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 assignations record or the archive record such information as is specified.

Provision is made to allow certain types of sensitive information in the assignation 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 is it 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 2024[1] 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.

Consultation

The 2023 Act sets down that before making the rules the Scottish Ministers must consult the Keeper.[2] Registers of Scotland hold a wealth of knowledge on the operation of registers

[1] S.S.I. 2024/378 (C. 27).

[2] 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

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

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).