



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Economy and Fair Work Committee

Wednesday 29 January 2025

Session 6



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ECONOMY AND FAIR WORK COMMITTEE

4th Meeting 2025, Session 6

CONVENER

*Colin Smyth (South Scotland) (Lab)

DEPUTY CONVENER

*Michelle Thomson (Falkirk East) (SNP)

COMMITTEE MEMBERS

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Murdo Fraser (Mid Scotland and Fife) (Con)

*Jamie Halcro Johnston (Highlands and Islands) (Con)

*Daniel Johnson (Edinburgh Southern) (Lab)

*Gordon MacDonald (Edinburgh Pentlands) (SNP)

*Lorna Slater (Lothian) (Green)

*Kevin Stewart (Aberdeen Central) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jill Clark (Scottish Government)

Ivan McKee (Minister for Public Finance)

David Robertson (Registers of Scotland)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Economy and Fair Work Committee

Wednesday 29 January 2025

[The Convener opened the meeting at 09:31]

Decision on Taking Business in Private

The Convener (Colin Smyth): Welcome to the fourth meeting in 2025 of the Economy and Fair Work Committee. Our first item of business is to decide whether to take in private item 7, which is consideration of correspondence from the Deputy First Minister on the budget for 2025-26. Are members content to do so?

Members indicated agreement.

Subordinate Legislation

Moveable Transactions (Scotland) Act 2023 Amendment Regulations 2025 [Draft]

Registers of Scotland (Fees and Plain Copies) Miscellaneous Amendments Order 2025 [Draft]

Moveable Transactions (Forms) (Scotland) Regulations 2024 (SSI 2024/379)

Moveable Transactions (Register of Assignations and Register of Statutory Pledges Rules) (Scotland) Regulations 2024 (SSI 2024/381)

09:32

The Convener: Our second item is an evidence session on four Scottish statutory instruments arising from the Moveable Transactions (Scotland) Act 2023. Two of those—the draft Moveable Transactions (Scotland) Act 2023 Amendment Regulations 2025 and the draft Registers of Scotland (Fees and Plain Copies) Miscellaneous Amendments Order 2025—are affirmative instruments. The other two—the Moveable Transactions (Forms) (Scotland) Regulations 2024 and the Moveable Transactions (Register of Assignations and Register of Statutory Pledges Rules) (Scotland) Regulations 2024—are negative instruments.

I welcome our witnesses. Joining us are Ivan McKee, who is the Minister for Public Finance, and Scottish Government officials Camilo Arredondo, who is a solicitor, and Jill Clark, who is the team leader of the private law unit. We also have David Robertson, who is a policy lead for Registers of Scotland.

All the instruments are linked, so this is an opportunity for the committee to discuss all four of them with the minister and his officials before we move to the formal procedure under the next agenda item. I stress that there is no need for any motions to be moved at this stage; that will happen under the next item.

I invite the minister to make a short opening statement.

The Minister for Public Finance (Ivan McKee): Good morning and thank you for inviting me along to give evidence on these four Scottish statutory instruments, which all relate to the Moveable Transactions (Scotland) Act 2023. The act is derived from the Scottish Law Commission's report on moveable transactions.

The draft Moveable Transactions (Scotland) Act 2023 Amendment Regulations 2025 do a number of things. First, the instrument ensures that the definition of insolvency contained in the 2023 act is appropriate and is in line with the overall policy intention of the legislation. Secondly, it makes necessary minor technical amendments and corrections to the act, for the purpose of giving full effect to the act as intended.

The then Minister for Community Wealth and Public Finance, who led the legislation through its parliamentary stages, signalled at stage 3 that, in light of stage 2 non-Government amendments to the definition of insolvency and subsequent Government amendments at stage 3 to modify the amended definition, there would be benefit in taking time to consult further in order to get that right, and that the powers in the act could be used to make any necessary further amendments. The changes to the definition of insolvency that are before us reflect that consultation.

The other changes are essentially technical and arose from further scrutiny of the 2023 act after it had been passed. Some inconsistencies were identified and the amendments ensure that those are addressed.

The second SSI—the draft Registers of Scotland (Fees and Plain Copies) Miscellaneous Amendments Order 2025—sets the fees that the keeper of the registers of Scotland will charge for use of the register of statutory pledges and the register of assignments, and for the provision of copies of and extracts from those two new registers, which were established under the 2023 act.

Registers of Scotland consulted on those fees last year, when a registration fee of £80 was proposed. That figure was based on the principle of cost recovery and used estimates of registration volumes that were derived from detailed stakeholder engagement over a number of years.

Respondents viewed the proposed fees as being prohibitively high and excessive, to the extent that the registers might not be used, impacting on the intended legal reforms under the act. The consultation prompted further engagement between Registers of Scotland and key stakeholders. More detailed information was obtained regarding the likely use of the two new registers, which allowed the anticipated volumes of applicants to be revised upwards. The result was a lower register of assignments registration fee of £30, as is set out in the order, with a £30 registration fee for an initial, or single, statutory pledge within a statutory pledge document, and a £5 fee for each additional statutory pledge for which a separate registration application is made.

Fees for making corrections to the register of statutory pledges, which include discharging statutory pledges from the register and correcting any mistakes that were introduced into the register by the applicant, are kept low, at £10. It is hoped that those fees will encourage users to maintain entries for statutory pledges over time, ensuring that the register is accurate and preventing it from becoming cluttered.

The fees for plain copies and extracts are in line with those charged by the keeper of the registers of Scotland for the other registers that are under her control, and searches of the two new registers are charged at £3 per search, under the existing Registers of Scotland (Fees) Order 2014.

The third SSI—the Moveable Transactions (Forms) (Scotland) Regulations 2024—provides for the form of a pledge enforcement notice and a correction demand for use in relation to statutory pledges, as created under the 2023 act.

The fourth SSI—the Moveable Transactions (Register of Assignations and Register of Statutory Pledges Rules) (Scotland) Regulations 2024—sets out rules for how the two new registers will operate on a practical level. That includes the making up and keeping of the registers; procedures in relation to registration and correction; and the form of documents and information to be used in connection with the registers. It is of particular note that the regulations set out that both registers will be electronic; they also set out the information that the applicants will be required to provide when making applications for registration.

I am happy to answer any questions about the SSIs.

The Convener: Thank you, minister. We go to members' questions, starting with Murdo Fraser.

Murdo Fraser (Mid Scotland and Fife) (Con): Good morning, minister. I have a mild fascination with this subject, dating back to my days in legal practice. To put that in context, I can remember being instructed by an England-based bank that had been approached by an impoverished Scottish farmer—not Jamie Halcro Johnston, I hasten to add. The bank was prepared to lend him some money and he had offered a flock of sheep as security, but I had to try to explain to the institution that it could not take security over the flock of sheep unless it took delivery of that flock, which was not of interest to the bank. I am delighted that the law has been reformed to simplify such processes, but that throws up a range of other issues that we must carefully consider.

You referred to the change in the definition of insolvency, which arose from the consultation process run by the Scottish Government. You

mentioned the responses to that consultation, but those have not been published and we do not know what else was in them. Is there any reason why you have not published the consultation responses, and was there anything else in those responses that you considered but decided not to change at this stage?

Ivan McKee: That is a good question. I will defer to officials, as I have not been through the consultation responses in detail. Does Jill Clark want to pick that up?

Jill Clark (Scottish Government): We have not published the responses, but we would be happy to do so. It was not a formal consultation. It was quite a short, one-month consultation that was targeted at people who specialised in the area. That is why the responses have not been published, although there is no reason not to publish them.

We asked about the definitions as they stood in the 2023 act when it was passed, and there were a variety of responses on whether the definition should be wide or narrow. They were fairly split, and we were content that we were probably in the right place when we got to the end of stage 3, following stage 2 amendments promoted by the Law Society of Scotland and further Scottish Government stage 3 amendments.

The anomaly was that debt arrangement schemes were included in the definitions. They are not insolvency procedures and therefore they should be removed. We consulted with the Accountant in Bankruptcy on that, and they agreed that they should be removed from the definitions, so that is what the draft Moveable Transactions (Scotland) Act 2023 Amendment Regulations 2025 do.

I am more than happy to publish the responses.

Murdo Fraser: It would be of interest to the committee to see whether there are other issues that we could look at in future.

I will widen the point slightly. Minister, before you arrived, we had a discussion in private about some of the issues that are thrown up by the legislation, particularly the risk to a purchaser, whether it be a consumer or a business, in relation to moveable property. They might not be aware that the law has changed in this area and that whatever they are purchasing might be attached and have a charge against it, because that simply might not have crossed their radar. How much has the Government done to raise awareness or create publicity for those who might be impacted by that?

Ivan McKee: That is a good point. The registers would make that information easily available for anyone who chose to search for it. You are

absolutely right that raising awareness of the change is important.

Jill, would you like to comment on what we have done specifically in that regard?

Jill Clark: Yes. In the few years since the legislation was passed, a lot of legal articles have been published about what is coming. Events and seminars have also been run by the commissioners who wrote the report and by the practitioners who worked on the group that supported its production, and we have gone along to those. There has been quite a lot of events.

David Robertson might be able to describe better what has happened via the registers, but there has also been engagement with stakeholders, and there will be guidance and marketing.

David Robertson (Registers of Scotland): Yes, that is correct. Full guidance will be available on our website, and a short, targeted marketing campaign is being planned so that people can become aware of the existence of the registers. I am not sure that that is publicly known. It is obviously professionally known, but it is less well-known publicly. We are currently engaging on the issue.

Murdo Fraser: I guess that that is my concern. Raising awareness among practitioners is one thing, but not everybody who is purchasing something moveable would necessarily involve lawyers in the transaction. Whether it is a business or a consumer parting with quite a large sum of money for something, they might realise that there is a charge on it only after the event.

Ivan McKee: That is a very good point, and you are right. Engaging with the profession is one thing, but, as you say, in many cases, legal support would not be engaged in those transactions. I am happy to take that away to look at how we can raise awareness more comprehensively through business organisations and at how we can raise the profile more generally.

Murdo Fraser: That would be helpful. There are consumer groups, for example, that would help to spread the word.

The Convener: I want to come back to the point about the consultation. This is probably a question for Jill Clark. You will publish the consultation responses, which will be helpful. However, there is just one proposed change as a result of the consultation. Were any issues raised in the consultation that led to your rejecting a change, for example? Was anything else asked for, or was everything covered by that one change?

Jill Clark: Yes—as I said, there were differing views as to how wide or narrow the definition

should be, but there was no consensus on that, so that is why there is only one change.

There is a power that we use just now and that we can use in the future should the landscape change regarding insolvency or bankruptcy. If that is the case, the definition can be further amended in the future, if there is a consensus for it.

09:45

On the point about awareness, consumers and individuals were removed from the ambit of the legislation at stage 2, so it is very much focused on businesses as opposed to individuals.

The Convener: Okay—thank you for that.

I bring in Daniel Johnson.

Daniel Johnson (Edinburgh Southern) (Lab): I have some questions about the Registers of Scotland (Fees and Plain Copies) Miscellaneous Amendments Order 2025. I thank Murdo Fraser, because the flock of sheep serves as a useful example. For a shepherd who wants to borrow against a flock of sheep, not only does registering need to be cost effective but—critically—so does updating the register in order to maintain accurate and current information on the asset that has been borrowed against.

I want to ask about the schedule of charges. You set out in your submission that, following consultation, you reduced the registration fee from £80 to £30. How was the level of £30 arrived at? Does the Government feel that that is the right level, given that the Law Society of Scotland, in its submission, points out that registration fees are considerably lower in other jurisdictions? The Law Society offers the examples of Australia and New Zealand, where the registration fee is about £7, while comparable situations, such as registering mortgages, or registering a company with Companies House, are charged at £15.

Although I understand that £30 is not an astronomical amount of money, it is still more than those sums. How was it arrived at, and what is the Government's view on what the level of fee does with regard to ensuring that an accurate register is maintained?

Ivan McKee: In general, Registers of Scotland brings in enough revenue through its various activities to cover its costs, which, from a public finance point of view, is very welcome. That is the principle to which we operate in order to understand the costs of running the service and the likely number of transactions. We used that to arrive at a fee structure that would allow ROS to cover its costs as a consequence.

The initial £80 was based on an estimate of the number of transactions. That estimate was then

revised as more work was undertaken in order to have a more thorough understanding of that. We estimate that there will be 25,000 transactions or thereabouts over the period of a year once the registers are up and running. If we do the calculations on that, with our estimated running costs, which are close to £1 million when everything is up and running, we come to that schedule of charges. That is why it is there.

It is about getting the balance right with regard to what people will feel is reasonable. Extensive consultation was undertaken on the matter, and many of the points that you raise were made. That was part of the reason for reducing the £80 charge to £30. I am not sure how many sheep you can buy for £30, but, in the grand scheme of things, if you are running sizeable transactions with many other fees involved, and borrowing against assets, I would expect that that figure would not be a significant issue.

As we move forward, there will be scope to revise the fees depending on whether more, or fewer, transactions come through, or how we see the costs working through.

Daniel Johnson: Is a review and assessment of the fee structure programmed in once the new measures are up and running?

Ivan McKee: The keeper will be watching that as part of her on-going business and engagement with ministers. The same would apply to the whole range of fees that ROS charges for various services. I do not think that there is any specific trigger for a review, but there would be a process—annually, I think—whereby there would be the opportunity to engage on that.

David Robertson: That is correct. We review fees anyway, but we will be keeping a particular eye on the two new registers in the first couple of years following their introduction.

Daniel Johnson: In your statement, you referred to the cost for searches. That is an important element of the whole system: that people can quickly look at what registrations there may be. When the legislation was progressing, there was some discussion about providing free access to non-profit money advisers. I understand that that has not come forward. What is the Government's thinking on that, and why has it not been included?

Ivan McKee: Has that not come forward?

David Robertson: To be honest, I do not have an answer to that.

Jill Clark: I can answer that. That was linked to individuals being able to take advantage of the Moveable Transactions (Scotland) Bill, but they were removed at stage 2, because consumer advice agencies raised concerns that that might

open them to bad lending. Individuals cannot have a statutory—

Daniel Johnson: I was not asking about individuals.

Jill Clark: The reason why money advice bodies might have had free access to the registers was to check on behalf of individuals. It would have meant that if they were sitting with a client, they could have looked at the register, but individuals will not be able to use the register.

Daniel Johnson: Sorry, can I clarify whether you are saying that not-for-profit money advice organisations will be able to search the register.

Jill Clark: They will be able to search the register.

Daniel Johnson: For free?

Jill Clark: Not for free.

Daniel Johnson: My understanding is that that is what was discussed as the bill was progressing through the Parliament.

Ivan McKee: The distinction is that, when the scope of the bill included individuals, there would have been a clear case for money advice organisations being able to access the registers to operate on behalf of individuals, but as the scope is now limited to businesses, the feeling is that there is no need for advice agencies to act on their behalf. Is that right?

Jill Clark: Yes.

Daniel Johnson: An associated point, which is related to the broad point about fees, is about the accessibility of the register, especially to businesses who may not necessarily be engaging armies of expensive lawyers. What work has been done to ensure that the register is easy to use and accessible to businesses that might seek to use it?

Ivan McKee: That is a good question. I will undertake to log in and see how it works to verify that. My experience of other registers that Registers of Scotland provides is that they are very easy to use and very accessible, but others may have different views on that.

David Robertson: Individual citizens will be able to make their own applications through the online registration system. It is open to professional users and non-professional users.

The Convener: I will come back on the point that the fees order makes no mention of not-for-profit money advisers being able to search the register for free. A money adviser might advise a sole trader, for example, and it is my understanding that it is a legislative requirement that not-for-profit money advisers can access the

register for free. How will that be achieved if they are advising a sole trader, for example?

Ivan McKee: That is a good point. The best plan is for us to take that away and reflect on it, and then come back to you. As I said, when individuals were taken out of the scope of the bill, the sense was that there was no requirement for that, because the vast bulk of money advice agencies would be operating on behalf of individuals. However, you are right that a sole trader could find themselves in that position. I will go and check what that situation looks like at the moment. I do not know whether we have got any data on how many searches we might expect money advice organisations to undertake, but I suspect that it would not be a big number in the grand scheme of things. We will reflect on that, engage with the keeper and respond to the committee.

Lorna Slater (Lothian) (Green): I have several questions, so I will put them into two clumps. I am asking questions about the rules in the new regulations on the making up and keeping of the registers. With no requirement for verification or update of the registers, how can accuracy be assured and fraud be prevented? How are out-of-date entries removed, for example when a debt has been paid or a pledge has been sold, and how are the registers updated if a pledge is transferred to a different creditor?

Ivan McKee: There is provision for that to be done. I suppose that your question is why people would do that. People on both sides of the transaction have an interest in keeping the registers up to date, as they reflect their commercial reality. Does anyone else want to comment?

David Robertson: The transfer of a pledge would be an assignation, which would be done through the correction procedure. Traditionally, in other registers, that might be done through a registration process, but transfer is not a registration trigger event, so it does not have to be done but it is an option. If the parties want to keep the register accurate, however, they would be expected to register reassignment through the correction procedure and it is open to professional and non-professional users to do that.

Please can you repeat your second question?

Lorna Slater: It was about keeping the registers up to date in terms of when entries should be removed because a pledge has been sold or a debt has been repaid.

David Robertson: Again, there are two means of updating the registers. It can be done through the correction procedures. The main means is that the secure creditor is expected to keep the register up to date. They are not obliged to do that—it is

optional—but there is an expectation that everyone who engages with the registers keeps them up to date, which makes sense.

If the register is not kept up to date, there is an approach whereby the person who grants a statutory pledge can write to the secure creditor and ask them to update the register and, if the secure creditor does not do that, the person can issue a correction demand to the keeper, who will update the register if the secure creditor does not challenge that at court.

Lorna Slater: So, there is no fee incurred for keeping a register up to date.

David Robertson: There is a fee of £10.

Lorna Slater: It is on the creditors and the debtors, as it were—the person who has made the pledge—to keep track of it. Is that correct?

David Robertson: That is only when the debtor asks the secure creditor to amend the register and they will not do it, for whatever reason. In that case, the person who grants the statutory pledge can issue the correction demand, which goes to the keeper, and there is a fee of £10 for that.

Lorna Slater: Therefore, the responsibility really lies with the creditor, except that that is optional, not mandatory.

David Robertson: Yes. The SLC originally looked at whether correction could be made mandatory, but it thought that it had to be optional. However, the expectation is that financial institutions would have a reputational interest in keeping the register up to date.

Lorna Slater: Is there a reason why it could not make it mandatory to keep the register up to date?

David Robertson: I cannot recall that.

Lorna Slater: Maybe you could write to us on that, because it is an interesting point. We all want to make sure that the registers are accurate, and you can imagine a small businessperson, who needs their asset back, not being able to get hold of it.

Is there enough information in the register to identify those carrying out registrations, especially if they are outwith the United Kingdom? How do we ensure that the register identifies the person or the business who can be contacted? If third parties are doing the registering, how do we ensure that they have appropriate permissions to do so? How do we ensure the privacy of the information that is being shared? How can third parties or people who find errors in the register correct those? You have mentioned the correction procedure, but is that available to a third party?

David Robertson: If the error affects them, the correction demand procedure will be available to

them. For example, if a third party is listed as a provider of a statutory pledge but they are not, they can go through the correction demand procedure. That is open to a third party who has been incorrectly listed. If a statutory pledge has been granted over property—and the register says that that is the property over which a statutory pledge has been granted—but a statutory pledge should not have been granted because the property belongs to a third party, they can challenge that and have the register corrected.

Lorna Slater: Who adjudicates that? Presumably, the register does not adjudicate that, if there is a dispute.

David Robertson: The procedure is that the third party has to write to the secure creditor to ask them to correct it. If the secure creditor does not do that, the third party will write to us. We will then serve a notice on the secure creditor to say that we will correct the register in 21 days—to do whatever we have been asked to do, such as removing a provider who has been incorrectly listed. If the secure creditor does not get back in touch to tell us that they will challenge that in court, we will correct the register in 21 days.

Lorna Slater: The first questions that I asked were about identifying organisations that are outwith the UK, whether there is enough information in the register to do that and how we ensure that appropriate permissions have been obtained and that privacy is protected when registrations are happening.

David Robertson: I can answer the first question, because the detail for all parties is quite considerable. The rules are quite technical and the level of information that has to be provided is considerable. The only difference for those outside the UK is that they do not automatically have to provide a company number that has been issued to them. All other details are exactly the same—the name, the registered office, the address. They are comparable for UK and non-UK organisations. The only one that is any different is the ID number. If you are a UK company, you have to give a company number; it is mandatory. However, if you are not a UK company, we cannot mandate the use of that, because we do not know whether there is one and we are not validating it. It is therefore optional. Apart from that, the detail with regard to the correspondence regime and who you would contact for the secure creditor or the provider is quite intensive.

10:00

Lorna Slater: There is an interesting question there about how that would overlap with international law, if there is a charge against something that is owned by someone outwith the

UK because a Scottish business took out a loan against that. Is that the purpose of that registration?

David Robertson: It should be a Scottish asset.

Lorna Slater: Right, okay. But it would maybe be owned by a—

David Robertson: Yes, it would be.

Lorna Slater: Right. Understood.

On the point about privacy, when registrations are going up, whether they are accurate or in error, what is done to make sure that the permissions for posting that information have been obtained?

David Robertson: We authenticate the applicant. If you are a business user, you may have an account with the Registers of Scotland anyway. If not, there will be an on-boarding process for our e-services. There will be a credit check, and there will almost certainly be a direct debit set up for payment. A number of checks are done before we will accept an application or regard an applicant as authenticated.

If you are a non-business user or a citizen, we will authenticate your identity through ScotAccount, which is a Scottish Government ID authentication service. We will also do a credit check as regards that.

Lorna Slater: That is for the secure creditor who is going to be updating—

David Robertson: That is the person who is making the applications—

Lorna Slater: —but they are putting in someone else's information—the information about the debtor.

David Robertson: That is correct, yes.

Lorna Slater: How do we ensure that they have permission to put that information about the debtor up there in a public space?

David Robertson: I would have to write to you with the answer for that one.

Ivan McKee: Putting that information up is a necessary part of the process, is it not? The whole point is to make that information visible.

David Robertson: The rules provide that you need that information in order to enable searching. The register cannot exist without that information. We accept that the information submitted by an authenticated user will be correct.

Lorna Slater: I suppose that that is true from the point of view of the secure creditor, but you assume that they have obtained that information accurately from the debtor.

David Robertson: That is correct. It would replicate what we do for all of our other registers. For instance, with the land register, a solicitor will be the applicant and they will submit, for instance, a disposition from A to B. Because they are an authenticated user, we will accept that they are entitled to act for B, but they are not acting for A. There is obviously the professional aspect of the submission of the applications. We simply assume that the information is correct.

Lorna Slater: Do we not have any concerns about the fact that a debtor's information is publicly available in that way? In fact, if I understand correctly, that is the point of having the registers.

Ivan McKee: The registers exist to create that visibility, so that people can search them. Exactly.

David Robertson: That visibility needs to be there, or else—

Lorna Slater: That is the point.

David Robertson: The key point of the registers is that, if the information is not there, the register is largely useless, because you cannot search it. It is really about the searching aspect; it is about someone doing due diligence if they want to lend or assess whether someone can borrow or make an assignment.

Lorna Slater: I guess that a debtor who is putting a pledge forward needs to understand that their data then becomes visible publicly. That is something that they need to be aware of. All right. Thank you very much. Thank you, convener.

Michelle Thomson (Falkirk East) (SNP): Good morning. Thank you for joining us.

I want to follow up on one wee thread off the back of what has been said. David Robertson, you mentioned a credit check. Can you remind me of the nature of that, because that will frame my question, and I did not quite hear all of what was said?

David Robertson: Unfortunately, I cannot give any more details regarding what we actually do.

Michelle Thomson: On whom do you perform the credit check in that role play?

David Robertson: It would be performed on the applicant—the person who engages with us. The applicant should be either the secured creditor or their legal representative.

Michelle Thomson: Okay. What tests have you done on the possibility of fraud? I heard what you said about checking, but, if that checking is predicated on an SC number that was set up through Companies House, the problem is that it is extremely easy to set up a fraudulent body via Companies House. There are umpteen examples

of Scottish limited partnerships, in particular, and no checking is done via Companies House.

I appreciate that it is a long shot, because, as one might ask, why would somebody go to the trouble of setting up and then putting in place a fraudulent transaction on the registers? I just wanted to explore how much you have tracked that through, because, in and of itself, an SC number, as well as the other associated detail, does not mean that someone is acting in good faith.

David Robertson: That is if someone went to those lengths. Most of our registered customers are either solicitors or legally qualified in some way. As part of the onboarding process for issuing them with registered accounts, we undertake a Law Society check to independently verify that they are who they say they are. When it comes to other customers, we tend not to have non-business users and individuals making too many applications.

When we are doing the land register, we carry out identification checks for fraud purposes, and that is largely what we are replicating for the moveable transactions registers. The best example is that, if you are an individual, we will check your identity through ScotAccount—checks of your passport and driving licence and a credit check are part of that. I cannot say exactly what is involved in the ScotAccount credit check.

Michelle Thomson: There are a number of different scenarios. I am just thinking about Scottish limited partnerships, which have been written about a great deal. They are used for a variety of mechanisms, but the whole point of them is that they give the impression of probity, because you can see them registered in Companies House and it is a brand: Scottish limited partnership. Part of the issue is that there is a footprint giving the illusion of legitimate activity when, actually, it might not be at all legitimate.

I am not certain that you have considered all the potential fraudulent situations if there has been a complete lack of testing by Companies House. The record has shown us that the volume of fraudulent companies is alarmingly large; there is ample evidence of that. For example, hundreds of Scottish limited partnerships have been registered to addresses in Dumbarton. You might ask why someone would go to the trouble of doing that, but that is the essence of fraud. Somebody did that, but for reasons that we have not yet thought of.

Ivan McKee: The question is whether there is an onus on the registers to verify information that they are presented with. Indeed, it is not even information that is the issue, because the information will be accurate; it is the intent behind the information. I suppose that the answer to that

is that the register can only check what is in front of it.

David Robertson: We can verify the applicant, but we cannot verify anything beyond that, because these are automatic registers. If we were to verify information, the registers could not be automatic. It would take a lot more staff, and there would be a massive cost impact. The very nature of them being electronic and automatic means that there is no keeper validation aspect to it.

Michelle Thomson: I suppose that that leads us in a neat circle back to the opening point about the veracity of the registers in general terms—a lot of our questions have been about that—and about the rules and regulations. There might well be scenarios—in fact, a lot of them have come out this morning—that have not necessarily been thought about in great detail.

I will leave it there, but if you have any further thoughts, feel free to write to us.

Murdo Fraser: Having reflected on some of the questions that I asked earlier about protections for purchasers, I want to return to them.

I understand that consumers are not covered by the legislation, because only businesses can grant pledges and charges. What happens if somebody buys from a business but not in the ordinary course of business? It is probably easier to illustrate with an example. Mr Halcro Johnston has a farm, so he is conducting a business. He is granted a charge over his moveable assets, including his combine harvester. I decide that I am going to buy his combine harvester, because I am a collector of old combine harvesters. In that circumstance, would I be protected, or would I need to search the register to ensure that there was no charge against it?

Jill Clark: There would be no requirement for you to check the register. You would still be protected without doing that.

Murdo Fraser: Because I am not a business.

Jill Clark: Yes—because you are an individual.

Kevin Stewart (Aberdeen Central) (SNP): This evidence session has opened up some huge cans of worms and possibilities, but it is our job to consider all aspects of the matter. I am interested in the corrections aspect. You are probably not aware of this, but I previously asked a lot of questions about the fraudulent disposition of title, the difficulty with correcting the register and doing what is right for people who have faced that fraud.

Lorna Slater probed the matter of corrections earlier. If there is a requirement for correction, and if, as Michelle Thomson said, there has been a possible fraud, who is liable for any correction or compensation?

Ivan McKee: Are you talking about who should make the correction or who would be liable if there was some fraud as a consequence of the entry in the register being incorrect?

Kevin Stewart: Kind of both.

David Robertson: Regarding the liability aspect, the keeper would not be liable; the keeper is specifically covered. It is reasonable for her to accept all the information that has been given to her in the registration process and the correction process. Unless the keeper specifically made a mistake in transferring information on to the register, or if there was some sort of system failure whereby a record was accidentally removed, there would be no liability on the keeper, because of the automatic nature of the registers.

If someone makes a fraudulent correction of the register, the notifications get sent immediately to all parties who have been involved in the registration process previously. In the scenario of a statutory pledge, the provider would get a notification, the secured creditor would get a notification and any email address that was previously supplied as part of the registration process would get a notification to say that the register had been corrected. That would alert them if there had been some sort of fraud in a correction application.

Kevin Stewart: I am playing devil's advocate here, but I think that it is important to do so. If somebody highlights that there is fraud and a correction is required, who is liable if those notifications do not go out?

David Robertson: I would have to check, but I think that the keeper is liable for notifications not going out.

Lorna Slater: We have talked a little bit about information accuracy for the creditor and the debtor. My question is about third parties. Other documents might have been uploaded as evidence for the asset that is being pledged—for example, invoices, which might include customer or individual information. On the point about customer databases being proof of the value of the asset, how does personal information get redacted from that supporting information? It is not about the creditor or the debtor, but the fact that you have all those customers is evidence of the asset. How is the privacy around that information assured, and how can that information be appropriately redacted?

Ivan McKee: The information might also be commercially sensitive. I assume that we do not put every invoice on to the register.

David Robertson: The documents that are submitted are uploaded automatically, and there is no validation of them, so there is potential for a

document to be submitted that contains personal information. The rules specifically provide for the redaction of that by the applicant before the document is sent out. We have a robust registration process, and there will be a warning about not uploading anything that contains personal information. The keeper redacts the full date of birth from any extract or search. We issue the month and the year, but we never issue a full date of birth as part of a search or an extract, unless it has been erroneously included in an uploaded document.

10:15

Due to the automatic nature of the register, you make your own registration application and you upload your own documents, and if you upload something that includes sensitive information, that can be publicly viewed. We have a robust information process as part of the registration to make sure that fair warning is given not to upload such information. People should probably know not to do that, because we have that process with at least one of our other registers—in the register of deeds, a registration will appear in the public register, but, if it contains sensitive information, we will contact the person to ask whether they are sure that they want to register that.

Lorna Slater: Uploads are checked, but if I find out that my information is in a scanned document or something else that got through the check, is there a method by which I can request that that information be corrected or redacted, given that I am not one of the two parties that can do the corrections?

David Robertson: Numerous types of corrections can be made. One of them is known as a manifest inaccuracy correction, which might be a route to request a correction. However, a more appropriate route would be to contact the secured creditor to get them to replace the document with one that did not contain the sensitive information.

Lorna Slater: That would clearly be quite a lot of work. In this case, the individual consumer—someone who was not involved in the transaction at all and might just be a customer—would have to go to the secured creditor to get the correction, even though they were not at fault in any way. Could a mechanism be considered to inform the registrar of that situation, so that the registrar could contact the secured lender? If my home address ended up on the register, it would seem a bit onerous for me, as an individual, to have to go through that arduous route to correct the record.

Ivan McKee: Who can make a correction is limited to the parties that were involved in the

transaction. To some extent, it depends on the definition.

David Robertson: The inclusion of such detail would not be an inaccuracy, as such, because the register would not be incorrect in including it.

Lorna Slater: That is correct.

David Robertson: However, we will take that issue away and think about what could be done in that regard.

Lorna Slater: Thank you.

The Convener: I am conscious that members have asked a lot of questions today, so the minister's proposal to come back in writing on a number of points is helpful. I am in members' hands on whether they are content to consider each of the instruments that are before us today, or whether they wish to defer consideration to next week, pending the receipt of that information. I am happy to hear members' views.

Michelle Thomson: It would not do any harm to wait a week, because a lot of detail has been brought out. That is my personal view; I am sure that other members will have their own views.

The Convener: I will request that the minister and his officials come back on the points that have been raised today, and we can consider some of those points and the instruments next week.

Are members content to defer consideration of the instruments to next week?

Members indicated agreement.

The Convener: That brings us to the end of today's evidence session. I thank the minister and his officials for joining us and for their commitment to come back on a number of points that members have raised, which I hope will allow us to consider the instruments next week.

10:18

Meeting continued in private until 10:36.

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