it. For example, publicly-traded shares might be considered an important potential source of

collateral, but the register may well have no effect in relation to them. The balancing of these issues is a matter of policy.

7. We are sympathetic to the view that the law should have a coherent intellectual structure. However, a coherent structure assumes a clear policy line and this paper offers the conflicting choice of: (a) the integrity of the register providing a 'strong' or 'dependable' security in the event of insolvency and (b) free movement of goods and the protection of third parties acting in good faith. It is not for the Faculty to make that choice but the apparent lack of empirical evidence to suggest that businesses face difficulties in obtaining loan finance is noted (paragraphs 12.12 and 12.13), and therefore there is reason to question whether the reforms proposed to the law of security are commercially necessary. We also note the desire to make this reform project manageable. However, if the reforms are considered necessary, then we are of the view that any insolvency law issues that may arise should be addressed at the same time. That may make the project slightly more complex, but at the same time, that would be the way to ensure that any reform in this area of the law brings certainty within a coherent intellectual structure.

(b) Legislative competence and consumer protection

8. The discussion paper poses a number of questions which raise the issue of treatment, or protection, of consumers. The choice is between: (a) protecting banks and other lenders in the event of insolvency and (b) protecting consumers. The treatment of consumers is primarily a matter of social and legislative policy on which the Faculty as a body has no views, beyond noting that any encroachment on consumer protection in favour of promoting the interests of financial institutions would need persuasive justification, which is undermined by the lack of empirical evidence supporting a need for change in order to stimulate the economy (paragraphs 12.12 and 12.13).
9. However, we do not think that it can necessarily be said with confidence that the proposals (so far as they concern consumers) fall within the legislative competence of the Scottish Parliament. The discussion paper correctly notes (paragraph 1.30) that the subject matter of the Consumer Credit Act 1974 is reserved. But the potentially relevant reservations in Section C7 (which is headed "Consumer Protection") are, it seems to us, much wider than that Act, and include Section C7(a) (the sale and supply of goods and services to consumers) and C7(c) (hire purchase).
10. The question of legislative competence of a particular provision would require careful scrutiny, having regard to section 29(2)(b) and (c), (3) and (4) of, as well as Schedule 4 to, the Scotland Act 1998. That is not a straightforward exercise, as can be seen in *Martin v Most* [2010] UKSC 10, 2010 SC (UKSC) 40. A challenge by Imperial Tobacco Limited to certain provisions of the Tobacco and Primary Medical Services (Scotland) Act 2010, which involves a detailed examination of how the consumer protection reservations operate in the context of those provisions of the Scotland Act 1998, is currently at *avizandum* in the Inner House. These are not incidental matters because, as already noted, the answers to some of the questions turn on the policy priority attaching to consumer protection and not simply the coherence of a set of rules relating to the law of property. It should also not be overlooked that the conflict of law implications of the legislation, which the paper also does not discuss, could give rise

to questions under section 29(2)(a) (i.e. whether the legislation may have extra-territorial effect) and could lead to confusion.

Summary of Proposals

1. Are there issues in the field of moveable transactions that stand in need of reform that are not addressed in this discussion paper?

(Para 1.42)

Comments on Proposal 1

We have no particular comment.

2. Would a new scheme on the general lines sketched in this chapter be appropriate?

(Para 3.45)

Comments on Proposal 2

Subject to the concerns raised in our preliminary comments, yes.

3. Should non-accessory moveable security be competent?

(Para 5.29)

Comments on Proposal 3

Yes

4. Do consultees agree that Scots law should not adopt the attachment/perfection distinction in any of its various forms?

(Para 13.29)

Comments on Proposal 4

Yes

5. The main options as to completion of title are as follows. Which should be preferred?
 - (a) Keep the current law, which requires intimation, albeit with certain revisions.
 - (b) Abandon the need for intimation. Transfer should happen solely by the mutual consent of the cedent and the assignee. (But with protections for the account debtor who acts in good faith.)

(c) Adopt something like the UCC approach: abolish the requirement of intimation, and introduce registration for some cases; for other cases transfer would happen solely by the mutual consent of the cedent and the assignee. (But with protections for the account debtor who acts in good faith.)

(d) Maintain the requirement of an external act in all cases, but give the parties the choice of registration or intimation. We provisionally incline towards to this option.

(Para 14.27)

Comments on Proposal 5

We would refer to our preliminary comments.

6. Should there be legislative clarification of the effect of a suspensive condition in an assignation?

(Para 14.28)

Comments on Proposal 6

We would refer to our preliminary comments.

7. Do consultees agree that priority should continue to be determined simply by date of completion of title?

(Para 14.32)

Comments on Proposal 7

Yes

8. Should notification, to be effectual, be in such a form as to bring home its meaning to a reasonable account party?

(Para 14.41)

Comments on Proposal 8

Subject to our preliminary comments, yes.

9. Should there be information duties on the assignee?

(Para 14.41)

Comments on Proposal 9

We refer to our preliminary comments.

10. If so, what should they be, and what should be the consequences of failure to perform them?

(Para 14.41)

Comments on Proposal 10

We refer to our preliminary comments.

11. (a) Do consultees agree that agreements to assign should not be subject to any requirement of form?
- (b) Should assignments have to be in writing? If so should they have to be signed by the granter only, or by both parties? (Writing and signature in this case could be electronic as well as paper-and-ink.)

(Para 14.47)

Comments on Proposal 11

On the hypothesis that an information duty were to be placed on assignees (see 9 above) that would, from a practical perspective, tilt the balance in favour of a requirement for writing in relation to the assignment; and certainly it is difficult to see how a system of registration could operate without some written record clarifying for the benefit of (a) the debtor and (b) the creditors of the assignor the nature of the obligation that has been assigned.

12. Do consultees agree that:
- (a) The rule that a mandate can operate as an assignment should be abrogated?
- (b) The rule whereby an assignee can sue in the name of the cedent should be abrogated?

(Para 14.51)

Comments on Proposal 12

(a) Yes; (b) Yes

13. (a) If a contract between X and Y contains an anti-assignment clause, and nevertheless there is a purported assignment by X of a right arising from the contract, should the effect of the clause be (as under current law) that the assignment of that right is invalid, or should the only consequence be that there has been a breach of contract by X?
- (b) Should the rule vary according to the type of case? (For example, that the rule should apply to receivables but not other claims.) If so, which rule should apply to which type of case?

(Para 14.57)

Comments on Proposal 13

- (a) The purported assignment should be invalid.
- (b) No

14. Do consultees think that the law about assignability, and the effect on assignability of contract terms conferring powers on the creditor, stand in need of reform? If so, how?

(Para 14.59)

Comments on Proposal 14

No

15. Should the law allow a future claim to be assigned (subject to the right in due course coming into being and being identifiable as the claim to which the assignment relates)?

(Para 14.68)

Comments on Proposal 15

Subject to our preliminary comments, yes.

16. If so, do consultees agree that the transfer of the claim should not be deemed to take place before the claim comes into being?

(Para 14.68)

Comments on Proposal 16

Yes

17. Should the power of consumers to assign after-acquired rights be restricted?

(Para 14.68)

Comments on Proposal 17

See part (b) of our preliminary comments.

18. Do consultees agree that the Policies of Assurance Act 1867 should be amended to confirm that it does not apply in Scotland?

(Para 14.69)

Comments on Proposal 18

Yes

19. Do consultees agree that the DCFR rule on partial assignation should be adopted?

(Para 14.72)

Comments on Proposal 19

Yes

20. Is there a need for legislation about the rule commonly known as *assignatus utitur jure auctoris*?

(Para 14.73)

Comments on Proposal 20

No (unless there is codification of the law of assignation)

21. Should there be legislative clarification as to the effect of a waiver-of-defence clause? If so, what should the law provide about such clauses?

(Para 14.74)

Comments on Proposal 21

Waiver-of-defence clauses should not be capable of having effect. If they were to be permitted they would doubtless become pro forma terms in all institutional lending transactions resulting in wholesale diminution of the rights of third parties.

22. Do consultees agree that there is no need for legislative intervention to deal with the transfer of entire contracts?

(Para 14.76)

Comments on Proposal 22

Yes

23. Should it be provided that unless otherwise agreed, assignation of a claim carries with it a right to acquire any security that exists for the assigned claim, and that if any further act is needed to vest the security in the assignee, the cedent will perform that act?

(Para 14.77)

Comments on Proposal 23

Yes, although there may be difficulty if the security secures multiple debts between debtor and creditor, and not all of those debts are assigned.

24. Should it be provided that where an assignation is registered in the relevant register (eg the Land Register in the case of a standard security), that registration should suffice to complete the title of the assignee, even though the general requirements for completed assignation of claims have not been met? (Any such rule would be accompanied by protection to the debtor who acts in good faith.)

(Para 14.79)

Comments on Proposal 24

See part (a) of our preliminary comments.

25. Should the codification of the law of assignation be an objective of the present project?

(Para 14.80)

Comments on Proposal 25

No

26. Should "intimate/intimation" be replaced by "notify/notification"?

(Para 14.81)

Comments on Proposal 26

No. We do not think that such a change is necessary or that it is an appropriate matter for legislative intervention. The term "intimation" is established legal terminology, well understood and used without difficulty. In any event, we are not persuaded that "intimations are hints". The primary definition of "intimation" in the Oxford English Dictionary (2nd edition (1989)) is "the action of intimating, making known or announcing; formal notification or announcement"; it is only its secondary meaning that is "the action of making known or expressing merely; an expression by sign or token, an indication; a suggestion, a hint".

27. (a) Should legislation bring Scots law into line with English law (as settled in *Sewell v Burdick*) by providing that the pledge of a bill of lading (or of a delivery order) is true pledge?

(b) Should legislation make it clear that the redelivery of pledged goods (or pledged bill of lading) extinguishes the pledge (but without prejudice to any new system allowing for non-possessory security)?

(Para 15.6)

Comments on Proposal 27

(a) Yes; (b) Yes

28. (a) We propose that where, under the pawnbroking provisions of the Consumer Credit Act 1974, ownership of the pledged item is lost because the loan is below the prescribed figure (currently £75), the debt (if more than the value of the item) should be reduced by the value of the item.

(b) We propose that where, under the pawnbroking provisions of the Consumer Credit Act 1974, ownership of the pledged item is lost because the loan is below the prescribed figure (currently £75), but the value of the item exceeds the loan, the loan should be discharged, and the pawnbroker should be obliged to pay the customer the surplus value (subject always to compensation for administrative expenses etc).

(Para 15.8)

Comments on Proposal 28

We agree, subject to part (b) of our preliminary comments.

29. Is the common law about a pledgee's power of sale satisfactory? If not, what changes are needed?

(Para 15.9)

Comments on Proposal 29

A pledgee should have an implied power of sale in the event of default by the pledger.

30. Do consultees agree that, in cases outwith the Consumer Credit Act 1974, there should be a provision dealing with forfeiture clauses along the lines proposed in the DCFR?

(Para 15.11)

Comments on Proposal 30

Yes

31. Should the law of pledge be codified?

(Para 15.12)

Comments on Proposal 31

No

32. If a new non-possessory security is introduced, do consultees agree that it should be on the basis of some type of public registration?

(Para 16.17)

Comments on Proposal 32

See part (a) of our preliminary comments.

33. Do consultees agree that the new moveable security should be capable of securing future obligations?

(Para 16.27)

Comments on Proposal 33

Subject to part (b) of our preliminary comments, yes.

34. If so, where there is an all-sums security, should its priority be capable of being frozen by notice, so as to enable a subsequent security to be granted, on lines broadly similar to the rules for floating charges and for standard securities?

(Para 16.27)

Comments on Proposal 34

Yes

35. Do consultees agree that there is no reason why a creditor should not be able to mandate the debtor to deal with the collateral free of the security?

(Para 16.28)

Comments on Proposal 35

Yes

36. Do consultees agree that buyers in the ordinary course of the seller's business should take free from a registered non-possessory security?

(Para 16.47)

Comments on Proposal 36

See part (a) of our preliminary comments.

37. Do consultees agree that a good faith buyer who has used reasonable diligence in searching the register should take free from entries not thereby revealed?

(Para 16.47)

Comments on Proposal 37

See part (a) of our preliminary comments.

38. Should the proposal just mentioned also apply to creditors taking security?

(Para 16.47)

Comments on Proposal 38

See part (a) of our preliminary comments.

39. Should there be a broader rule that entries not discoverable by reasonable diligence should not affect either a buyer or another type of grantee, whether or not the register has actually been searched?

(Para 16.47)

Comments on Proposal 39

See part (a) of our preliminary comments.

40. Should there be a rule that a good faith buyer should always take free from a registered security where the price paid by the buyer is below a certain limit (to be adjusted from time to time by statutory instrument)? If so, what should that limit be?

(Para 16.47)

Comments on Proposal 40

We refer to our preliminary comments.

41. Would consultees prefer something along the lines of the proposal in the Murray Report, which would mean that good faith buyers would not normally take subject to a registered moveable security?

(Para 16.47)

Comments on Proposal 41

See part (a) of our preliminary comments.

42. Should delivery be a precondition of protection?

(Para 16.47)

Comments on Proposal 42

See part (a) of our preliminary comments.

43. The new moveable security should not have a special "proceeds" rule.

(Para 16.48)

Comments on Proposal 43

We agree.

44. Do consultees agree that the new security right should not extend to property that has acceded to immovable (heritable) property?

(Para 16.49)

Comments on Proposal 44

Yes

45. Do consultees agree that ranking should be by date of registration, subject to the qualifications necessary in the case of security over after-acquired property?

(Para 16.55)

Comments on Proposal 45

See part (a) of our preliminary comments.

46. Do consultees agree that any new security right should be without prejudice to the landlord's hypothec?

(Para 16.56)

Comments on Proposal 46

Yes

47. Should the new moveable security be postponed, in terms of ranking, to security rights arising by operation of law?

(Para 16.58)

Comments on Proposal 47

See part (a) of our preliminary comments.

48. What views do consultees have as to the enforcement of the new moveable security?

(Para 16.71)

Comments on Proposal 48

See part (a) of our preliminary comments.

49. If a new non-possessory security over corporeal moveable property is introduced, do consultees agree that it should not be capable of being granted by a consumer in relation to future property?

(Para 16.78)

Comments on Proposal 49

See part (b) of our preliminary comments.

50. If a new non-possessory security over corporeal moveable property is introduced, should there be other restrictions in relation to consumer debtors? For example should goods exempt from diligence be excluded? Or should the security be valid only to secure purchase finance?

(Para 16.78)

Comments on Proposal 50

See part (b) of our preliminary comments.

51. If a new non-possessory security over corporeal moveable property is introduced, should the pro-consumer protections in the Consumer Credit Act 1974 be amended so as to extend to it? (Other than those protections that would apply automatically.)

(Para 16.78)

Comments on Proposal 51

See part (b) of our preliminary comments.

52. If a new non-possessory security over corporeal moveable property is introduced, the Agricultural Credits (Scotland) Act 1929 should be repealed.

(Para 16.81)

Comments on Proposal 52

We agree.

53. If a new type of security right over moveable property is introduced, what should it be called?

(Para 16.83)

Comments on Proposal 53

The Faculty has no particular view on this.

54. Do consultees agree that any new non-possessory security right over corporeal moveable property should not extend to ships over which a ship mortgage can be granted?

(Para 17.2)

Comments on Proposal 54

The Faculty has no particular comment to make on this.

55. Do consultees agree that any new non-possessory security right over corporeal moveable property should not extend to aircraft over which an aircraft mortgage can be granted?

(Para 17.3)

Comments on Proposal 55

The Faculty has no particular comment to make on this.

56. Should the prescribed style for Scottish aircraft mortgages be deleted from the Mortgaging of Aircraft Order 1972?

(Para 17.3)

Comments on Proposal 56

The Faculty has no particular comment to make on this

57. Should the Mortgaging of Aircraft Order 1972 be amended to make it clear that priority notices are competent in Scotland, as in England?

(Para 17.3)

Comments on Proposal 57

The Faculty has no particular comment to make on this.

58. Should the UK Government accede to the Cape Town Convention (either for the whole UK or for Scotland only)?

(Para 17.8)

Comments on Proposal 58

The Faculty has no particular comment to make on this

59. The concept of a "proper" security right over incorporeal moveable property should be introduced into Scots law.

(Para 18.12)

Comments on Proposal 59

Yes

60. Do consultees agree that, if a new security right over claims is introduced, it should be created by registration?

(Para 18.17)

Comments on Proposal 60

Yes

61. Do consultees agree that, if a new security right over claims is introduced, it should apply to all types of claim, and not just some types, such as receivables?

(Para 18.17)

Comments on Proposal 61

Yes

62. Should there be a special regime for construction contracts?

(Para 18.25)

Comments on Proposal 62

No

63. Do consultees agree that the issues about priority/ranking are substantially the same as for non-possessory security rights?

(Para 18.28)

Comments on Proposal 63

See part (a) of our preliminary comments.

64. Do consultees have views as to the enforcement of the new moveable security in so far as the collateral consists of personal rights?

(Para 18.32)

Comments on Proposal 64

No

65. If a new type of moveable security right is introduced, should assignation in security cease to be competent?

(Para 18.36)

Comments on Proposal 65

Yes

66. Is there a need for restrictions on the ability of consumers to grant security over after-acquired rights?

(Para 18.42)

Comments on Proposal 66

See part (b) of our preliminary comments.

67. Should all good faith buyers of company shares, and of corporate and public-sector bonds, take free of registered security rights? Or should the protection be limited to a certain class, such as open-market buyers?

(Para 19.9)

Comments on Proposal 67

See part (a) of our preliminary comments.

68. In the case of registered intellectual property, we propose that registration of the new security right in the relevant intellectual property register should not displace the requirement for registration in the Register of Moveable Transactions.

(Para 19.16)

Comments on Proposal 68

We agree.

69. Special types of incorporeal moveable property such as intellectual property rights, company securities (shares and bonds), public sector bonds, intermediated securities and negotiable instruments should be included in any new system of moveable security.

(Para 19.20)

Comments on Proposal 69

We agree.

70. A new public register should be established, provisionally to be called the Register of Moveable Transactions, in which (i) assignments of personal rights and (ii) securities over moveable property (corporeal and incorporeal) could be registered.

(Para 20.1)

Comments on Proposal 70

We agree.

71. The new register would be administered by the Keeper of the Registers of Scotland or by such other person as Ministers may appoint.

(Para 20.2)

Comments on Proposal 71

We agree

72. Should the new register absorb the Register of Floating Charges?

(Para 20.3)

Comments on Proposal 72

Yes

73. Do consultees agree that the registered document should be the constitutive document?

(Para 20.20)

Comments on Proposal 73

See part (a) of our preliminary comments.

74. What views do consultees have about the information to be contained in the entry in the register?

(Para 20.35)

Comments on Proposal 74

See part (a) of our preliminary comments.

75. Should errors be subject to a "reasonable findability" test? (In other words, errors that did not prejudice "reasonable findability" would not matter. Errors that did prejudice "reasonable findability" would be fatal to the validity of the entry, whether or not anyone had in fact been misled.) Or should the validity of an entry depend on its being error-free?

(Para 20.38)

Comments on Proposal 75

See part (a) of our preliminary comments.

76. What views do consultees have about the form of the Register of Moveable Transactions, about the way entries would be made, and the manner in which it should be searchable?

(Para 20.45)

Comments on Proposal 76

See part (a) of our preliminary comments.

77. Do consultees agree that if a new moveable security is introduced which is created by registration a section 893 order should be made so as to avoid a double registration requirement?

(Para 20.48)

Comments on Proposal 77

Yes, assuming that adequate information-sharing arrangements can be made. It is understood that there are currently delays in the registration of some existing types of land transactions, which may explain why no orders have been made as yet by the Secretary of State under section 893.

78. Should entries lapse after a certain period unless renewed? If so, should that period be five years, or some other period?

(Para 20.54)

Comments on Proposal 78

We are concerned that an arbitrary time limit may leave short-term securities on the register for longer than is needed, and be an inconvenient administrative burden for securities intended

to last longer, leading to the unintentional loss of securities due to oversight. Perhaps the registration document could specify the duration of the security required by the parties.

79. Do consultees agree that superseded data should be archived?

(Para 20.54)

Comments on Proposal 79

Yes, subject to the observation that retention does have data protection implications (relevant to Article 8 of the ECHR and therefore relevant to the legislative competence of the legislation if passed by the Scottish Parliament). Access to archived material would require to be regulated.

80. (a) Do consultees agree that, even if the issue of Article 4 of Directive 2000/35/EC is not an obstacle, Scots law should not, at least at the present time, introduce a system of recharacterisation of quasi-securities?

(b) If consultees agree with the previous proposal, do they think that Scots law should introduce the "halfway house" in relation to quasi-securities, ie registrability without full recharacterisation? If so, should it apply to certain cases only (such as trusts) or to all cases?

(c) If either full recharacterisation is adopted, or the halfway house, should there be categories (eg sales to consumers) where registration should not be required? Should there be grace periods?

(Para 21.26)

Comments on Proposal 80

(a) We agree

(b) No

(c) (N/A.)

81. Do consultees agree that if the floating lien is introduced, it would have to be treated, for the purposes of insolvency law, in substantially the same way as the floating charge?

(Para 22.19)

Comments on Proposal 81

See part (a) of our preliminary comments.

82. Specifically, should the special rule in section 245 of the Insolvency Act 1986 apply to the new security, to the extent that the collateral in question had been acquired by the debtor after the registration of the security?

(Para 22.19)

Comments on Proposal 82

See part (a) of our preliminary comments.

83. If the floating lien is introduced, should it be subject to the "effectually executed diligence" rule?

(Para 22.21)

Comments on Proposal 83

See part (a) of our preliminary comments.

84. Do consultees agree that the new moveable security right should not be limited to present assets (other than in consumer cases)?

(Para 22.22)

Comments on Proposal 84

On consumer cases, see part (b) of our preliminary observations.

That apart, we see no reason in principle why moveable security should be limited to present assets. In any trading enterprise it is to be expected that stock will turnover on a regular basis and to limit the security to the specific items in stock on any particular day would (a) limit the utility of the security and (b) be practically impossible to operate. How would someone know which specific items of stock were on the premises on any particular date?

85. Do consultees agree that the new moveable security right should be capable of being granted by any person, juristic or natural?

(Para 22.23)

Comments on Proposal 85

Yes in relation to commercial enterprises and individuals engaged in business. As regards consumers, see part (b) of our preliminary comments.

86. Do consultees agree that the floating charge should not be abolished, at least for the time being?

(Para 22.28)

Comments on Proposal 86

Yes

87. If floating charges are to continue to be competent, should they continue to be capable of covering immovable/heritable property?

(Para 22.29)

Comments on Proposal 87

Yes

88. If floating charges are to continue to be competent, and if the floating lien is introduced, should the current ranking rules of English law, in relation to subsequent security rights, be followed more closely?

(Para 22.32)

Comments on Proposal 88

See part (a) of our preliminary comments.

89. The statutory provisions about the interaction of floating charges with "effectually executed diligence" should be amended so as to ensure that the original intention of the legislation is given effect to.

(Para 22.34)

Comments on Proposal 89

See part (a) of our preliminary comments.

90. The recommendation of the Murray Report that sole traders and ordinary partnerships should be able to grant floating charges should not now be taken forward.

(Para 22.35)

Comments on Proposal 90

See part (a) of our preliminary comments.

Thank you for taking the time to respond to this Discussion Paper. Your comments are appreciated and will be taken into consideration when preparing a report containing our final recommendations.