

Moveable Transactions

Save the date: 1st April 2025

Just in time for Christmas, three gifts of statutory instruments to implement the Moveable Transactions (Scotland) Act 2023 (the “**Act**”) have been made and laid before the Scottish Parliament. We can now look forward with certainty to the long-awaited reform of the law on taking security over moveable property in Scotland.

This briefing provides an update on these SIs and proposals for early 2025.



Update on implementation of the Act

1. Pursuant to the Moveable Transactions (Scotland) Act 2023 (Commencement) Regulations 2024/378 **1st April 2025 is the appointed date** for the coming into force of the remaining provisions of the Act.
2. The Moveable Transactions (Register of Assignations and Register of Statutory Pledges Rules) (Scotland) Regulations 2024/381 (which will come into force on 1st April 2025) set out the **rules of procedure for the new registers**, the Register of Assignations and the Register of Statutory Pledges (together, “**the Rules**”). See *The Rules below further*.
3. Pursuant to the Act, before enforcing a pledge, a secured creditor must serve a “**pledge enforcement notice**” on specified parties. In addition, the Act provides that a person identified as the provider of the pledge or a person who has a right in the encumbered property may issue a “**correction demand**” to the registered creditor to correct an entry in the statutory pledges record. The Moveable Transactions (Forms) (Scotland) Regulations 2024/379 (which will come into force on 1st April 2025) specify **the forms to be used for a pledge enforcement notice and a correction demand**.

In addition, the following **draft** forms of statutory instrument are proposed:

4. The Registers of Scotland (Fees and Plain Copies) Miscellaneous Amendments Order 2025 SI 2025 **proposes to set the fees** which RoS may charge for use of the new registers, and for the provision of extracts and plain copies from those registers. See *Proposed Fees below further*.
5. The Moveable Transactions (Scotland) Act 2023 Amendment Regulations 2025 have been proposed to amend the Act, to make certain **modifications and minor corrections** required.



Recap: how will the Act reform the current regime?

The Act introduced the possibility of new forms of security and related public registers for security over moveable property:

1. **The Register of Assignations (“RoA”)** – it will be possible to grant assignations of claims that can, instead of intimation to the relevant contract counterparties, instead be registered on the new (public and searchable) RoA. As well as removing the requirement for intimating an assignation (required currently in order for an assignation to be validly constituted), this will enable assignations in security to be granted over future claims and rights of the relevant chargor (with the assignation being effective at the point the future claim comes into existence), so long as such claims or rights are adequately described in accordance with the requirements of the Act.
2. **The Register of Statutory Pledges (“RSP”)** – this will be used to grant and record new statutory pledges over corporeal moveable property (“**corporeal**” property exists in physical form, such as equipment and machinery, generally known as “**chattel**” under English law). The new statutory pledges will not require physical delivery of the asset, provided they are recorded on the new RSP and so the original security provider/owner can maintain full possession and use of the asset. This reform will also apply to certain types of incorporeal

moveable property (“**Incorporeal**” property does not exist in physical form, such as intellectual property rights, known as intangible assets or choses in action under English law).

It will still be possible going forward for lenders to require intimation of assignments of incorporeal moveable property, or to take physical pledges of corporeal moveable property (by delivery of the physical asset into the lender’s possession), instead of using the new registers to record and complete a security interest. It will be up to individual lenders to consider what form of security (essentially, old or new) will be appropriate for them, the assets and the particular borrower in the context of the relevant financing transaction.

Our previous briefing published just after the passing of the Moveable Transactions (Scotland) Bill **provides a useful explanation of the scope of the reform and the practical consequences**: [moving-on-with-moveable-security-in-scotland](#)



The Rules

The Rules follow the framework of the Act and have been drafted in parallel to and with the support of an extensive information technology project undertaken by Registers of Scotland (“**RoS**”) to develop and build the two new registers.

- Applications for registration on the new registers must be made using the **electronic forms specified on the online registration system**, with exceptions for system unavailability, lack of internet access, or other exceptional circumstances.
- “**Authorised users**” will be accredited and verified by the Keeper to use the online registration system.
- The **date and time** of registration will be determined by the Keeper’s acceptance of the application.
- **The Keeper is not required to verify** the entitlement of an authorised user to make an application for registration or to determine the legal validity or accuracy of documents or information submitted for registration.
- **Specific information** must be provided for registration, including the names of the assignor/pledge provider and assignee/secured creditor, legal capacities, addresses, and unique identification numbers, as well as a description of the assigned claim/encumbered property.
- We expect that a **pdf form** of assignment or pledge must be uploaded as part of the application. Personal information relating to an individual assignor or provider of a pledge should be **redacted** – personal information comprises dates of birth, bank account numbers and signatures, but not addresses or unique identification numbers.
- Applicants must **certify** that the pdf copies of assignment documents, statutory pledges, or amendments submitted for registration are true copies.

Where an assignment of claims or statutory pledge is granted by a UK registered company or LLP, it will also **require (separate) registration as normal at Companies House**, including payment of the additional registration fee there.



Proposed Fees (still to be confirmed)

Registration - Register of Assignations

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|---|--------------------|
| – Application for registration of an assignment document | £30 |
| – Assignment document assigning different claims to different assignees | £30 for each claim |

Registration - Register of Statutory Pledges

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|---|---|
| – Application for registration of a constitutive document | £30 |
| – Constitutive document creating more than one statutory pledge | £5 for each additional statutory pledge |
| – Application for registration of an amendment document | £30 for each record entry amended |

Access to information and documents – both registers

- Extracts (of entries/part entries in the records/archive records, documents/part document) (an **extract** is a certified copy of a document that carries evidential status in court) £35 plus VAT each
- Plain copies (of entries/part entries in the records/archive records, documents/part document) (a **plain copy** contains the same information as an extract but does not carry the same evidential status. Plain copies are typically used for informational purposes when there is no need for a legally authenticated document.) £25 plus VAT each

Corrections to Register of Statutory Pledges

- Application by secured creditor/pledge provider for correction of an entry in the statutory pledges record £10 for each entry



Any update on shares?

An additional gift remains in the post... as currently drafted the Act does not include provision for statutory pledges to be provided over shares in Scottish limited companies, although they do also comprise “incorporeal moveable” property under Scots law.

Currently security over such shares in a Scottish company is technically possible only by way of either (i) floating charge; or (ii) otherwise by a form of security (commonly called a “**shares pledge**”) which requires actual transfer of the shares into the name of the lender, or an applicable trustee or nominee, with the company’s register of members written-up to reflect this, which is increasingly unpopular with lenders.

It is anticipated that an Order will be made by the Secretary of State for Scotland under section 104 of the Scotland Act 1998 to extend the provisions of the Act to financial instruments and financial collateral arrangements, and optimists are hopeful that this additional reform will also be in force for 1st April 2025.



2025

2025 looks to be a promising year for lenders, borrowers and legal practitioners. The new regime and simplified process for granting security over most types of physical and incorporeal moveable assets may be transformational.

Greater ease of taking fixed security over these forms of property should create greater flexibility, access to potentially improved terms and a wider choice of financing structure options. In particular, we note that the ability to assign a defined class of future claims using the new Register of Assignations method means securitisation and invoice finance (both of which can currently involve unwieldy legal mechanics and structures under Scots law) should become significantly easier and more attractive to businesses in Scotland.

Happy New Year!



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