POLICY NOTE

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 2024[1] 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
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