



# Moveable Transactions (Scotland) Act 2023

2023 asp 3

## PART 3

### MISCELLANEOUS AND GENERAL

PROSPECTIVE

#### *Computer system*

#### **114 Automated computer system**

- (1) The Keeper may, by means of an automated computer system under the Keeper's management and control, carry out the duties imposed on the Keeper under [Chapter 2 of Part 1](#) and [Chapter 2 of Part 2](#).
- (2) The power under [subsection \(1\)](#) includes, for example, the power to enable—
  - (a) the electronic generation and communication of applications under this Act,
  - (b) automated registration under this Act, and
  - (c) the creation of electronic documents.
- (3) The Keeper may impose reasonable conditions for using any computer system provided for the purposes of [subsection \(1\)](#).

#### **Commencement Information**

- II** S. 114 not in force at Royal Assent, see [s. 121\(2\)](#)

*Status: Point in time view as at 14/06/2023. 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 3. (See end of Document for details)*

PROSPECTIVE

*Registration of electronic documents*

**115 Competence of registration of electronic documents**

Section 9G(1)(d) of the Requirements of Writing (Scotland) Act 1995 (registration and recording of electronic documents) does not apply in relation to the registration of a document by the Keeper under this Act.

**Commencement Information**

**I2** S. 115 not in force at Royal Assent, see [s. 121\(2\)](#)

PROSPECTIVE

*Good faith*

**116 Good faith**

- (1) [This section](#) applies in relation to any provision made in this Act as respects good faith.
- (2) If there is a dispute as to whether a person was in (or acted in) good faith, the burden of proof lies on whoever asserts that the person was not in (or did not act in) good faith.

**Commencement Information**

**I3** S. 116 not in force at Royal Assent, see [s. 121\(2\)](#)

PROSPECTIVE

*Review of the Act*

**117 Review of Act**

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of the review period—
  - (a) undertake a review of the operation of this Act, and
  - (b) prepare a report on that review.
- (2) The report must, in particular, set out—
  - (a) an assessment of—
    - (i) the impact of allowing the debtor to waive the right to assert defences as provided for in section 14(1), and

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- (ii) how well the provisions regarding statutory pledges are working in relation to sole traders and small businesses, and
  - (b) the steps (if any) that the Scottish Ministers propose to take as a result of the findings of the review.
- (3) The Scottish Ministers must, as soon as reasonably practicable after preparing the report—
- (a) publish the report, and
  - (b) lay the report before the Scottish Parliament.
- (4) For the purposes of this section, “the review period” is the period of 5 years beginning with the day on which sections 1 and 42 come into force or, if they come into force on different days, the earlier of those days.

#### Commencement Information

**I4** S. 117 not in force at Royal Assent, see [s. 121\(2\)](#)

### General

#### 118 Regulations

- (1) Any power of the Scottish Ministers to make regulations under this Act includes the power to make—
- (a) incidental, supplementary, consequential, transitional, transitory or saving provision,
  - (b) different provision for different purposes.
- (2) Regulations under any of the following sections are subject to the affirmative procedure: ~~section 28(3), 32(3), 36(4), 37(3), 41(4), 44(3), 47(8), 49(7), 57(10), 65(10), 78~~ or [120\(3\)](#).
- (3) Regulations under [section 74\(9\)\(b\)](#), [75\(7\)\(b\)](#) or [119](#) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.
- (4) Any other regulations under this Act are subject to the negative procedure.
- (5) [This section](#) does not apply to regulations under [section 121](#).

#### Commencement Information

**I5** S. 118 in force at 14.6.2023, see [s. 121\(1\)](#)

#### 119 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.
- (2) Regulations under [this section](#) may modify any enactment (including this Act).

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*Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Part 3. (See end of Document for details)*

### Commencement Information

**I6** S. 119 in force at 14.6.2023, see [s. 121\(1\)](#)

PROSPECTIVE

## 120 Interpretation of Act

- (1) In this Act (except where the context requires otherwise)—
- “court” means Court of Session or sheriff,
  - “electronic document” has the meaning given by section 9A of the Requirements of Writing (Scotland) Act 1995,
  - “electronic signature” has the meaning given by section 12(1) of the Requirements of Writing (Scotland) Act 1995,
  - “the Keeper” means the Keeper of the Registers of Scotland,
  - “prescribed” means prescribed by regulations made by the Scottish Ministers,
  - “registration number” means a unique identifier consisting of numerals or of letters and numerals, and
  - “traditional document” has the meaning given by section 1A of the Requirements of Writing (Scotland) Act 1995.
- (2) In this Act, a reference (however expressed) to—
- (a) the authentication of a document by a person is a reference to the electronic signature of that person—
    - (i) being incorporated into, or logically associated with, the electronic document, and
    - (ii) having been created by that person,
  - (b) the execution of a document is a reference to the document’s being subscribed as a traditional document in compliance with section 2(1) of the Requirements of Writing (Scotland) Act 1995.
- (3) The Scottish Ministers may by regulations modify (either or both) paragraph (a) or paragraph (b) of subsection (2).
- (4) Where, under or by virtue of a provision of this Act, however expressed, a person (“P”) is required or permitted to proceed in some way, the provision is to be construed as if any reference in it to P includes a reference to any person authorised by P to proceed in such a way on P’s behalf.

### Commencement Information

**I7** S. 120 not in force at Royal Assent, see [s. 121\(2\)](#)

## 121 Commencement

- (1) [This section](#) and sections [118](#), [119](#) and [122](#) come into force on the day after Royal Assent.

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*Status: Point in time view as at 14/06/2023. 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 3. (See end of Document for details)*

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- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under [this section](#) may—
- (a) include transitional, transitory or saving provision,
  - (b) make different provision for different purposes.

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**Commencement Information**

**I8** S. 121 in force at 14.6.2023, see [s. 121\(1\)](#)

**122 Short title**

The short title of this Act is the Moveable Transactions (Scotland) Act 2023.

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**Commencement Information**

**I9** S. 122 in force at 14.6.2023, see [s. 121\(1\)](#)

**Status:**

Point in time view as at 14/06/2023. 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 3.