

## Moveable Transactions (Scotland) Bill

I refer to your [letter to Lady Paton of 29 September](#).

The only technical proposals that I would make at this stage concern s 1(5) and s 38.

Section 1(5) says:

Nothing in 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).

Section 38 says:

In the Transmission of Moveable Property (Scotland) Act 1862, after section 3 insert—

“3A Disapplication of Act to certain assignations

Nothing in this Act applies to an assignation of a claim to which Part 1 of the Moveable Transactions (Scotland) Act 2023 applies.”.

In my view s 1(5) should be replaced by a provision on the following lines:

This Part is without prejudice to the Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226).

At the same time s 38 should, I suggest, be replaced by:

The Transmission of Moveable Property (Scotland) Act 1862 is repealed.

The reason for both changes is that, as s 1(5) stands at present, the existing law (including the 1862 Act) would continue to apply to FC transactions, except as specifically provided by the FC Regulations. If the FC Regulations were perfect and comprehensive that would not matter. But they are not. Accordingly the “backdrop” law for FC arrangements should be the new law. (Which means, among other things, NOT the 1862 Act.)

As should be apparent, the changes I suggest are very much technical, and do not at all affect the policy of the Bill.

Professor George Gretton