

T: 0300 244 4000
E: scottish.ministers@gov.scot

Colin Smyth MSP
Convener
Economy and Fair Work Committee
The Scottish Parliament
Edinburgh
EH99 1SP

31 January 2025

Dear Colin Smyth MSP,

THE MOVEABLE TRANSACTIONS (SCOTLAND) ACT 2023 – SCOTTISH STATUTORY INSTRUMENTS - MOVEABLE TRANSACTIONS (SCOTLAND) ACT 2023 AMENDMENT REGULATIONS 2025, REGISTERS OF SCOTLAND (FEES AND PLAIN COPIES) MISCELLANEOUS AMENDMENTS ORDER 2025, MOVEABLE TRANSACTIONS (FORMS) (SCOTLAND) REGULATIONS 2024 AND MOVEABLE TRANSACTIONS (REGISTER OF ASSIGNATIONS AND REGISTER OF STATUTORY PLEDGES RULES) (SCOTLAND) REGULATIONS 2024

Thank you for the opportunity to provide evidence to the Economy and Fair Work Committee on the four Scottish Statutory Instruments (“SSIs”) relating to the Moveable Transactions (Scotland) Act 2023 (“the Act”). Several queries were by raised by Committee members, generally in connection with the operation of the two registers established under the Act – the Register of Assignations (“RoA”) and the Register of Statutory Pledges (“RSP”) - and I undertook to write to the Committee with further information on those issues. I have set out that information below but thought it might be helpful to firstly set out some context in terms of the enabling Act and the scope of the regulations under consideration.

Scope

When I appeared before the Committee on 29 January 2025, the Committee explored a number of issues in some detail – generally revolving around privacy, fraud and good faith protection for purchasers regarding the operation of the RoA and RSP.

Whilst these issues are undoubtedly important in relation to the new registers being introduced, they are matters which relate primarily to provisions in the Act itself and not the regulations under consideration.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

All three issues were explored in detail by the Scottish Law Commission (SLC) in their 2017 Report on Moveable Transactions which led to the draft Bill as introduced and they were further debated and scrutinised during the passage of the Act. The lead Committee for the Bill was the Delegated Powers and Law Reform Committee

The regulations now before the Committee simply set out the detail on how the new regime and the registers supporting it will operate on a practical level, including how the register will be made up and kept including the presumption in favour of digital registration.

Privacy

With respect to privacy considerations in relation to the new registers, publicity of relevant personal information is an unavoidable consequence of adopting, as the Act does, public registration as a policy solution, at least for significant proportions of registrations under both registers. Without the ability for users to search and view the contents of the registers, they would not be able to function as intended. Registers of this type function in similar ways in many other jurisdictions with the controls in place being effective in striking the correct balance between publicity and privacy/fraud prevention.

The Act itself prescribes the information to be included in entries made following registration, with the Rules simply providing additional clarity on this information e.g. the extent of names to be provided and unique identifiers for companies.

Both the Act and the Rules do, however, take measures to ensure that personal information is not disclosed in a way that could enable fraud.

Firstly, the Act provides that although registered entries will include dates of birth, it will not be possible to search in this way – searches can only be performed using a name which can optionally be accompanied by a month and year of birth. This prevents searching being used as a way to establish full dates of birth of relevant parties named on the register.

Secondly, the rules provide that personal information (as defined) must not be available to anyone searching the registers and must not appear in any extract issued by the Keeper of the Registers (“the Keeper”), and that parties are free to proactively redact such information from the copy documents submitted for registration. It follows that, provided applicants are careful not to provide personal information in the assignation/statutory pledge documents, it will not be unnecessarily disclosed by the Keeper.

The Keeper will also automatically redact a full date of birth from a record entry appearing in a search or extract so that only the month and year is included. This is consistent with the approach taken by Companies House in relation to the disclosing of personal data.

The Keeper will provide full guidance on when redaction may be appropriate as part of both the registration system and published guidance.

Stakeholders have confirmed that in the case of assignations of customer invoices or consumer debt, it is not envisaged that documents disclosing customer information will be routinely uploaded to the register – this information will be held in off-register schedules. Similarly, in respect of the RSP, the copy pledge document will only contain details of the provider and the secured creditor (as required by the Act). Businesses will have sound commercial reasons too for not wishing to publish customer lists.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot



Corrections

The 2023 Act provides that each register has its own correction regime.

The RoA is, in effect, a snapshot in time register – a register of documents. The only ways in which an inaccuracy can be created is if the information that is inputted by the applicant is either incorrect or incomplete, if there has been no copy assignment document uploaded or that document is itself invalid, or if the Registers of Scotland (“RoS”) registration system inadvertently removes a registered entry. The RoA cannot, therefore – barring system error – become incorrect unless the information/document was incorrect to begin with.

Where an inaccuracy in the RoA is identified to the Keeper and there is evidence to support this (“a manifest inaccuracy”), the Keeper will correct this if what is needed to correct the register is manifest. Otherwise, the Keeper will note the inaccuracy on the record (section 29(2) of the Act).

There is no restriction on whom can notify the Keeper of a manifest inaccuracy in the RoA – an inaccuracy is either manifest or it is not. The Keeper’s duty to rectify in such an instance is thus not solely applicant-dependent. Separately, a court may also direct the Keeper to correct the register (section 29(1) of the Act).

The RSP has a more involved correction regime. The RSP, being a register of rights, will contain statutory pledges which are capable of extinction (through, for example, discharge) or being the subject of other juridical acts (for example, assignment) which render the register inaccurate because these take place off-register.

Section 101(1) of the Act allows for correction in such instances by providing that there is an “inaccuracy” in the record where the record misstates what the position is, in law or in fact, in relation to a statutory pledge.

Specific routes to RSP correction are provided for. Firstly, a secured creditor can apply to correct any inaccuracy in the register under section 96(1) of the Act (primarily those caused by supervening events such as discharge, but also typos or incorrect document upload). Such corrections will be secure, creditor-led and made online.

Secondly, a person with a specified interest in the accuracy of a record entry, and who maintains that the record is inaccurate, is able to demand (under section 98(1) of the Act) that the registered secured creditor apply for correction under section 96(1), and if no such application is made, apply for the correction themselves under section 98(6) of the Act.

The category of person who would qualify to be able to issue such a demand is restricted to: (a) a person identified in the record as the provider where that person asserts either that they are not the identified provider, or the property identified as being the subject of the pledge is not in fact encumbered property and (b) a person with a right in property which is identified as the encumbered property where that person believes that the property is not in fact encumbered property. The Act does not provide for anyone else other than these persons to be able to issue a correction demand under sections 96(1) and 98(6).

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot



Thirdly, a court can direct the Keeper to correct the register (section 100(1) of the Act). Lastly, the Keeper can correct the register upon becoming aware of a manifest inaccuracy in the RSP (section 100(2) of the Act).

The effect of section 100(3) of the Act, however, is to exclude court direction, section 96(1) and section 98(6) identified inaccuracies from the type of inaccuracies that can be corrected by the Keeper under section 100(2) of the Act.

Section 100(3) of the Act additionally has the effect of excluding inaccuracies which the Keeper thinks could be reasonably corrected via either the section 96(1) or section 98(6) correction routes from the type of inaccuracies that can be corrected by the Keeper under section 100(2) of the Act.

Where the Keeper decides that it would be unreasonable for a manifest inaccuracy that is brought to her attention to be corrected via either the section 96(1) or section 98(6) application-based routes to correction, she will correct the register.

The applicability of this “reasonableness test” will depend on the facts and circumstances of each individual case. The “reasonableness test” will not be met, however, for reasons of correction fee alone.

Mandatory corrections

A key feature of the debate on the new registers, both when the SLC consulted in their report and when Parliament considered the Act, was where to strike the appropriate balance between the utility of the registers as sources of data and providing ease of doing business (which is the primary policy intention of the Act).

This is most relevant in respect of statutory pledges, which may be assigned, varied or discharged after the initial registration. The Act reflects the strong views of stakeholders that these subsequent events should not be mandatory registration events, but instead should be optional corrections. This, for example, is in line with the existing position for floating charges.

As a consequence, the content of an entry in the RoS or RSP will relate only to fact of the registration/correction of either a registered assignation or a registered statutory pledge having taken place and will not be evidential of anything other than this.

In particular, entries will not be evidential of the capacity of party identified in the register to enter into an assignation or statutory pledge, and the registers should not be used (such as by someone searching the register) to evidence anything other than the fact of registration/correction having taken place. The Keeper will ensure that users are aware of this through the guidance to be published as part of both the online register itself and on her website.

In order to encourage corrections to be made, a number of steps have been taken. Firstly, the Act itself contains straightforward correction provisions which will allow relevant parties to easily make corrections – in most cases, this will be facilitated through the Keeper’s online service, with correction itself being automated.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew’s House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

INVESTORS IN PEOPLE[™]
We invest in people Silver



Secondly, correction fees have been kept deliberately low at £10 (or free in some cases) to encourage ongoing updates to entries.

Thirdly, the Act provides for a 'correction demand' process in relation to statutory pledges which will allow a provider of a statutory pledge to issue a prescribed demand to the secured creditor to correct the register in certain circumstances – where the secured creditor fails to respond to this demand, the provider can apply to the Keeper to correct the register. Fourthly, the Act enables parties to correct the registers at the instance of a court.

And finally, the Act allows Ministers to make regulations to introduce changes to how updates on statutory pledges must be made. As the registers mature, RoS will monitor customer behaviour in relation to corrections and will be able to provide data to Ministers should they wish to consider using these powers.

Liability

Sections 37(1) and 109(1) of the Act provide, for the RoA and RSP respectively, for a strict Keeper liability regime whereby the Keeper must compensate any person who has suffered a loss in consequence of a matter, amongst other things, an inaccuracy in the record to the extent that it is attributable to the making up, maintenance or operation of the register (including an attempted correction of it). In other words, the person does not have to show that the Keeper is at fault (as opposed to, say, arising from an unavoidable malfunction of the Keeper's automated systems).

However, the effect of both sections 37(3) and 109(3) of the Act is that an inaccuracy in information included in a record entry when being made up or corrected by the Keeper is not covered by those strict liability provisions where the Keeper has been misled into making the inaccuracy and reasonably believed the information to be accurate.

Sections 37(4) and 109(4) of the Act also provide that the circumstances in which the Keeper is entitled to reasonably believe information to be accurate include if it is provided in connection with an application (registration or correction) to which the entry relates.

As such, if the Keeper faithfully replicates the information provided in an application form (registration or correction) and that information proves to be incorrect, that is not an inaccuracy for which the Keeper is liable, though the person who submitted the application may be liable under either section 38(1) or 110(1) of the Act.

In that case, liability would apply (subject to the restrictions in sections 38(2) or 110(2) of the Act) where the person who made the application which led to the entry did not exercise reasonable care, or where the person notified the Keeper of an apparent inaccuracy without taking reasonable care.

A key mitigating action for fraud prevention in relation to correction applications is that the Keeper will notify all parties related to the corrected entry – such as the provider and the secured creditor - upon such correction taking place.

Such notifications will be automatic where email addresses are held for the parties related to the corrected entries. Where an email address is not held, Gov.uk/Notify will be used to send notifications by post. Gov.uk/Notify is an established service, typically very stable, but RoS

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

will monitor the external service, so that, if system use was not possible, notifications would be sent when the service was available again.

Sections 37(1)(c), 109(1)(b) and 109(1)(c) of the Act provide for the Keeper to be liable for the issuing/service of correction statements/notifications which are incorrect.

Fraudulent activity

In relation to steps the Keeper should take to minimise fraudulent documents from being registered, the Act itself is clear on the role of the Keeper in this regard – this is not a matter for the regulations.

The Keeper's role in relation to the new registers is administrative, in line with the largely automated nature of these registers. The Act specifies that the Keeper is entitled to rely on the information provided by applicants and further, that she has no duty or power to investigate allegations of fraudulent behaviour. Provided applications meet the requirements as set out in the Act and rules, they will be accepted.

Where there are allegations of fraud, parties will be directed to the police in exactly the same way as would happen if fraudulent activity were to be alleged in any of the other registers under the Keeper's control.

To carry out checks on individual entities (such as companies) involved in the documents registered would not only require change to the primary legislation which has already been passed, but would also significantly increase the operational costs of the register – manual checks would be required, and processing times would increase (whereas an advantage of the current automated approach is instantaneous registration). Such a checking stage would also be out of step with other established registers such as the Land Register. It is also not clear to us of what such checks would comprise.

It is anticipated that the vast majority of applications to the new registers will come from the legal and banking sectors, both of which are subject to strict professional regulation and have a duty of care to provide accurate information in the course of their dealings. These professionals, not RoS, are best placed to carry out anti-fraud checks and will have rigorous processes already in place. For example, law firms are obliged to verify their clients for money laundering reasons.

In addition, as referenced during the Committee session, RoS will verify the identity of applicants. In the case of professional users (such as lawyers and lenders), this will be through the existing RoS onboarding process and will involve identity checks and the establishment of direct debits.

A credit check will also be required in every instance. In the case of non-professional users (for example, a sole trader wishing to register a pledge without the assistance of a lawyer), digital ID verification will be used, supplemented, again, with a credit check.

Exactly the same provisions will apply to applicants for correction in the RSP, whether a secured creditor correcting the register under section 96(1) of the Act or a correction demand applicant under section 98(6) of the Act.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Correction of the RoA will only be possible on a manifest inaccuracy basis (section 29(2) of the Act). The RSP will also have such a route to correction (section 100(1)(b) of the Act) to supplement those other routes provided for in the Act. All such manifest inaccuracy corrections will be evidence based.

The position of RoS is that all such inaccuracies will either be manifest or they won't. As such, it will not matter whom it is that brings such an inaccuracy to the attention of the Keeper as the duty on the Keeper to correct a manifest inaccuracy will not be dependent on the party bringing that inaccuracy to the Keeper's attention.

The Committee also raised the possibility that someone may establish themselves as a Scottish Limited Partnership through the Companies House Register. They could then go on to register an assignation or a statutory pledge on the relevant Registers. Clearly if someone does not own a claim assigned or an asset pledged fraudulently, the fraudulent assignation or pledge won't assign or pledge anything and the owner can just ignore it.

Alternately, the purpose of registration, may be as a means of providing a legitimacy to their business so that they could go on to carry out fraudulent activities based on that legitimacy. Registration with Companies House may of course be sufficient to establish that legitimacy without the need to further register in either the Register of Assignation or the Register of Statutory Pledges. As I have already mentioned above, entries will not be evidential of the capacity of a party identified in the register to enter into an assignation or statutory pledge, and the registers should not be used (such as by someone searching the register) to evidence anything other than the fact of registration/correction having taken place. This will be made clear to users with a statement in the online registration system and a link to the guidance.

Not-for-profit money advisers

On a point of clarification and correction, I would also like to address the question about the position of non-for-profit money advisers who undertake a search of either of the registers. Sections 33(4) and 104(4) of the Act enable such bodies to search the respective registers without incurring a fee. When individuals were removed from the Bill at Stage 2 we did consider removing this exemption too at Stage 3 but did not. I can confirm that the registers have been designed in such a way that non-for-profit money advisers will not be charged a fee when making a search. For information, the Act contains a provision at section 33(5) to enable us to use the Rules to define the meaning of not-for-profit money advisers. At this time we have opted not to do so on the basis, as I indicated at the meeting, that numbers relying on such provision will be negligible. At some point in the future, when we have the benefit of experiencing how this facility is being used we may consider adding a definition to the Rules. Please accept my apologies for the incorrect advice provided to the Committee that such bodies would be charged a fee as this will not be the case.

Other matters

For completeness I would also like to confirm, in response to a line of questioning on the insolvency definition, that we will publish the responses to the consultation relating to the insolvency definition.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

INVESTORS IN PEOPLE[™]
We invest in people Silver



I can also confirm that in the example outlined of an individual consumer purchasing, in his example a combine harvester, which may have had a statutory pledge over it, that the individual would be protected and there is no requirement placed on them to search the RSP. The authority for this is set out at section 54 of the Act.

There was a question raised about the accessibility of the registers and their ease of use. Registers of Scotland adheres to the [Scottish Approach to Service Design](#) which sets out that 'the people of Scotland are supported and empowered to actively participate in the definition, design and delivery of their public services'.

In developing these new registers, RoS have worked closely with a wide range key stakeholders from an early stage to ensure that user views are taken on board. Work is currently in the 'beta' testing phase, which involves 45 users across 12 firms being given access to a closed version of the register and feeding back to the development team.

As part of the user-centred design approach, the registers are built to ensure that they are accessible to all users such as those who may work with screen readers or other adaptive software. The registers are also built using existing components from RoS, GDS and SG pattern libraries, all of which be familiar to users of other government services and which have been subject to extensive testing to ensure compliance with a wide range of devices. RoS also comply with Web Content Accessibility Guidance (WCAG) 2.1 regulations and will publish an accessibility statement on our website when the registers go live.

Finally, the point was well made that we need to ensure that we promote awareness of the new legislation. There is already a good level of awareness amongst the legal practitioner and lending sectors who will we think, be the main users of the Registers. When the Bill was passing through Parliament, I know that the then Minister for Community Wealth and Public Finance met with consumer bodies and with the Federation of Small Businesses and listened carefully to what they had to say. It would be my intention to write to these bodies in the course of the next month or so to highlight that the changes in the law will be coming into force and that the Registers will be going live at the same time. That letter will also signpost the availability of guidance on the Registers of Scotland website. I would be happy to share the correspondence with the Committee.

I hope this additional information is of help to the Committee.

Yours sincerely,



Ivan McKee MSP

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

INVESTORS IN PEOPLE™
We invest in people Silver

