



Moveable Transactions (Scotland) Act 2023

2023 asp 3

PART 1 **S**

ASSIGNATION

CHAPTER 1 **S**

ASSIGNATION OF CLAIMS, PROTECTION OF DEBTORS AND RELATED MATTERS

PROSPECTIVE

Protection of debtors

10 Protection of debtor who performs in good faith **S**

- (1) [Subsection \(2\)](#) applies where, after a claim is transferred, the debtor, or any co-debtor, performs in good faith to the person last known to the debtor, or that co-debtor, to be the holder of the claim.
- (2) The debtor, or (where there are two or more co-debtors) each of the co-debtors, is discharged from the claim to the extent of the performance.
- (3) For the purpose of [subsection \(2\)](#), it is not to be taken that a debtor, or any co-debtor, has performed other than in good faith by reason only of (any or all of)—
 - (a) an assignment document's having been registered,
 - (b) the application of [section 8\(9\)](#),
 - (c) the application of [section 8\(10\)](#).

Commencement Information

- II** S. 10 not in force at Royal Assent, see [s. 121\(2\)](#)

Status: This version of this cross heading contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Cross Heading: Protection of debtors. (See end of Document for details)

11 Further provision as to protection of debtor **S**

- (1) [Subsection \(2\)](#) applies where—
- (a) the holder of a claim purports to assign the claim (or the same part of the claim) by means of more than one assignment document, each in favour of a different person,
 - (b) the claim (or part) is transferred to one of those persons,
 - (c) the debtor, or any co-debtor, receives notice of the purported assignment to the other (or, as the case may be, another) of those persons (the “purported assignee”), from the person who granted the purported assignment or from the purported assignee, in the manner mentioned in [section 8\(1\)\(a\)](#) or [\(b\)\(ii\)](#), and
 - (d) by virtue of that notice, the debtor, or any co-debtor, performs in good faith to the purported assignee.
- (2) The debtor, or (where there are two or more co-debtors) each of the co-debtors, is discharged from the claim (or part) to the extent of the performance.
- (3) [Section 10\(3\)](#) applies for the purposes of [subsection \(2\)](#) as it applies for the purposes of [section 10\(2\)](#).

Commencement Information

I2 S. 11 not in force at Royal Assent, see [s. 121\(2\)](#)

12 Performance in good faith where claim assigned cannot be transferred by intimation **S**

- (1) [Subsection \(2\)](#) applies where—
- (a) by virtue only of being of a type prescribed under [section 3\(8\)](#), a claim in respect of which an assignment document is granted is not transferred, and
 - (b) the debtor, or any co-debtor, performs in good faith to the assignee.
- (2) The debtor, or (where there are two or more co-debtors) each of the co-debtors, is discharged from the claim to the extent of the performance.
- (3) For the purposes of [subsection \(1\)\(b\)](#), a debtor, or co-debtor, is not to be taken to perform in good faith where that debtor or co-debtor knows—
- (a) that the assignment document has not been registered, and
 - (b) that transfer of the claim requires registration.

Commencement Information

I3 S. 12 not in force at Royal Assent, see [s. 121\(2\)](#)

13 Performance in good faith where claim assigned subject to condition **S**

- (1) [Subsection \(2\)](#) applies where—
- (a) a claim in respect of which an assignment document is granted is subject to a condition which must be satisfied before the claim is transferred,
 - (b) the claim has not yet been transferred by virtue only of the condition not yet being satisfied, and

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- (c) the debtor, or any co-debtor, performs in good faith to the assignee.
- (2) The debtor, or (where there are two or more co-debtors) each of the co-debtors, is discharged from the claim to the extent of the performance.
- (3) Section 10(3) applies for the purposes of subsection (2) as it applies for the purposes of section 10(2).

Commencement Information

I4 S. 13 not in force at Royal Assent, see [s. 121\(2\)](#)

14 Asserting defence or right of compensation **S**

- (1) Except in so far as the debtor and the assignor agree otherwise before an assignment document is granted in respect of the claim, the debtor, or any co-debtor, may assert against the assignee any defence which the debtor, or co-debtor, would have had the right to assert against the assignor.
- (2) Nothing in [subsection \(1\)](#) affects the operation of any other enactment which restricts or prevents the making of such an agreement.
- (3) For the purposes of any enactment or rule of law concerning compensation, set-off, retention, balancing of accounts or counterclaims, a debtor is not to be treated as receiving notice of the assignment of a claim only because an assignment document is registered in respect of the claim.

Commencement Information

I5 S. 14 not in force at Royal Assent, see [s. 121\(2\)](#)

15 Right to withhold performance until information as to assignment is provided **S**

- (1) A debtor on whom a notice of assignment of a claim is served under [section 8\(1\)\(a\)](#) by an assignee may request from the assignee reasonable evidence of the granting of an assignment document in respect of the claim.
- (2) For the purposes of [subsection \(1\)](#), “reasonable evidence” includes, for example, the written confirmation of an assignor that the assignor granted the document.
- (3) [Subsection \(1\)](#) applies to a purported notice of assignment as it applies to a notice of assignment, and a reference in that subsection to an assignee includes a reference to a purported assignee.
- (4) If evidence is requested under [subsection \(1\)](#), the debtor may withhold performance until—
- that evidence is received, or
 - the debtor receives notification in writing from the purported assignee or the purported assignor that an assignment document has not been granted in respect of the claim.

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- (5) A debtor who, other than by virtue of [section 8\(1\)](#), has reasonable grounds to believe that an assignment document has been granted in respect of a claim may state those grounds to the supposed assignor and request that person to provide a written statement as to whether the document has been granted.
- (6) If a written statement provided by virtue of [subsection \(5\)](#) is to the effect that the document has been granted, that statement must include the name and last known address of the assignee.
- (7) If a written statement is requested under [subsection \(5\)](#), the debtor may withhold performance until that statement (conforming, where it is a statement to the effect mentioned in [subsection \(6\)](#), with the requirements of that subsection) is received.
- (8) A debtor who knows that an assignment document has been granted in respect of a claim may request the assignor or the assignee to provide a written statement as to whether (either or both)—
 - (a) the assignment of the claim is subject to a condition,
 - (b) any such condition has been satisfied.
- (9) If a written statement is requested under [subsection \(8\)](#), the debtor may withhold performance until that statement is received.
- (10) Where a debtor who makes a request under subsection (1), (5) or (8) is a co-debtor, the reference in subsection (4) or (as the case may be) (7) or (9) to the debtor is to the debtor who made the request and does not include a reference to any co-debtor of that debtor.

Commencement Information

I6 S. 15 not in force at Royal Assent, see [s. 121\(2\)](#)

Status:

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