



# Moveable Transactions (Scotland) Act 2023

2023 asp 3

## PART 1

### ASSIGNATION

PROSPECTIVE

## CHAPTER 2

### REGISTER OF ASSIGNATIONS

#### *Register of Assignations*

#### **19 The Register of Assignations**

- (1) There is to be a public register known as the Register of Assignations.
- (2) The register is to be under the management and control of the Keeper.
- (3) Subject to the provisions of this Act, the register is to be in such form as the Keeper thinks fit.
- (4) The Keeper must take such steps as appear reasonable to the Keeper to protect the register from—
  - (a) interference,
  - (b) unauthorised access, and
  - (c) damage.

#### **Commencement Information**

- II** S. 19 not in force at Royal Assent, see [s. 121\(2\)](#)

*Status: This version of this chapter contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Chapter 2. (See end of Document for details)*

### Structure and contents of the register

#### 20 The parts of the register

The Keeper must make up and maintain, as parts of the register—

- (a) the assignments record, and
- (b) the archive record.

##### Commencement Information

**I2** S. 20 not in force at Royal Assent, see [s. 121\(2\)](#)

#### 21 The assignments record

(1) An entry in the assignments record is to comprise—

- (a) the assignor's name and address,
- (b) where the assignor is an individual, the assignor's date of birth,
- (c) any identifying number which the assignor has and which, by virtue of RoA Rules, must be included in the entry,
- (d) the assignee's name and address,
- (e) any identifying number which the assignee has and which, by virtue of RoA Rules, must be included in the entry,
- (f) where the assignee is not an individual, an address (which may be an email address) to which any request for information regarding the assignment may be sent,
- (g) such description of the claim as is required, or permitted, for the purposes of [this subsection](#) by RoA Rules,
- (h) a copy of the assignment document,
- (i) the registration number allocated under [section 25\(1\)\(b\)](#) to the entry,
- (j) the date and time of registration of the assignment document,
- (k) any other information that is required under any other section of this Act, and
- (l) any other information that is specified for the purposes of [this subsection](#) by RoA Rules.

(2) The assignments record is the totality of all such entries.

##### Commencement Information

**I3** S. 21 not in force at Royal Assent, see [s. 121\(2\)](#)

#### 22 The archive record

The archive record is the totality of—

- (a) all entries and copy documents transferred from the assignments record under [section 30\(1\)\(a\)](#) or [\(2\)\(c\)](#),
- (b) all copy documents included in the archive record under [section 30\(1\)\(c\)](#) or [\(2\)\(b\)](#),

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- (c) all copies of such other documents as the Keeper considers it appropriate to include in the archive record, and
- (d) any other information that is specified for the purposes of [this section](#) by RoA Rules.

#### Commencement Information

**I4** S. 22 not in force at Royal Assent, see [s. 121\(2\)](#)

### Registration process

#### 23 Application for registration

- (1) An assignee may apply to the Keeper for registration of an assignment document.
- (2) The Keeper must deal with applications in the order in which they are received.
- (3) The Keeper must accept the application if—
  - (a) it is submitted with a copy of the assignment document,
  - (b) it contains all the information the Keeper requires in accordance with [section 21](#) to be able to make up an entry for the assignment document under [section 25\(1\)](#),
  - (c) it conforms to such RoA Rules as relate to the application, and
  - (d) either—
    - (i) such fee as is payable for the registration is paid, or
    - (ii) arrangements satisfactory to the Keeper are made for payment of that fee.
- (4) If the requirements of [subsection \(3\)](#) are not satisfied, the Keeper must reject the application and inform the applicant accordingly.

#### Commencement Information

**I5** S. 23 not in force at Royal Assent, see [s. 121\(2\)](#)

#### 24 Application for registration where claims assigned to different assignees

- (1) Where an assignment document assigns different claims to different assignees, each assignee may apply to the Keeper for registration of the document only in so far as it assigns a claim to that assignee (“the applicant”).
- (2) A reference in this Part, in relation to an assignment document in respect of which such an application has been accepted by the Keeper, to—
  - (a) the registration of the document is a reference to the registration of the document in so far as it assigns a claim to the applicant,
  - (b) the assignee under the document is a reference to the applicant,
  - (c) a claim assigned by the document is a reference to a claim assigned by the document to the applicant.

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#### Commencement Information

**I6** S. 24 not in force at Royal Assent, see [s. 121\(2\)](#)

### 25 Registration

- (1) On accepting an application made under [section 23](#), the Keeper must—
  - (a) make up an entry for the assignment document (from the assignment document, the information provided in the application and the circumstances of registration),
  - (b) allocate a registration number to the entry (based on the order in which applications are dealt with), and
  - (c) maintain the entry in the assignments record.
- (2) An assignment document is taken to be registered on the date and at the time entered for it for the purpose of [section 21\(1\)\(j\)](#).

#### Commencement Information

**I7** S. 25 not in force at Royal Assent, see [s. 121\(2\)](#)

### 26 Verification statement

- (1) After the registration of an assignment document under [section 25](#), the Keeper must issue a written statement verifying the registration to—
  - (a) the assignor, and
  - (b) the assignee,
 but only if and to the extent that the application made under [section 23](#) contains an email address for those persons.
- (2) That statement must—
  - (a) include—
    - (i) the date and time of the registration, and
    - (ii) the registration number allocated to the entry made up for the assignment document, and
  - (b) conform to such RoA Rules as relate to the statement.
- (3) Where a statement is issued under [subsection \(1\)](#) and is received by the assignee but not the assignor, the assignor may request a copy of it from the assignee.
- (4) Within 21 days beginning with the day a request is made under [subsection \(3\)](#), the assignee must supply the assignor with the copy requested.

#### Commencement Information

**I8** S. 26 not in force at Royal Assent, see [s. 121\(2\)](#)

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### Effective registration

#### 27 Effective registration of assignment document

- (1) The registration of an assignment document is ineffective if—
  - (a) the entry made up for the assignment document in the assignments record—
    - (i) does not include a copy of the assignment document, or
    - (ii) is, at the time of registration, seriously misleading as a result of an inaccuracy or inaccuracies in it, or
  - (b) the assignment document is invalid.
- (2) But [subsection \(1\)\(a\)\(ii\)](#) is subject to [section 28\(1\)\(c\)](#) and [\(d\)](#).
- (3) Where the registration of an assignment document is ineffective by virtue of [subsection \(1\)](#), it becomes effective if and when the entry is corrected.

#### Commencement Information

- I9** S. 27 not in force at Royal Assent, see [s. 121\(2\)](#)

#### 28 Seriously misleading inaccuracies in the assignments record

- (1) In determining for the purpose of [section 27\(1\)\(a\)\(ii\)](#) whether an entry in the assignments record is seriously misleading as a result of an inaccuracy or inaccuracies in it—
  - (a) the entry is seriously misleading where—
    - (i) any of [subsections \(2\) to \(5\)](#) apply, or
    - (ii) despite [sub-paragraph \(i\)](#) not being satisfied, the inaccuracy or inaccuracies are such that a reasonable person would be seriously misled by the entry,
  - (b) any inaccuracy is to be disregarded to the extent that it appears in the assignment document but is not replicated elsewhere in the entry,
  - (c) where the entry is seriously misleading in respect of only part of the assigned claim, that is not to be taken to affect the entry in its application to the rest of the claim,
  - (d) where the entry is seriously misleading in respect of a co-assignor or co-assignee but not in respect of both (or all) co-assignors or co-assignees, that is not to be taken to affect the entry in its application to a co-assignor or co-assignee in respect of whom the entry is not seriously misleading.
- (2) [This subsection](#) applies where—
  - (a) the assignor is a person required by RoA Rules to be identified in the assignments record by an identifying number, and
  - (b) if a search of the record were to be carried out for that number, using the search facility provided under [section 33](#), it would not disclose the entry.
- (3) [This subsection](#) applies where—
  - (a) the assignor is not a person required by RoA Rules to be identified in the assignments record by an identifying number, and
  - (b) if a search of the record were to be carried out, using the search facility provided under [section 33](#), for—

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- (i) the assignor’s proper name at the date the application for registration was made, or
  - (ii) the assignor’s proper name at that date together with the assignor’s month and year of birth,
- it would not disclose the entry.
- (4) **This subsection** applies where the entry inaccurately reflects the assignee’s proper name at the date the application for registration was made in such a way that a reasonable person would be seriously misled.
- (5) **This subsection** applies where—
- (a) there is a requirement, by virtue of **section 21(1)(g)**, for an entry in the assignations record to specify the type of claim assigned, and
  - (b) the entry—
    - (i) describes the claim as being of a type that it is not, or
    - (ii) fails to allocate a type to the claim.
- (6) In the application of **this section** to co-assignors and co-assignees—
- (a) subsections (2) and (3) apply in relation to a co-assignor as they apply in relation to an assignor,
  - (b) subsection (4) applies in relation to a co-assignee as it applies in relation to an assignee.
- (7) The Scottish Ministers may by regulations modify **this section** to make provision about what does, and what does not, make an entry seriously misleading for the purpose of **section 27(1)(a)(ii)** and how that is to be determined.
- (8) In **this section**, the “proper name” of an assignor or assignee means the person’s name in the form determined in accordance with RoA Rules.

#### Commencement Information

**I10** S. 28 not in force at Royal Assent, see **s. 121(2)**

### Corrections

#### 29 Correction of the assignations record

- (1) Where a court determines in any proceedings that the assignations record is inaccurate, the court—
- (a) must direct the Keeper to correct the record, and
  - (b) may give the Keeper any further direction it considers necessary in connection with the correction.
- (2) Where the Keeper becomes aware of a manifest inaccuracy in the assignations record, other than as a result of a direction under **subsection (1)**—
- (a) the Keeper must correct the record if what is needed to correct it is manifest,
  - (b) otherwise, the Keeper must note the inaccuracy on the entry in question.
- (3) There is an “inaccuracy” in the assignations record where—

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- (a) the information included, by virtue of [section 21\(1\)](#), in an entry in the record is inaccurate or incomplete,
  - (b) an entry in the record—
    - (i) does not include a copy of the assignment document as required by [paragraph \(h\)](#) of that section, or
    - (ii) includes such a copy but the document copied is invalid, or
  - (c) an entry has incorrectly been removed from the record.
- (4) A correction of the assignments record may involve—
- (a) the removal of an entry,
  - (b) the removal of information included in an entry,
  - (c) the amendment of, or an addition to, the information, or replacement of a copy document, included in an entry,
  - (d) the restoration of information, or of a copy document, to an entry,
  - (e) the restoration of an entry (whether or not by transferring it from the archive record to the assignments record).
- (5) A correction is taken to be made on the date and at the time entered for it in the register in pursuance of a provision of [this Part](#).

#### Commencement Information

**III** S. 29 not in force at Royal Assent, see [s. 121\(2\)](#)

### 30 Correction of the assignments record: procedure

- (1) Where the Keeper corrects the assignments record by removing an entry from the assignments record, the Keeper must—
- (a) transfer the entry to the archive record,
  - (b) note on the transferred entry—
    - (i) the subsection of [section 29](#) by virtue of which the transfer is made, and
    - (ii) the details of the correction (including the date and time of the removal), and
  - (c) include in the archive record a copy of any document which discloses, or contributes to disclosing, the inaccuracy which is the subject of the correction.
- (2) Where the Keeper corrects the record by restoring an entry, by restoring, removing or amending information included in an entry or by restoring or replacing a copy document, the Keeper must—
- (a) note on the entry that it has been corrected and the details of the correction (including the date and time of the correction),
  - (b) include in the archive record a copy of any document which discloses, or contributes to disclosing, the inaccuracy which is the subject of the correction, and
  - (c) in the case of the replacement of the copy document, transfer the replaced copy to the archive record.
- (3) Having corrected the record, the Keeper must notify the following persons (in so far as it is reasonable and practicable to do so) that the correction has been made—

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- (a) every person specified for the purposes of [this subsection](#) by RoA Rules, and
  - (b) any other person who appears to the Keeper to be affected by it materially.
- (4) A failure to comply with [subsection \(1\)\(c\)](#), [\(2\)\(b\)](#) or [\(3\)](#) does not affect the validity of the correction of the record.

#### Commencement Information

**I12** S. 30 not in force at Royal Assent, see [s. 121\(2\)](#)

### 31 Proceedings involving the accuracy of the assignations record

The Keeper is entitled to appear and be heard in any civil proceedings, whether before a court or tribunal, in which—

- (a) the accuracy of the assignations record, or
  - (b) what is needed to correct an inaccuracy in the record,
- is put in question.

#### Commencement Information

**I13** S. 31 not in force at Royal Assent, see [s. 121\(2\)](#)

### 32 Power to make provision about applications for corrections

- (1) The Scottish Ministers may by regulations modify [this Part](#) to make provision for or about applications to the Keeper for the correction of an entry in the assignations record.
- (2) Regulations under [subsection \(1\)](#) may, in particular—
- (a) make provision about—
    - (i) the persons, or descriptions of persons, who are entitled to make an application,
    - (ii) the circumstances in which an application is to be accepted (which may include consideration of whether there has been payment of a fee), and
    - (iii) the steps to be taken where an application is accepted,
  - (b) modify the Keeper’s duty to act on becoming aware of a manifest inaccuracy in the assignations record to take account of the application process, and
  - (c) allow RoA Rules to make provision about the procedure in relation to applications for corrections.

#### Commencement Information

**I14** S. 32 not in force at Royal Assent, see [s. 121\(2\)](#)



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### Searches and extracts

#### 33 Searching the assignments record

- (1) The Keeper must provide a facility by which the assignments record may be searched.
- (2) That search facility must allow the assignments record to be searched by reference to, and only by reference to—
  - (a) any of the following information in the entries contained in that record—
    - (i) the names of assignors, which must be capable of being searched with and without the months and years of birth of assignors who are individuals,
    - (ii) the identifying numbers of assignors required by RoA Rules to be identified in the assignments record by such a number,
  - (b) registration numbers allocated, under [section 25\(1\)\(b\)](#), to entries in that record, or
  - (c) any other factor, or characteristic, specified for the purposes of [this paragraph](#) by RoA Rules.
- (3) Subject to any restrictions imposed under RoA Rules, a person may search the assignments record using the search facility provided under [subsection \(1\)](#) provided that either—
  - (a) such fee as is payable for the search is paid, or
  - (b) arrangements satisfactory to the Keeper are made for payment of that fee.
- (4) But no fee is payable for a search of the assignments record which is carried out on behalf of an individual by a not-for-profit money adviser (being an adviser who does not charge individuals for the adviser’s services).
- (5) The Scottish Ministers may, by regulations, make further provision about the meaning of “not-for-profit money adviser” for the purposes of subsection (4).

#### Commencement Information

**I15** S. 33 not in force at Royal Assent, see [s. 121\(2\)](#)

#### 34 Admissibility and evidential status of search results

- (1) A copy of a search result (in printed or electronic form) which relates to a search carried out by means of a search facility provided by the Keeper is admissible in evidence.
- (2) In the absence of evidence to the contrary—
  - (a) where such a search result purports to show an entry in the assignments record, it is sufficient proof of—
    - (i) the registration of the assignment document to which the result relates,
    - (ii) where applicable, a correction of the entry in the assignments record to which the result relates, and
    - (iii) the date and time of such registration or, as the case may be, correction, and

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- (b) where such a search result purports not to show an entry in the assignations record, it is sufficient proof of an entry in the assignations record not being disclosed at the date and time of such search by means of the search carried out.

#### Commencement Information

**I16** S. 34 not in force at Royal Assent, see [s. 121\(2\)](#)

### 35 Extracts and their evidential status

- (1) A person may apply to the Keeper for an extract of an entry in the register.
- (2) The Keeper must issue the extract if—
  - (a) such fee as is payable for issuing it is paid, or
  - (b) arrangements satisfactory to the Keeper are made for payment of that fee.
- (3) But if, on application under subsection (1), the applicant requests an extract as at a specific date and time, the Keeper need comply with the request only to the extent that it is reasonably practicable to do so.
- (4) The Keeper may validate the extract as the Keeper considers appropriate.
- (5) The Keeper may issue the extract as an electronic document unless the applicant requests that it be issued as a traditional document.
- (6) The extract is to be accepted for all purposes as sufficient evidence of the contents of the entry as at—
  - (a) in the case of an extract requested as mentioned in subsection (3), the date and time to which the extract relates (being a date and time specified in the extract), and
  - (b) in any other case, the date on which and the time at which the extract is issued (being a date and time specified in the extract).

#### Commencement Information

**I17** S. 35 not in force at Royal Assent, see [s. 121\(2\)](#)

### *Requests for information*

### 36 Assignee's duty to respond to request for information

- (1) An entitled person may ask the person identified in an entry in the assignations record as the assignee (the “registered assignee”) to provide the entitled person with a written statement as to whether—
  - (a) a claim specified by the entitled person is assigned by the assignation document,
  - (b) the registered assignee has granted a further assignation document in respect of the claim, or
  - (c) a condition specified by the entitled person and to which the assignation is subject has been satisfied.

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- (2) The following are entitled persons for the purposes of [this section](#)—
- (a) in relation to a request under [subsection \(1\)](#), a person who (depending on who holds the claim) may have a right to execute diligence against the claim, or
  - (b) a person not mentioned in [paragraph \(a\)](#) but who has the consent of the person identified in the entry as the assignor to make a request under [subsection \(1\)](#).
- (3) For the purposes of [subsection \(2\)\(a\)](#), a person who may have a right to execute diligence against the claim includes a person authorised to execute a charge for payment who (depending on who holds the claim) may have a right to execute diligence against the claim if and when the days of charge expire without payment.
- (4) The registered assignee must, within 21 days beginning with the day of receiving a request under [subsection \(1\)](#), comply with it unless—
- (a) it is manifest that the registration is ineffective in relation to the assignation of the claim to which the request relates,
  - (b) in the case of a request made under [subsection \(1\)\(a\)](#), it is manifest from the entry for the assignation that the claim specified is not assigned by the assignation document,
  - (c) both—
    - (i) the registered assignee has, within the period of 3 months ending with the day of receipt of the request, complied with a request under the same paragraph of [subsection \(1\)](#) from the same person and in relation to the same claim, and
    - (ii) the information contained in the statement issued in relation to the earlier request remains correct.
- (5) The registered assignee may recover from the entitled person any costs reasonably incurred in complying with the request.
- (6) On the application of the registered assignee, the court may by order—
- (a) exempt the registered assignee from complying with a request under [subsection \(1\)](#) or such part of the request as it specifies in the order, or
  - (b) extend the period within which the registered assignee must comply with the request by such number of days as it specifies in the order,
- if satisfied that in all the circumstances it would be reasonable to do so.
- (7) If, on the application of the entitled person, the court is satisfied that the registered assignee has, without reasonable excuse, failed to comply with [subsection \(4\)](#), it may by order require the registered assignee to comply with the request within 14 days or such other period (which may be longer or shorter than 14 days) as the court considers appropriate.
- (8) The Scottish Ministers may by regulations modify [this section](#) so as to specify further persons, or descriptions of persons, who are entitled persons for the purposes of [this section](#).

#### Commencement Information

**118** S. 36 not in force at Royal Assent, see [s. 121\(2\)](#)

*Status: This version of this chapter contains provisions that are prospective.*

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### Entitlement to compensation

#### 37 Liability of Keeper

- (1) A person is entitled to be compensated by the Keeper for loss suffered in consequence of—
- (a) an inaccuracy in the assignations record to the extent that it is attributable to the making up, maintenance or operation of the register (including an attempted correction of it),
  - (b) the issue, under [section 26\(1\)](#), of a written statement which is incorrect,
  - (c) the service, under [section 30\(3\)](#), of a notification which is incorrect,
  - (d) a search result which—
    - (i) relates to a search of the assignations record carried out by means of a search facility provided by the Keeper,
    - (ii) ought (as a result of the search terms used) to reflect accurately the contents of the assignations record at the time the search was made, and
    - (iii) does not accurately reflect those contents,
  - (e) the issue, under [section 35](#), of an extract which is not a true extract,
  - (f) an application being accepted or rejected in error,
  - (g) an attempt to make an application, which the Keeper would otherwise have accepted, failing as a result of an error in the system the Keeper has for accepting applications, or
  - (h) applications being dealt with otherwise than in the order in which they are received.
- (2) But the Keeper has no liability under [subsection \(1\)](#)—
- (a) in so far as the person’s loss could have been avoided had the person taken measures which it would have been reasonable for the person to take,
  - (b) in so far as the person’s loss was not reasonably foreseeable, or
  - (c) for non-patrimonial loss.
- (3) For the avoidance of doubt, an inaccuracy in information included in an entry in the assignations record when that entry is made up under [section 25\(1\)\(a\)](#) or corrected under [section 29](#) does not fall within [subsection \(1\)\(a\)](#) to the extent that the Keeper—
- (a) has been misled into making the inaccuracy, and
  - (b) reasonably believed the information to be accurate.
- (4) For the purposes of [subsection \(3\)](#), the circumstances where the Keeper is entitled to reasonably believe information to be accurate include those where it is provided—
- (a) in connection with an application to which the entry relates, or
  - (b) by the court.

#### Commencement Information

**I19** S. 37 not in force at Royal Assent, see [s. 121\(2\)](#)

#### 38 Liability of certain other persons

- (1) A person (“P”) is entitled to be compensated in the following circumstances—

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- (a) where P suffers loss in consequence of an inaccuracy in an entry in the assignations record then, to the extent that it is not attributable to the Keeper, P is entitled to be compensated for that loss by—
    - (i) the person who made the application for registration which gave rise to the inaccurate entry if that person failed to take reasonable care in making it, or
    - (ii) where the inaccurate entry arises from the attempted correction of an apparent inaccuracy, the person who notified the Keeper of the apparent inaccuracy if that person failed to take reasonable care in doing so,
  - (b) where P suffers loss in consequence of an inaccuracy in information supplied in response to a request under [section 36\(1\)](#), P is entitled to be compensated for that loss by the person who supplied the information if that person failed to take reasonable care in supplying it, or
  - (c) where P suffers loss in consequence of a failure, without reasonable excuse, to comply with a request in accordance with [section 36\(4\)](#), P is entitled to be compensated for that loss by the person whose failure it was.
- (2) But a person has no liability under [subsection \(1\)](#)—
- (a) in so far as P’s loss could have been avoided had P taken measures which it would have been reasonable for P to take,
  - (b) in so far as P’s loss was not reasonably foreseeable, or
  - (c) for non-patrimonial loss.

#### Commencement Information

**I20** S. 38 not in force at Royal Assent, see [s. 121\(2\)](#)

### Rules

#### 39 Rules

- (1) The Scottish Ministers may by regulations make rules (“RoA Rules”)—
- (a) about the making up and keeping of the register,
  - (b) about the procedure in relation to applications for registration under [section 23\(1\)](#),
  - (c) about searches in the register and the results of those searches,
  - (d) about the required form and content of any document or information to be used in relation to the register,
  - (e) requiring there to be entered in the assignations record or the archive record such information as is specified in the rules, or
  - (f) regarding other matters in relation to registration under [this Part](#), being matters for which the Scottish Ministers consider it necessary or expedient to provide in order to give full effect to the purposes of [this Part](#).
- (2) RoA Rules under [subsection \(1\)](#) may, in particular, include provision—
- (a) about the identification, in any application and in the register, of any person or claim, including—
    - (i) how the proper form of a person’s name is to be determined, and

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*Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Chapter 2. (See end of Document for details)*

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- (ii) where the person has an identifying number (whether of numerals or of letters and numerals) allocated to the person, whether that number must be used in identifying the person,
  - (b) about the nature of the address of the assignor or the assignee to be included in an entry in the register,
  - (c) about the degree of precision with which time is to be recorded in the register,
  - (d) about information which, though contained in an assignation document, need not be included in a copy of that document submitted with an application under [section 23\(1\)](#),
  - (e) about whether a signature contained in an assignation document need be included in a copy of that document so submitted,
  - (f) about information which, though contained in the register, is not to be—
    - (i) available to persons searching it, or
    - (ii) included in any extract issued under [section 35](#),
  - (g) about when the register is open for—
    - (i) registration,
    - (ii) searches.
- (3) Before laying a draft of a Scottish statutory instrument containing regulations under [subsection \(1\)](#) before the Scottish Parliament, the Scottish Ministers must consult the Keeper.

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#### **Commencement Information**

**121** S. 39 not in force at Royal Assent, see [s. 121\(2\)](#)

**Status:**

This version of this chapter contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Chapter 2.