

Economy and Fair Work Committee
Wednesday 29 January 2025
4th Meeting, 2025 (Session 6)

Note by the Clerk on two Scottish Statutory Instruments relating to the Movable Transactions (Scotland) Act 2023

Overview

1. Four Scottish Statutory Instruments (SSIs) have been laid relating to the Moveable Transactions (Scotland) Act 2023.
2. The Committee will take evidence from Ivan McKee, Minister for Public Finance, and officials on two instruments, before debating each motion in turn, in the name of the Minister, inviting the Committee to recommend approval of each. A separate paper has been prepared covering the two negative instruments.
3. These are draft Scottish Statutory Instruments (SSIs), which require approval by resolution of the Parliament before they can become law. More information about the instruments is summarised below.

Title of instruments:

- I. [The Moveable Transactions \(Scotland\) Act 2023 Amendment Regulations 2025](#); and
- II. [The Registers of Scotland \(Fees and Plain Copies\) Miscellaneous Amendments Order 2025](#).

Laid under:

- I. [Moveable Transactions \(Scotland\) Act 2023](#); and
- II. [The Land Registration \(Scotland\) Act 2012](#)

Laid on: 16 December 2024

Procedure: Affirmative

Lead committee to report by: 9 February 2025

Commencement: If approved, the instrument comes into force on 1 April 2025.

Procedure

4. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.

5. Once laid, the instrument is referred to—
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds; and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
6. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
7. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee—
 - an evidence session with the Minister and officials; followed by
 - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
8. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument.

Delegated Powers and Law Reform Committee consideration

9. The DPLR Committee considered the instruments on 7 January 2025 and reported on them in its [1st Report, 2025](#).
10. It made no recommendations in relation to the instruments.

Purpose of the instruments

The Moveable Transactions (Scotland) Act 2023 Amendment Regulations 2025

11. These regulations amend sections 4 and 50 of the Movable Transactions (Scotland) Act 2023 to update the definition of insolvency for the purposes of the Act, following stakeholder consultation.
12. They also make minor technical amendments and corrections to sections 6 and 14 of the Act for the purposes of, and for giving full effect to, the Act.
13. Additionally, the original legislation refers to consulting the Keeper of the Registers of Scotland on any draft regulations under the Act containing the rules of procedure for the Register of Assignations and the Register of Statutory Pledges (sections 39(1) and 111(1)). Any changes to the rules around these registers will be made

under the negative procedure, rather than the affirmative procedure, and therefore do not require that consultation. These regulations amend this error by removing the requirement.

14. The policy note accompanying this instrument is attached at Annexe A. A SPICe briefing on both affirmative instruments is also attached.

The Registers of Scotland (Fees and Plain Copies) Miscellaneous Amendments Order 2025

15. The Movable Transactions Scotland Act 2023 created two new registers to simplify and facilitate moveable transactions in Scotland— the Register of Assignations and the Register of Statutory Pledges. Both are under the management and control of the Keeper of the Registers of Scotland.

16. This instrument amends the Registers of Scotland (Fees) Order 2014 (as amended) to set the fees Registers of Scotland may charge for their use. It also further amends the 2014 Fees Order to correct historic typographical errors and amends the Registers of Scotland (Information and Access) Order 2014 to apply its terms to both new registers.

17. The policy note accompanying this instrument is attached at **Annexe B**. A SPICe briefing on both instruments is also attached.

Report

18. **Following today's consideration, a draft report will be prepared by the clerks. The Committee is invited to delegate responsibility for agreeing the draft report to the Convener.**

**Clerks to the Committee
January 2025**

POLICY NOTE

THE MOVEABLE TRANSACTIONS (SCOTLAND) ACT 2023 AMENDMENT REGULATIONS 2025

SSI 2025/XXX

The above instrument will, if approved, be made by the Scottish Ministers in exercise of sections 4(7)(c), 50(4) and 119 of the Moveable Transactions (Scotland) Act 2023 (“the 2023 Act”). The instrument is subject to the affirmative procedure.

Summary Box

The purpose of this instrument is to amend the 2023 Act to amend the definition of insolvency, and to make minor technical amendments and corrections to sections 6 and 14 of the 2023 Act for the purposes of, and for giving full effect to, that Act.
--

Policy Objectives

The 2023 Act reforms and modernises Scots law to make it easier for businesses and individuals to assign claims or raise finance using moveable property by creating two new registers, the Register of Assignations (“RoA”) and the Register of Statutory Pledges (“RSP”) under the management and control of the Keeper of the Registers of Scotland (“the Keeper”). The registers will simplify and facilitate moveable transactions in Scotland:

- the ownership of debts and other obligations will be able to be assigned (transferred) by registering the assignation in the RoA rather than by giving notice (intimation) to the debtor (although intimation will remain available); and
- corporeal (tangible) moveable property and incorporeal (intangible) moveable property (such as intellectual property and financial assets) will be able to be used as security for loans by registering a statutory pledge in the RSP, removing the current need to transfer either possession of, or title to, the property to the creditor or the use of expensive and inefficient workarounds.

This instrument would amend the 2023 Act as follows.

Definition of insolvency - sections 4(6)(a) and 50(3)(a) of the 2023 Act

The 2023 Act sets out, in sections 4(6) and 50(3) respectively, circumstances in which either the assignor of an assignation or the provider of a statutory pledge, respectively, would be deemed insolvent for the purposes of the 2023 Act.

At Stage 2 of the parliamentary scrutiny of the Moveable Transactions (Scotland) Bill, amendments were made to the insolvency definitions in these sections. Some of these amendments were reversed and others corrected at Stage 3 on the basis that the Scottish Government would undertake further stakeholder consultation on the definition of insolvency for the purposes of the 2023 Act during the pre-commencement period and, if the consultation pointed to further amendments being necessary, that these would be made by regulations under the specific powers in sections 4(7)(c) and 50(4) of the 2023 Act as passed. This consultation ran from 16 October to 15 November 2023.

Consideration of the resulting stakeholder consultee responses resulted in one common issue being identified, that of the inclusion in the insolvency definitions of an application for a debt payment programme under a Debt Arrangement Scheme (see further under 'Consultation' below). Regulation 2(2) and (6) accordingly remove the corresponding provisions from the definitions contained in sections 4(6)(a) and 50(3)(a) of the 2023 Act respectively.

Assignability and defences – sections 6(3) and 14(1) of the 2023 Act – existing and future claims

A central tenet of the reforms provided for in the 2023 Act is the ability to assign both existing *and* future claims. This is not currently possible in a practical sense under Scots law and therefore it was part of the policy intention, going back to the 2017 Scottish Law Commission report on moveable transactions, for the reforms to remedy this. The 2023 Act does so by allowing registration (as an alternative to intimation) as a competent method for assigning a claim. This allows both existing claims and those not yet in existence to be assigned competently - as provided for in section 1(4) of the 2023 Act. For example, a business would be able to grant an assignation document, have it registered and competently assign future invoices to future customers that don't exist yet – these claims would later transfer to the assignee once the business becomes the holder of the claim (i.e. at the point the future invoices come into being). This is because the 2023 Act provides for registration as an alternative to intimation – you cannot intimate to future customers that don't exist yet, hence the need for publicity by registration.

Sections 6(3) and 14(1) of the 2023 Act provide for different elements, concerning respectively limitations on assignability and defences of the debtor, but the amendments proposed under this instrument at regulations 2(3) and (4)(a) and (b) are of similar effect. There are two important elements to an assignation – the *grant* of the assignation document assigning the claim, and the *transfer* of the claim itself. In a standard assignation of an existing claim not subject to any conditions, the transfer element will occur upon registration or intimation and will likely be within a short timeframe after the grant of the document. However, for an

assignment of a *future* claim, the assignment document can be granted some time before the eventual transfer of the claim – as it only transfers once it comes into existence. Therefore, sections 6(3) and 14(1) as passed, by limiting the agreement not to assign a claim or agree that a defence should not be asserted to the time of the *granting* of the assignment document, whilst it covers existing claims, will not work correctly for future claims. The salient point in time for the operation of these provisions is the *transfer* of the claim (and in relation to section 6(3) the point at which the claim would have otherwise transferred), not the grant of the assignment document. These limited amendments would not affect the applicability of these provisions to existing claims, and would preserve the ability of the parties to agree otherwise in both sections 6(3) and 14(1).

The Scottish Government accordingly considers the amendments proposed to these provisions in this instrument are appropriate to ensure that the overall policy intention of the reforms in Part 1 of the 2023 Act apply equally to existing and future claims as otherwise provided for in the 2023 Act. These amendments are consequential and incidental and are considered appropriate in light of the regime of the 2023 Act, in particular section 1(4), to allow the 2023 Act to be implemented and operate in the manner intended.

Compensation etc. – section 14(3) of the 2023 Act – registration, intimation and deemed delivery of notice

It was the intention when passing section 14 to put the common law rule “the assignee takes the rights of the assignor” on a statutory footing. Section 14(3), which specifically deals with the assertion of a right of compensation etc. of this rule, provides that a debtor is not to be treated as having been told about the assignment of a claim only because an assignment document has been registered. A technical amendment to section 14(3) is considered necessary for the purposes of giving full effect to both that provision and the wider 2023 Act because, whilst registration is carved out for the purposes of section 14(3) because it does not form part of the existing common law rule, it was an error not to also carve-out the new deemed notice provisions found in section 8(9) and (10) of the 2023 Act, which also do not form part of the existing common law rule and apply where an assignment has been intimated instead of registered. We consider it was clearly Parliament’s intention when passing section 14(3) that on notice being given to the debtor, compensation in relation to subsequent dealings could not be pled as per the existing common law rule. But there are no deemed delivery notice provisions in the existing law, and it is considered to be unfair to debtors to have compensation pleas cut off because of a transfer of a claim they know nothing about. The introduction of registration means that a claim can be transferred without the debtor’s actual knowledge, but so too do the deemed notice provisions where it is intimated. Regulation 2(4)(c) remedies this gap and is considered appropriate as consequential, incidental on and supplementary to section 8(9) and (10) of the Act.

Consulting the Keeper on the Rules – sections 39(3) and 111(3) of the 2023 Act

The 2023 Act provides that the Scottish Ministers may make regulations containing the rules of procedure for the RoA and the RSP, under sections 39(1) and 111(1)

respectively. Any such regulations providing for the register rules are to be subject to the negative procedure, as provided for in section 118(4) of the 2023 Act.¹¹ However, the requirement to consult the Keeper in sections 39(1) and 111(1) erroneously make reference to “laying a draft of a Scottish statutory instrument [...] before the Scottish Parliament [...]”. The Keeper has in any event been consulted before making the Regulations containing the Rules which have been made at the same time as this instrument is laid, and to which the amendments to be made by this instrument will not apply (as they will not be in force when the Rules Regulations are made). Regulation 2(5) and (7) nonetheless amend sections 39(3) and 111(3) to reflect the correct negative procedure. The Scottish Government consider these amendments are appropriate as consequential and incidental to allow for the aforementioned provisions to operate as intended without impacting the purpose of the provisions as passed by Parliament. This will apply to any future exercise of the rule-making power.

In conclusion, the Scottish Government consider the amendments proposed are appropriate to make the required limited technical amendments to the 2023 Act to ensure that the 2023 Act is implemented in line with the manner Parliament intended.

Anticipatory exercise of powers

Insofar as this instrument is made under sections 4(7)(c), 50(4) and 119 of the 2023 Act and, with the exception of the latter, prior to those sections being commenced by the Moveable Transactions (Scotland) Act 2023 (Commencement) Regulations 2024² which will bring sections 4(7)(c) and 50(4) into force on 1 April 2025, the same day as this instrument will come into force, this would be in accordance with section 4 of the Interpretation and Legislative Reform (Scotland) Act 2010 which enables a power to make subordinate legislation to be exercised prior to the commencement of the provision of the relevant Act which confers the power. The Scottish Ministers consider it is expedient to exercise sections 4(7)(c) and 50(4) in this way so the changes to the definition of insolvency are in place in order to bring the rules on the assignation of claims and the creation of statutory pledges in section 4 and 50 of the new regime in the 2023 Act into force and to give them full effect as required using the powers in sections 4(7)(c) and 50(4) of the Act for the purposes of those sections.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children’s rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Moveable Transactions (Scotland) Act 2023 Amendment Regulations

¹ The Delegated Powers Memorandum for the Bill as considered by Parliament noted negative procedure for these provisions (sections 37(1) and 109(1) as they were then numbered).

² S.S.I. 2024/378 (C. 27).

2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

As mentioned above, a short and targeted consultation on the definition of insolvency for the purposes of the Act was carried out in late 2023. A total of six responses were received. There was consensus that the definitions of insolvency for the purposes of the Act should capture both relevant insolvency procedures as well as the state of being insolvent but beyond that there was a range of views offered on whether the definitions should be narrow or wide. Based on the responses and the preference to adopt a balanced and consistent approach the decision was taken to make only one change – to remove an application for a debt payment programme under the Debt Arrangement Scheme (“DAS”) from the definitions on the basis that, as highlighted by one of the consultees, the Debt Arrangement Scheme is not an insolvency process but a statutory debt repayment process. They considered that it would be inconsistent in terms of wider Scottish Government policy to treat DAS differently in the context of this legislation, to which the Scottish Government concurs.

Impact Assessments

A [Child Rights and Wellbeing Impact Assessment](#) (“CRWIA”) has been completed on this instrument and has been published alongside the laying of this instrument. An Equality Impact Assessment (“EQIA”) was undertaken for the introduction of the Moveable Transactions (Scotland) Bill to Parliament. The EQIA has been reviewed for this instrument and it was concluded that the EQIA meets the needs of this instrument. No equality issues have been identified and there were no issues concerning children's rights and wellbeing identified.

Financial Effects

A Business and Regulatory Impact Assessment (“BRIA”) has not been carried out for this instrument as a BRIA was completed when the Bill was introduced to the Scottish Parliament. No changes made to the Bill through its parliamentary passage alter the overall impact on businesses which was found at that time to be positive. This instrument does not have any material consequence to businesses.

Scottish Government
Justice
December 2024

POLICY NOTE

THE REGISTERS OF SCOTLAND (FEES AND PLAIN COPIES) MISCELLANEOUS AMENDMENTS ORDER 2025

SSI 2025/Draft

The above instrument will, if approved, be made by the Scottish Ministers in exercise of the powers conferred by sections 107(1) and 110(1) and (2) of the Land Registration etc. (Scotland) Act 2012 (“the 2012 Act”). The instrument is subject to affirmative procedure.

Summary Box

The purpose of this instrument is to set the fees Registers of Scotland may charge for use of the Register of Assignations and the Register of Statutory Pledges, and for the provision of extracts and plain copies from those registers under the Moveable Transactions (Scotland) Act 2023 (“the 2023 Act”).

Policy Objectives

The 2023 Act provides for the creation of two new registers – the Register of Assignations (“RoA”) and Register of Statutory Pledges (“RSP”) – the operation of which will simplify and facilitate moveable transactions in Scotland. The 2023 Act provides for both new registers to be under the management and control of the Keeper of the Registers of Scotland (“the Keeper”).

The 2023 Act contains a number of provisions requiring a fee to be paid to the Keeper on the occasion of certain events, namely, when registering a document, when making certain corrections (RSP only), when searching the register and when requesting an extract of a record entry.

As with the other registers under the Keeper’s management and control, the setting of fees for these new registers is a matter for the Scottish Ministers, who will set those fees in this instrument under the powers in section 110 of the 2012 Act.

This instrument accordingly amends the Registers of Scotland (Fees) Order 2014 (as amended) (“the 2014 Fees Order”) so as to make provision for the statutory registration, correction and extract fee regime which will underpin the operation of both the RoA and RSP. It also, at article 2(5)(a) and (b), further amends the 2014 Fees Order to correct historic typographical errors.

The setting of and reviewing of fees complies with the requirements of the Scottish Public Finance Manual to meet full cost recovery.

This instrument does not require to make provision regarding the fee which will apply to the searching of either the RoA or RSP as the 2014 Fees Order already contains a blanket search fee provision which applies to all of those registers under the Keeper's management and control and which will therefore automatically apply to both the RoA and RSP.

Certain other information/access services will additionally be required to be offered by the Keeper to facilitate the effective operation of the RoA and RSP, namely the facility to obtain plain copies of register information (a plain copy is a simple copy which provides a cheaper alternative to customers who wish a copy which does not have the evidential status of an extract) and the facility to request the Keeper to search for, and provide, register information on a customer's behalf (a "register inspection" facility).

The 2014 Fees Order provides for a fee regime for both plain copies and register inspection for those registers under the Keeper's management and control, where specified. The Keeper intends to offer both of these services, at a fee, for users of the RoA and RSP.

This instrument is therefore also needed to accordingly amend the 2014 Fees Order so as to make provision for the fee to be charged for plain copies of information contained in the RoA and RSP.

This instrument does not require to make provision regarding a register inspection fee in respect of the RoA and RSP as the 2014 Fee Order already contains a blanket, under defined exceptions, fee provision for this service which applies to all remaining registers under the Keeper's management and control, and which will therefore automatically apply to both the RoA and RSP.

Further, the Registers of Scotland (Information and Access) Order 2014 makes provision in relation to information to be made available by the Keeper and access to any register under the management and control of the Keeper. Article 2 of that Order details those registers from which a plain copy can be obtained and makes provision as to how such plain copies can be applied for and are issued by the Keeper.

This instrument is therefore also needed to accordingly amend the Registers of Scotland (Information and Access) Order 2014 so as to apply its terms to both the RoA and RSP.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Minister have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Registers of Scotland (Fees and Plain Copies) Miscellaneous Amendments Order 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

On behalf of the Scottish Ministers, Registers of Scotland ("RoS") publicly consulted on proposals for those fees which would apply to the operation of the RoA and RSP between 8 July 2024 and 16 September 2024. The consultation document was published on the websites of both the Scottish Government and RoS. In total, 14 responses were received and came from two stakeholder groups, seven firms of solicitors, one property search firm, one business finance firm; and three individuals.

The responses of those consulted and who consented to the publishing of their response are included along with the consultation report published on the websites of both Scottish Government and RoS. These include The Law Society of Scotland and UK Finance.

An overwhelming majority of respondents were either dissatisfied or strongly dissatisfied by the consultation's key proposals regarding RoA and RSP registration fees, with respondents' viewing these as prohibitively high and excessive to the extent that the legal reforms intended by the Act could be negatively impacted.

The consultation's registration fee proposals were based on cost-recovery, with registration volumes being estimated from detailed user research undertaken with a wide range of stakeholders, industry experts and academics over several years. Despite this level of engagement, it proved extremely difficult for RoS to obtain accurate estimates of volumes for the new registers. Accordingly, the RoS estimates of volumes which informed the proposed registration fees were necessarily cautious.

The consultation responses indicated that the consultation had the effect of focussing the minds of stakeholders, particularly around the requirement for a "reduced fee for multiples" fee model for the RSP. This prompted further engagement with stakeholders, including with a majority of consultation respondents, and that allowed more informed assumptions on likely usage for the new registers to be developed.

This further engagement has increased the confidence of RoS as to effect of multiple registrations on RSP volumes and also increased confidence on lender uptake and early adoption rates, confirming that RoS' previous estimates of these were overly cautious and enabling the upwards revision of volume estimates for both registers.

Also following the consultation, RoS had more updated data on ongoing running costs that were refreshed.

These revised assumptions on volumes and costs both impacted on RoS' cost-recovery model for fee-setting, allowing RoS to propose a significantly reduced registration fee of £30 across both registers, in tandem with a "reduced fee for multiples" fee model for the RSP which uses a registration fee of £30 for an initial (or single) statutory pledge within a constitutive document, with a £5 fee for each additional statutory pledge for which a separate registration application is made.

The Keeper has been consulted on the proposals in compliance with section 110(3) of the 2012 Act. Following approval by the Minister for Public Finance, the reduced registration fees and the new RSP fee model were included in this instrument.

Impact Assessments

A [Children's Rights and Wellbeing Impact Assessment](#) ("CRWIA") has been completed on this instrument and has been published alongside the laying of this instrument. There were no issues concerning children's rights and wellbeing identified.

An Equality Impact Assessment ("EQIA"), Fairer Scotland Duty and Islands Impact were undertaken for the introduction of the Moveable Transactions (Scotland) Bill ("the Bill") to Parliament. No equality, Fairer Scotland Duty or Islands impact issues were identified at that time.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has not been carried out for this instrument. The BRIA completed when the Bill was introduced to the Scottish Parliament covered the financial aspects including the registration fees that the Keeper may charge. RoS recent consultation on the registration fees for this instrument did not require a further BRIA as the level of fees proposed fell within the range in the existing BRIA. No changes to the Bill through its parliamentary passage altered the overall impact on businesses which was found at that time to be positive.

Scottish Government
Justice
December 2024