



# Moveable Transactions (Scotland) Act 2023

2023 asp 3

PROSPECTIVE

## 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.

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

*Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 1. (See end of Document for details)*

- (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](#)).

#### Commencement Information

**I1** S. 1 not in force at Royal Assent, see [s. 121\(2\)](#)

## 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.

#### Commencement Information

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

## 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.

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- (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—
    - (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.

#### Commencement Information

**I3** S. 3 not in force at Royal Assent, see [s. 121\(2\)](#)

## 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—

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- (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,
    - (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 \(6\)](#).

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#### Commencement Information

**I4** S. 4 not in force at Royal Assent, see [s. 121\(2\)](#)

### 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.

#### Commencement Information

**I5** S. 5 not in force at Royal Assent, see [s. 121\(2\)](#)

### 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.
- (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.

#### Commencement Information

**I6** S. 6 not in force at Royal Assent, see [s. 121\(2\)](#)

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## 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.

### Commencement Information

I7 S. 7 not in force at Royal Assent, see [s. 121\(2\)](#)

## 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

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- (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,
  - (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](#)—



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“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.

#### Commencement Information

**18** S. 8 not in force at Royal Assent, see [s. 121\(2\)](#)

## 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.

#### Commencement Information

**19** S. 9 not in force at Royal Assent, see [s. 121\(2\)](#)



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

#### Commencement Information

**I10** S. 10 not in force at Royal Assent, see [s. 121\(2\)](#)

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

#### Commencement Information

**I11** 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

- (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

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- (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

**I12** S. 12 not in force at Royal Assent, see [s. 121\(2\)](#)

### 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).

#### Commencement Information

**I13** S. 13 not in force at Royal Assent, see [s. 121\(2\)](#)

### 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.

#### Commencement Information

**I14** S. 14 not in force at Royal Assent, see [s. 121\(2\)](#)

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## 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
  - (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.

### Commencement Information

**I15** S. 15 not in force at Royal Assent, see [s. 121\(2\)](#)

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### *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.

#### **Commencement Information**

**I16** S. 16 not in force at Royal Assent, see **s. 121(2)**

### *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.

#### **Commencement Information**

**I17** S. 17 not in force at Royal Assent, see **s. 121(2)**

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### *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.

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#### **Commencement Information**

**I18** S. 18 not in force at Royal Assent, see [s. 121\(2\)](#)

## **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.

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#### **Commencement Information**

**I19** S. 19 not in force at Royal Assent, see [s. 121\(2\)](#)

#### *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 assignations record, and

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

*Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 1. (See end of Document for details)*

- (b) the archive record.

#### Commencement Information

**I20** S. 20 not in force at Royal Assent, see [s. 121\(2\)](#)

## 21 The assignations record

- (1) An entry in the assignations 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 assignation 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 assignation document,
  - (i) the registration number allocated under [section 25\(1\)\(b\)](#) to the entry,
  - (j) the date and time of registration of the assignation 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 assignations record is the totality of all such entries.

#### Commencement Information

**I21** 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 assignations record under [section 30\(1\)\(a\)](#) or [\(2\)\(c\)](#),
- (b) all copy documents included in the archive record under [section 30\(1\)\(c\)](#) or [\(2\)\(b\)](#),
- (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.

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*Status: This version of this part contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the*  
*Moveable Transactions (Scotland) Act 2023, Part 1. (See end of Document for details)*

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**Commencement Information**

**I22** 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**

**I23** 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.

**Commencement Information**

**I24** S. 24 not in force at Royal Assent, see [s. 121\(2\)](#)



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

**Changes to legislation:** There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 1. (See end of Document for details)

## 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

**I25** 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

**I26** S. 26 not in force at Royal Assent, see [s. 121\(2\)](#)

### *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

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

*Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 1. (See end of Document for details)*

- (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

I27 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—
    - (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.

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

*Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 1. (See end of Document for details)*

- (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

**I28** 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—
- (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

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*Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 1. (See end of Document for details)*

- (c) an entry has incorrectly been removed from the record.
- (4) A correction of the assignations 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 assignations 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

**I29** S. 29 not in force at Royal Assent, see [s. 121\(2\)](#)

### 30 Correction of the assignations record: procedure

- (1) Where the Keeper corrects the assignations record by removing an entry from the assignations 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—
  - (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.

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

*Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 1. (See end of Document for details)*

#### Commencement Information

**I30** 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

**I31** 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

**I32** S. 32 not in force at Royal Assent, see [s. 121\(2\)](#)

#### *Searches and extracts*

### 33 Searching the assignations record

- (1) The Keeper must provide a facility by which the assignations record may be searched.
- (2) That search facility must allow the assignations 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—

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- (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 assignations 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 assignations 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 assignations 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

**I33** 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 assignations 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 assignations record to which the result relates, and
    - (iii) the date and time of such registration or, as the case may be, correction, and
  - (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

**I34** S. 34 not in force at Royal Assent, see [s. 121\(2\)](#)

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

*Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 1. (See end of Document for details)*

### 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

I35 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.
- (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



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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 assignment 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 assignment that the claim specified is not assigned by the assignment 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

**I36** S. 36 not in force at Royal Assent, see [s. 121\(2\)](#)

### *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 assignments record to the extent that it is attributable to the making up, maintenance or operation of the register (including an attempted correction of it),

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- (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

**I37** 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—
- (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

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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

**I38** 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
    - (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,

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*Status: This version of this part contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the*  
*Moveable Transactions (Scotland) Act 2023, Part 1. (See end of Document for details)*

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- (d) about information which, though contained in an assignment 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 assignment 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**

**I39** S. 39 not in force at Royal Assent, see [s. 121\(2\)](#)

## CHAPTER 3

### MISCELLANEOUS AND INTERPRETATION OF [PART 1](#)

#### *Miscellaneous*

#### **40      Repeal of Transmission of Moveable Property (Scotland) Act 1862**

The Transmission of Moveable Property (Scotland) Act 1862 is repealed.

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**Commencement Information**

**I40** S. 40 not in force at Royal Assent, see [s. 121\(2\)](#)

#### *Interpretation of [Part 1](#)*

#### **41      Interpretation of [Part 1](#)**

- (1) In [this Part](#) (except where the context requires otherwise)—
- “the archive record” is to be construed in accordance with [section 22](#),
  - “assignment” means assignment of a claim,
  - “assignment document” has the meaning given by [section 1\(1\)](#),
  - “the assignments record” is to be construed in accordance with [section 21\(2\)](#),
  - “assignee” means the person to whom a claim is assigned,
  - “assignor” means the person by whom a claim is assigned,
  - “claim”—

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

*Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 1. (See end of Document for details)*

- (a) means a right to the performance of an obligation (including an obligation not to do something), but
  - (b) does not include a non-monetary right relating to land or a negotiable instrument,
- “correction”, in relation to the assignments record, is to be construed in accordance with [section 29\(4\)](#),
- “debtor” means the person against whom a claim may be enforced,
- “holder”, in relation to a claim, means the person who has the right to performance of an obligation under the claim,
- “inaccuracy”, in relation to the assignments record, is to be construed in accordance with [section 29\(3\)](#),
- “the register” means the Register of Assignations,
- “right in security”—
- (a) means a right in security over property (including a floating charge), but
  - (b) does not include a right to execute diligence,
- “RoA Rules” has the meaning given by [section 39\(1\)](#).
- (2) Where two or more persons are co-assignors or co-assignees in relation to a claim, any reference in this Act to the assignor or assignee (as the case may be) is, unless the context requires otherwise, a reference to all of those persons.
- (3) A reference (however expressed) in [this Part](#) to—
- (a) an assignment document having been granted in respect of a claim is to be construed as a reference to the document having been executed or authenticated,
  - (b) an assignment document being registered is to be construed as a reference to the Keeper’s carrying out, in respect of the document, the duties imposed on the Keeper by [section 25\(1\)\(a\)](#) and [\(b\)](#).

#### Commencement Information

**141** S. 41 not in force at Royal Assent, see [s. 121\(2\)](#)

**Status:**

This version of this part contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 1.