

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 Moveable 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 consider two SSIs which are subject to annulment by resolution of the Parliament until 18 February 2025. The Committee is invited to consider the instruments. There is a separate cover paper for the two affirmative instruments.
3. More information about the instruments is summarised below.

Title of instruments:

- I. [Moveable Transactions \(Forms\) \(Scotland\) Regulations 2024](#), SSI 2024/379
- II. [Moveable Transactions \(Register of Assignations and Register of Statutory Pledges Rules\) \(Scotland\) Regulations 2024](#), SSI 2024/381

Laid under: [Moveable Transactions \(Scotland\) Act 2023](#) (“the 2023 Act”)

Laid on: 16 December 2024

Procedure: Negative

Deadline for committee consideration: 17 February 2025

Deadline for Chamber consideration: 18 February 2025

Commencement: 1 April 2025

Procedure

4. Under the negative procedure, an instrument is laid after it is made but is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
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. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).
 7. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

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

Purpose of the instruments

Moveable Transactions (Forms) (Scotland) Regulations 2024

9. This instrument provides for the form of a Pledge Enforcement Notice, and a correction demand for use in relation to the statutory pledge as created under the 2023 Act.

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

10. This instrument makes provision for the rules relating to the Register of Assignations and the Register of Statutory Pledges, both of which are established under the 2023 Act.
11. The Policy Notes accompanying the instruments are included at Annexe A and B.

Committee consideration

12. No motion recommending annulment has been lodged and, following notification of this instrument in the members bulletin, no member has indicated any concerns or questions.
13. Members are invited to note the instrument.

Clerks to the Committee January 2025

SCOTTISH GOVERNMENT POLICY NOTES

THE MOVEABLE TRANSACTIONS (FORMS) (SCOTLAND) REGULATIONS 2024

SSI 2024/379

The Moveable Transactions (Forms) (Scotland) Regulations 2024 is made by the Scottish Ministers in exercise of the powers conferred by sections 65(1), 98(4)(a) and 118(1) of the Moveable Transactions (Scotland) Act 2023 Act (“the 2023 Act”). The instrument is subject to negative procedure.

Summary Box

The purpose of this instrument is to provide for the form of a Pledge Enforcement Notice and a correction demand, respectively, for use in relation to the statutory pledge, as created under the 2023 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 provides for the form of two prescribed forms to be used in relation to the statutory pledge. The statutory pledge, as introduced under the 2023 Act, is a new form of fixed security that can be granted over moveable property such as plant and equipment, intellectual property such as patents and trademarks, and financial instruments such as shares.

Before taking steps to enforce a statutory pledge, a Pledge Enforcement Notice in terms of section 65(1) of the 2023 Act must be served on various parties including the provider, the holder of any other security (where known) and any occupier (where relevant). Section 65(1) also holds that the Pledge Enforcement Notice must be in the form prescribed by the Scottish Ministers in regulations. This instrument accordingly sets out the form of a Pledge Enforcement Notice.

Section 98(1) of the 2023 Act allows a person to serve on the registered creditor of a statutory pledge a notice demanding that they apply to the Keeper to correct the relevant entry in the RSP. This may be required where an entry in the statutory pledges record requires amendment or contains an error. Section 98(4)(a) holds that such a correction demand must be in the form prescribed by the Scottish Ministers in regulations. This instrument accordingly sets out the form of a correction demand.

Anticipatory exercise of powers

Insofar as this instrument is made under sections 65(1), 98(4)(a) and 118(1) of the 2023 Act and, with the exception of the latter, prior to those sections being commenced via the Moveable Transactions (Scotland) Act 2023 (Commencement) Regulations 2024¹ which will bring sections 65(1) and 98(4)(a) 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 65(1) and 98(4)(a) in this way so as it will ensure the required prescribed forms in relation to the statutory pledge are fully in place for when the new regime under the 2023 Act comes into force. If this instrument is not in force at the same time the 2023 Act fully comes into force, then the enforcement and correction processes will not be able to operate as intended and required; this will mean a relevant correction cannot be demanded and secured creditors will be unable to enforce a statutory pledge. Using the powers in sections 65(1) and 98(4)(a) of the 2023 Act in accordance with section 4 of the Interpretation and Legislative Reform (Scotland) Act 2010 is therefore expedient for the purpose of bringing the 2023 Act fully into force.

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 (Forms) (Scotland) Regulations 2024 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

No formal consultation was undertaken on this instrument. Advice was however, sought from a group of practitioners who would be using the two new registers for views from an user perspective. Their views and suggestions for the form of these two forms has been discussed and taken into account when prescribing these forms.

¹ S.S.I. 2024/378 (C.27).

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 (“the 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 the impact on children’s rights and wellbeing has been assessed as neutral.

Financial Effects

A Business and Regulatory Impact Assessment (“BRIA”) has not been carried out as a BRIA was completed when the Bill was introduced to Parliament. No changes made to the Bill through its parliamentary passage alter the overall impact on businesses which found at that time to be positive. The BRIA has been reviewed for this instrument and it was concluded that the BRIA meets the needs of this instrument.

Scottish Government
Justice
December 2024

THE MOVEABLE TRANSACTIONS (REGISTER OF ASSIGNATIONS AND REGISTER OF STATUTORY PLEDGES RULES) (SCOTLAND) REGULATIONS 2024

SSI 2024/381

The Moveable Transactions (Register of Assignations and Register of Statutory Pledges Rules) (Scotland) Regulations 2024 are made by the Scottish Ministers in exercise of the powers conferred by sections 39(1), 111(1) and 118(1) of the Moveable Transactions (Scotland) Act 2023 (“the 2023 Act”). The instrument is subject to the negative procedure.

Summary Box

The purpose of the instrument is to make provision for the rules relating to the Register of Assignations and the Register of Statutory Pledges, both of which are established under the 2023 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. The 2023 Act provides for the creation of two new registers, being the Register of Assignations (“RoA”) and the Register of Statutory Pledges (“RSP”) and these will be under the management and control of the Keeper of the Registers of Scotland (“the Keeper”). The operation of both new 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 forms part of a suite of secondary legislation relating to the implementation of the 2023 Act. It provides rules for the operation of the RoA and RSP in relation to (amongst other matters):

- the making up and keeping of the registers;
- the procedure in relation to applications for registration;
- searches in the registers and the results of those searches;

- the required form and content of any document or information to be used in relation to the registers; and
- requiring there to be entered in the assignments record or the archive record such information as is specified.

Provision is made to allow certain types of sensitive information in the assignment or constitutive document, as well as any signatures, to be redacted in the interests of confidentiality and fraud prevention. The rules also provide that certain registered information will not be visible to persons searching the registers and for certain registered information not to appear in an extract of an entry to the registers.

The rules provide detail to support the provisions in the 2023 Act for the two new registers. While it is not anticipated that the rules will be subject to frequent change, it is foreseeable that they will require amendment as time goes on. In particular, the rules will allow the Scottish Ministers to regulate how the RoA and RSP are kept in light of changing circumstances and technologies in the future. Amendments to the rules will also allow existing processes to be altered as required, where, for example, a development in the law requires the Keeper to ask different questions or be supplied with different information by applicants.

Anticipatory exercise of powers

This instrument is made under sections 39 and 111 of the 2023 Act before they are commenced by the Moveable Transactions (Scotland) Act 2023 (Commencement) Regulations 2024² which will bring those sections into force on 1 April 2025, the same day as this instrument will come into force. This is done 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 commencement of the provision of the relevant Act which confers the power. The Scottish Ministers consider it is expedient to exercise those sections to give full effect to the provisions of Parts 1 and 2 of the 2023 Act which provide for the RoA and the RSP.

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 (Register of Assignations and the Register of Statutory Pledges Rules) (Scotland) Regulations 2024 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.

² S.S.S.I. 2024/378 (C.27)

Consultation

The 2023 Act sets down that before making the rules the Scottish Ministers must consult the Keeper³. Registers of Scotland hold a wealth of knowledge on the operation of registers under the Keeper's management and control. The Scottish Government has worked collaboratively with the Keeper in producing the rules for both registers – the RSP and RoA. The Keeper is responsible for the build of the registers (as provided for in section 114 of the 2023 Act) and will be responsible for their ongoing operation and maintenance. The Keeper has accordingly been consulted on the Regulations before they were made and laid. The rules have not been publicly consulted on, but the implementation of the Act has been discussed with the expert stakeholder working group on the 2023 Act.

Impact Assessments

A [Child Rights and Wellbeing Impact Assessment](#) (CRWIA) has been completed on the Rules 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 (“the Bill”) to Parliament. There are no children's rights and wellbeing impact issues for this SSI or equality issues.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has not been carried out as a BRIA was completed when the Bill was introduced to the Scottish Parliament. Any changes made to the Bill through the passage of Parliament does not alter the overall impact on businesses which found at that time to be positive. This SSI does not have any material consequence to businesses as the rules are concerned with the running of the Registers and not the underlying principles.

Scottish Government
Justice Directorate
December 2024

³ Sections 39(3) and 111(3) of the 2023 Act, which as enacted contain a mistake in referring to consultation before laying a draft of the SSI containing the rules regulations, instead of before making those regulations– which are subject to the negative procedure (section 118(2) and (4) of the Act). It is proposed to correct that mistake by Moveable Transactions (Scotland) Act 2023 Amendment Regulations 2025 laid in draft at the same time as this SSI (though that correction will not apply to the initial Rules regulations made in this SSI).