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27 October 2022

Stuart McMillan MSP
Convener, Delegated Powers and Law Reform Committee

By Email: DPLR.Committee@parliament.scot

Dear Mr McMillan,

Moveable Transactions (Scotland) Bill

Thank you for your correspondence of 27 October regarding the Committee evidence session on 25 October on the above Bill. Thank you also for the opportunity to address in more detail the question raised by Mr Sweeney.

Having had the opportunity to read the Official Report and consider the matter in more detail, I would make a number of points:

- In general terms, we don't take a position on whether or not statutory pledge should be available as an option to individual consumers. The only note of caution we would sound is that, were it to be decided that individual consumers should not be able to grant a statutory pledge over their property, it would be essential that, in doing so, we did not inadvertently exclude sole traders – especially unregistered enterprises or very early stage start-ups.
- Given that a sole trader's business cannot, by definition, be separated from them as an individual, it could be a challenge to establish whether a particular individual was seeking to grant a pledge in a business context or a domestic one. It is also easy to see how difficulty could arise in trying to define whether an asset is, say, used wholly or mainly for the purposes of a business (e.g. a family car).
- It is our default position that, wherever practical, small businesses should be afforded the same protections afforded to consumers. Small businesses traditionally have a negotiating power more akin to those of individual consumers than large corporations. However, if doing so in this case might make Statutory Pledge prohibitively expensive for sole traders to access as lenders price-in any protections, this could frustrate the overall aims of the Bill. The likelihood of this happening, however, is probably more a question for the finance industry than us.



I hope this is helpful and, of course, we remain more than happy to continue to engage with the Committee as the Bill progresses.

Yours sincerely,

Colin Borland
Director of Devolved Nations
Federation of Small Businesses