



# Moveable Transactions (Scotland) Act 2023

2023 asp 3

## PART 1

### ASSIGNATION

#### CHAPTER 1

##### ASSIGNATION OF CLAIMS, PROTECTION OF DEBTORS AND RELATED MATTERS

###### *Assignment of claims*

#### **1 Assignment of claims: general**

- (1) The assignment of a claim requires the execution or authentication of a document assigning the claim (an “assignment document”) by the person assigning it.
- (2) The assignment document must identify the claim.
- (3) But an assignment document which assigns a number of claims need not identify each claim separately provided that the document identifies the claims in terms of their constituting an identifiable class.
- (4) It is competent to assign a claim which, at the time the assignment document is granted, is not held by the assignor (whether or not the claim yet exists at that time).
- (5) For the purposes of subsection (2), the ways in which the claim can be identified in the assignment document include by making reference in the assignment document to another document, the terms of which are not reproduced.
- (6) Nothing in [this Part](#) applies to the assignment of a claim as part of a financial collateral arrangement, within the meaning of regulation 3(1) of the Financial Collateral Arrangements (No.2) Regulations 2003 ([S.I. 2003/3226](#)).

## 2 Assignment of claim subject to a condition

- (1) The assignment of a claim may be subject to a condition which must be satisfied before the claim is transferred.
- (2) Any such condition must be specified in the assignment document.
- (3) The condition may, for example—
  - (a) be the occurrence of a particular date,
  - (b) depend on something happening (whether or not it is certain that the thing will happen), or
  - (c) depend on a period of time elapsing during which something must not happen (whether or not it is certain that the thing will happen at some time).
- (4) For the purposes of [subsection \(2\)](#), the ways in which the condition can be specified in the assignment document include by making reference in the assignment document to another document, the terms of which are not reproduced.

## 3 Transfer of claims

- (1) A claim in respect of which an assignment document is granted is transferred on the requirements mentioned in [subsection \(2\)](#) all being met.
- (2) Those requirements are that—
  - (a) the assignor is the holder of the claim,
  - (b) either—
    - (i) intimation of the assignment is effected under [section 8\(1\)](#), or
    - (ii) the assignment document is registered,
  - (c) the claim is identifiable as a claim to which the assignment document relates, and
  - (d) if the assignment is subject to a condition which must be satisfied before the claim is transferred, the condition is satisfied.
- (3) For the purposes of [subsection \(1\)](#), if the claim is a claim such as is mentioned in [section 1\(4\)](#)—
  - (a) the requirement mentioned in [subsection \(2\)\(a\)](#) is met when the assignor becomes the holder of the claim, and
  - (b) any rule of law as to accretion does not apply in relation to the claim.
- (4) [Subsection \(2\)\(b\)\(ii\)](#) is subject to [section 27](#) (effective registration of assignment document) and, accordingly, the requirement of that subsection—
  - (a) is not met if the registration of the assignment document is ineffective in accordance with [section 27\(1\)](#), and
  - (b) is met if and when that registration becomes effective in accordance with [section 27\(3\)](#).
- (5) [Subsection \(6\)](#) applies where—
  - (a) an assignor grants more than one assignment document in respect of the same claim,
  - (b) each of the purported assignments of the claim is to a different person, and
  - (c) the requirements of [subsection \(2\)](#) are all met in relation to each of the purported assignments at the same time by virtue of—

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- (i) the assignor becoming the holder of the claim,
  - (ii) the claim becoming identifiable as a claim to which the assignment document relates, or
  - (iii) where each of the purported assignments is subject to a condition which must be satisfied before the claim is transferred, those conditions being satisfied at the same time.
- (6) The claim transfers under [subsection \(1\)](#) to the person to whom it is assigned by whichever of the purported assignments of the claim first met the requirement of [subsection \(2\)\(b\)](#).
- (7) [This section](#) is subject to [section 4](#) (assignment of claims: insolvency).
- (8) The Scottish Ministers may by regulations prescribe types of claim in relation to which [sub-paragraph \(i\)](#) of [subsection \(2\)\(b\)](#) is to be disregarded.

#### **4 Assignment of claims: insolvency**

- (1) [This section](#) applies where—
- (a) an assignment document is granted in respect of a claim such as is mentioned in [section 1\(4\)](#), and
  - (b) after the document is granted, the assignor becomes insolvent.
- (2) The assignment is ineffective in relation to the claim if the assignor becomes the holder of the claim after becoming insolvent.
- (3) But [subsection \(2\)](#) does not apply in relation to a claim in respect of income from property in so far as that claim—
- (a) is not attributable to anything agreed to by, or done by, the assignor after the assignor became insolvent, and
  - (b) relates to the use of property in existence at the time the assignor became insolvent.
- (4) [Subsection \(5\)](#) applies where—
- (a) but for [subsection \(3\)](#), the assignment would be ineffective by virtue of [subsection \(2\)](#), and
  - (b) the assignor is discharged—
    - (i) under section 137, 138 or 140 of the Bankruptcy (Scotland) Act 2016, or
    - (ii) by virtue of section 184(3) of that Act.
- (5) The assignment is ineffective, in relation to the claim, if by the time of discharge the assignor has not become the holder of the claim.
- (6) For the purposes of [this section](#)—
- (a) an assignor who is an individual, or the estate of which may be sequestrated by virtue of section 6 of the Bankruptcy (Scotland) Act 2016, becomes insolvent when—
    - (i) the assignor’s estate is sequestrated,
    - (ii) the assignor grants a trust deed for creditors or makes a composition or arrangement with creditors,
    - (iii) the assignor is adjudged bankrupt,
    - (iv) a voluntary arrangement proposed by the assignor is approved,

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- (v) the assignor’s application for a debt payment programme is approved under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002, or
  - (vi) the assignor becomes subject to any other order or arrangement analogous to any of those mentioned in [sub-paragraphs \(i\) to \(v\)](#) anywhere in the world, and
- (b) an assignor other than is mentioned in [paragraph \(a\)](#) becomes insolvent when—
- (i) a decision approving a voluntary arrangement entered into by the assignor has effect under section 4A of the Insolvency Act 1986 (the “1986 Act”),
  - (ii) the assignor is wound up under Part 4 or 5 of the 1986 Act or under section 367 of the Financial Services and Markets Act 2000,
  - (iii) an administrative receiver, as defined in section 251 of the 1986 Act, is appointed over all or part (being a part which includes the claim) of the property of the assignor,
  - (iv) the assignor enters administration (“enters administration” being construed in accordance with paragraph 1(2) of schedule B1 of the 1986 Act),
  - (v) an order under section 901F of the Companies Act 2006 sanctioning a compromise or arrangement entered into by the assignor comes into effect over all or part of the property of the assignor, or
  - (vi) the assignor becomes subject to any other order, appointment or arrangement analogous to any of those mentioned in sub-paragraphs (i) to (v) anywhere in the world.
- (7) The Scottish Ministers may by regulations modify—
- (a) [subsection \(4\)](#),
  - (b) [subsection \(5\)](#),
  - (c) [subsection \(6\)](#).

## 5 Assignment in part

- (1) A claim may be assigned in whole or in part.
- (2) But if the claim is not a monetary claim, the claim may be assigned in part only if the claim is divisible and either—
- (a) the debtor consents, or
  - (b) the assignment is not likely to result in the obligation to which it relates becoming significantly more burdensome for the debtor.
- (3) Except in so far as the debtor agrees otherwise with the assignor, or agreed otherwise with a person who was previously the holder of the claim (when that person was the holder), the assignor is liable to the debtor for any expense incurred by the debtor which is attributable to the claim’s being assigned in part rather than in whole.

## 6 Limitations as to assignability: general

- (1) Nothing in [this Part](#) affects any other enactment, or any rule of law, by virtue of which the assignment of a claim is of no effect.

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- (2) But such an enactment or rule of law does not apply to an assignment if the grounds on which the assignment would be of no effect by virtue of that enactment or rule are grounds which [this Part](#) provides do not make the assignment of no effect.
- (3) The assignment, in whole or in part, of a claim is of no effect if and in so far as, before the assignment document in respect of the claim was granted—
  - (a) the debtor and the holder of the claim had agreed that the claim was not to be so assigned, or
  - (b) the person whose unilateral undertaking gives rise to the claim had stated that the claim was not to be so assigned.
- (4) For the purposes of [subsection \(3\)\(a\)](#), it does not matter whether the holder of the claim became the holder of the claim after the agreement was made.
- (5) Nothing in [subsection \(3\)](#) affects the operation of any other enactment concerning the effect of an agreement or statement such as is mentioned in that subsection.

## **7 Claim in respect of wages or salary**

- (1) It is not competent for an individual to assign a claim in respect of wages or salary payable to the individual.
- (2) For the purposes of [subsection \(1\)](#), “wages” and “salary” include—
  - (a) any of the following which is referable to the individual’s employment (whether or not payable under the individual’s contract of employment)—
    - (i) a fee,
    - (ii) a bonus,
    - (iii) commission,
    - (iv) holiday pay, or
    - (v) any other emolument,
  - (b) any payment in respect of expenses incurred by the individual in carrying out that employment, and
  - (c) if the individual is dismissed from that employment by reason of redundancy, any payment referable to the redundancy.
- (3) Nothing in [subsection \(1\)](#) affects the operation of any other enactment allowing the assignment of a claim such as is mentioned in that subsection in particular circumstances.

## **8 Intimation of the assignment of a claim**

- (1) For the purposes of [section 3\(2\)\(b\)\(i\)](#), intimation is effected only—
  - (a) by the assignor or the assignee serving notice of the assignment on the debtor, or
  - (b) on the occurrence either—
    - (i) of the debtor acknowledging to the assignee that the claim is assigned, or
    - (ii) of intimation to the debtor, in judicial proceedings to which the debtor is a party, that the assignment is founded on in the proceedings.

- (2) Where there are co-debtors in respect of a claim, intimation as respects any one or more of them is, for the purposes of [section 3\(2\)\(b\)\(i\)](#), intimation to them all.
- (3) A notice served under [subsection \(1\)\(a\)](#)—
- (a) must—
    - (i) set out the name and address of both the assignor and the assignee,
    - (ii) provide details of the claim assigned, and
    - (iii) in the case of a claim assigned in part, provide details of the part assigned,
  - (b) must be in writing and consist of, or be contained within, one or more documents,
  - (c) need not be executed or authenticated, and
  - (d) if the claim is a monetary claim, may (but need not) be in such form (if any) as is prescribed for the purposes of [this paragraph](#).
- (4) Where a notice is served as mentioned in [subsection \(5\)\(c\)](#), [paragraph \(a\)](#) of [subsection \(3\)](#) may be satisfied by providing an electronic link to a website, or to a portal, in which the information mentioned in that paragraph is set out.
- (5) For the purposes of [subsection \(1\)\(a\)](#), service of a notice must be by—
- (a) delivering the notice personally to the debtor,
  - (b) sending it—
    - (i) by postal services, or
    - (ii) by any other service which conveys postal packets from one place to another,
 either to the proper address of the debtor or to an address for postal communication provided to the assignor by the debtor, or
  - (c) transmitting it to an address for electronic communication so provided.
- (6) But a determination (a “determination as to method of service”) may be made in accordance with [subsection \(7\)](#) that, as respects the claim (either or both)—
- (a) only certain paragraphs and sub-paragraphs of [subsection \(5\)](#), as specified in the determination, are to apply for the purposes of [section 3\(2\)\(b\)\(i\)](#),
  - (b) [subsection \(5\)](#) is to apply as if for the closing words of [paragraph \(b\)](#) there were substituted a reference to a particular address as specified in the determination.
- (7) A determination as to method of service is made in accordance with [this subsection](#) where it is made—
- (a) by written agreement between the debtor and the holder of the claim, or
  - (b) where a unilateral undertaking gives rise to the claim, by a written statement (whether or not comprised within the undertaking) of the person whose undertaking it was.
- (8) Where a determination as to method of service specifies an address as mentioned in [subsection \(6\)\(b\)](#)—
- (a) the debtor may notify the holder of the claim of a different address to replace—
    - (i) the address so specified, or
    - (ii) an address previously notified under [this paragraph](#), and
  - (b) an address notified under [paragraph \(a\)](#) is, until a further address is so notified, to be treated for the purposes of [subsection \(6\)\(b\)](#) as if it were specified in the determination.

- (9) Where a notice is served—
- (a) as mentioned in [subsection \(5\)\(b\)](#) (including, where relevant, as modified by [subsection \(6\)\(b\)](#)), and
  - (b) by being sent to an address in the United Kingdom,
- it is to be taken to have been received 48 hours after it is sent unless it is shown to have been received earlier.
- (10) Where a notice is served as mentioned in [subsection \(5\)\(c\)](#), it is to be taken to have been received 24 hours after it is transmitted unless it is shown to have been received earlier.
- (11) In [this section](#)—
- “holder of the claim” includes a person who becomes the holder of the claim after a determination is made,
  - “postal packet” and “postal services” have the meanings given by section 27(1) and (2) of the Postal Services Act 2011,
  - “proper address of the debtor” means—
    - (a) in the case of a body corporate, the address of the registered or principal office of the body,
    - (b) in the case of a partnership, the address of the principal office of the partnership, and
    - (c) in any other case, the last known address of the debtor.
- (12) Any reference in [this section](#) to—
- (a) a notice being served on the debtor is to be construed as including a reference to its being served on a person authorised to receive such a notice on behalf of the debtor,
  - (b) the proper address of the debtor is, where a notice is served on a person so authorised, to be construed as a reference to the proper address of that person.

## **9 Warrandice implied in the assignment of a claim**

- (1) [Subsections \(2\) to \(5\)](#) apply except in so far as the assignor and the assignee agree otherwise.
- (2) In granting, for value, an assignment document in respect of a claim, the assignor is taken to warrant to the assignee that—
- (a) the assignor is entitled to, or (in the case of any such claim as is mentioned in [section 1\(4\)](#)) will be entitled to, transfer the claim to the assignee,
  - (b) the debtor is obliged to, or (when performance becomes due) will be obliged to, perform in full to the assignor, and
  - (c) the assignor has done nothing, and will do nothing, to prejudice the assignment.
- (3) In granting, other than for value, an assignment document in respect of a claim, the assignor is taken to warrant to the assignee that the assignor will do nothing to prejudice the assignment.
- (4) In granting an assignment document in respect of a claim (whether or not for value), the assignor is not taken to warrant to the assignee that the debtor will perform to the assignee.

- (5) [Subsections \(2\) to \(4\)](#) apply in relation to providing, in a contract or unilateral undertaking, for the assignment of a claim as they apply in relation to the granting of an assignment document in respect of a claim.

### *Protection of debtors*

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

- (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\(10\)](#).

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

- (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\(2\)](#).

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

- (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.

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

- (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
  - (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).

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

- (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.

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

- (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—
- (a) that evidence is received, or

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- (b) 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.
- (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.

### *Accessory security rights*

## 16 Accessory security rights

- (1) [Subsections \(2\)](#) and [\(3\)](#)—
  - (a) apply, and apply only, in relation to any claim assigned in whole, but
  - (b) are subject to any express provision to the contrary in the assignment document.
- (2) Subject to anything which requires to be done under [subsection \(3\)](#), the assignee acquires, by virtue of the transfer of the claim, any security (in so far as the security is transferable) which relates to, and only to, the claim transferred.
- (3) Where the performance of some act by the assignor is necessary for the security to transfer to the assignee, the assignor must—
  - (a) perform that act, and
  - (b) do so as soon as reasonably practicable after the claim is transferred.
- (4) In [this section](#), “security” means both—
  - (a) a right in security, and
  - (b) the correlative right in respect of a cautionary obligation.

*Abolition of certain rules of law*

**17 Abolition of certain rules of law**

- (1) The following rules of law are abolished insofar as they apply to an assignment of a claim to which [this Part](#) applies—
- (a) any rule whereby a mandate may operate as an assignment of a claim,
  - (b) any rule whereby an assignment is rendered ineffective by an instruction to the debtor by an assignee of a claim that the debtor perform to the assignor,
  - (c) any rule whereby an assignee of a claim may sue in the name of an assignor, and
  - (d) any rule as to warrandice to be implied—
    - (i) in assigning a claim, or
    - (ii) in providing, in a contract or unilateral undertaking, for the assignment of a claim.
- (2) But [subsection \(1\)\(c\)](#) does not affect the application of any enactment, or any rule of law, as respects subrogation.

*Saving*

**18 Saving as respects International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015**

- (1) [This Part](#) is without prejudice to the application, as respects the assignment and acquisition of associated rights, of the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 ([S.I. 2015/912](#)).
- (2) In [subsection \(1\)](#)—
- “assignment” has the meaning given by regulation 5, as read with regulation 35, of those regulations, and
  - “associated rights” has the meaning given by regulation 5 of those regulations.