



The Scottish Parliament  
Pàrlamaid na h-Alba

Alison Irvine  
Head of Cabinet, Parliament and  
Governance Division  
Scottish Government

Delegated Powers and Law Reform  
Committee  
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23 September 2022

### Moveable Transactions (Scotland) Bill at Stage 1

Dear Alison,

The Delegated Powers and Law Reform Committee considered the delegated powers in the above Bill at its meeting on 20 September 2022 and seeks an explanation of the following matters:

Section 3(8) - Transfer of claims

Power conferred on: the Scottish Ministers  
Power exercisable by: Regulations made by Scottish statutory instrument  
Parliamentary procedure: affirmative procedure

Paragraph 19 of the [Delegated Powers Memorandum](#) (DPM) outlines that the vast majority of assignments will be likely to be effected by registration in the Register of Assignations rather than by intimation. However, the DPM also highlights that the combined system of intimation or registration “is intended to provide assignees with flexibility and a choice as to how they give effect to the assignment of a claim.”.

The Committee would therefore be grateful for a further explanation of:

- 1. why this power is considered necessary to be delegated as it could be used to exclude claims from being able to be transferred by way of intimation, and therefore reduce, or remove the flexibility that the Bill currently provides for.**

Section 4(7) - assignment of claims: insolvency

Power conferred on: the Scottish Ministers  
Power exercisable by: Regulations made by Scottish statutory instrument  
Parliamentary procedure: affirmative procedure

The DPM highlights in paragraph 26 that the Scottish Law Commission (SLC) considered that there were “many different types of insolvency and similar processes

in Scotland, and elsewhere”. So, while the Bill provides for a comprehensive list of insolvency processes, the SLC considered that it was difficult to decide on exactly what processes should be subject to the rules relating to an assignor’s insolvency was not easy and agreed that there should be a power to add further cases such as equivalent processes in other jurisdictions.

The Committee notes that the Scottish Government consider the power to be narrow in scope and may be required to be used at relatively infrequent intervals.

While the Committee acknowledges that it might be considered appropriate for a power to enable equivalent processes from other jurisdictions to be subject to these provisions, it is a power to modify subsections (4), (5) and (6). It therefore allows amendment to specifying when the assignation is ineffective in relation to the claim, what circumstances that applies to and what constitutes insolvency, which may impact on the financial position of assignors and debtors.

The Committee would therefore be grateful for a further explanation of:

- 2. why these powers are considered necessary to be delegated as they appear to be wide and could be used to make significant modifications to the Bill.**

Section 53(8) – Acquisition in good faith of motor vehicles

Power conferred on: the Scottish Ministers  
Power exercisable by: Regulations made by Scottish statutory instrument  
Parliamentary procedure: affirmative or negative depending on how exercised

The Committee notes that the effect of specifying classes of motor vehicles to which subsections (1)-(7) of section 53 do not apply may remove a protection available for a purchaser to receive property unencumbered where it has been purchased in good faith, which may have a significant impact on the financial position of individuals.

Consequently, while the Committee acknowledges from paragraph 94 of the DPM that the Scottish Government considers that negative procedure should apply, the DPM does not provide an explanation for the choice of the negative procedure in this case.

The Committee would therefore be grateful for an explanation of:

- 3. why, in the absence of an explanation in the DPM, the negative procedure is considered appropriate when specifying classes of motor vehicle to which subsections (1) - (7) do not apply, and whether affirmative procedure may be more appropriate.**

Section 93(1) – Power of Scottish Ministers as regards duration of statutory pledge

Power conferred on: the Scottish Ministers  
Power exercisable by: Regulations made by Scottish statutory instrument  
Parliamentary procedure: affirmative procedure

The Committee notes the SLC's view outlined in paragraph 141 of the DPM that registration in the statutory pledges record "in principle should be for an indefinite period, as is the case for standard securities and floating charges.". The SLC did suggest that "the legislation should be future-proofed since there may come a time when the statutory pledges record needs to be decluttered and so proposed that the Scottish Ministers should have power to set a period after which a statutory pledge would be extinguished, unless the entry for it is renewed."

Paragraph 142 of the DPM states that the power could be used in the event that a large number of pledges continue to appear in the record many years after registration but are believed to have been extinguished or restricted off-register. The power only affects entries in the statutory pledges record and not the archive record and the Scottish Government state that similar powers are found in comparator legislation in other jurisdictions.

The DPM states at paragraph 140 that the SLC's consultees "mostly opposed the suggestion that registration should lapse after a certain period unless renewed."

The Committee would therefore be grateful to know:

- 4. whether, given the views of the SLC's consultees and the impact this power could have if exercised, there should be a consultation requirement, not only with the Keeper, but also with other stakeholders, before this power is exercised.**

Finally, the delegated powers in sections 34(8), 63(4), 65(8), 75(10) and 105(8) of the Bill amend various lists for different purposes. For each of these powers to be exercised the DPM highlights a number of people, or groups of people, that the legislation could be amended to add to those lists.

The Committee would therefore be grateful for a further explanation as to:

Section 34(8) - Assignee's duty to respond to request for information

- 5. why, if there are further categories of person able to be identified at this time, such as insolvency officials and executors, they are not specified on the face of the Bill;**

Section 63(4) – Pledge enforcement notice - Power to modify section 63 to specify further persons to be served a pledge enforcement notice and set out exceptions to this requirement

- 6. why, if there are further categories of person able to be identified at this time, such as insolvency officials, they are not specified on the face of the Bill;**

Section 65(8) – Secured creditor's right to take possession of, or steps in relation to, corporeal property - Power to specify additional authorised persons

- 7. why, if there are further categories of person able to be identified at this time, such as insolvency practitioners with a relevant interest, they are not specified on the face of the Bill;**

Section 75(10) – Application of proceeds from enforcement of pledge – Power to modify section 75 so as to specify further persons to whom must be issued a written statement

- 8. why, if there are further categories of person able to be identified at this time, such as insolvency officials, they are not specified on the face of the Bill; and**

Section 105(8) – Secured creditor’s duty to respond to request for information – Power to modify section 105 so as to specify further persons who are entitled persons for the purposes of section 105

- 9. why, if there are further categories of person identified at this time such as insolvency practitioners with a relevant interest, they are not provided for on the face of the Bill.**

I would be grateful if you could please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 12 noon on **Thursday 6 October 2022**.

Yours sincerely,

Andrew Proudfoot  
**Clerk to the Delegated Powers and Law Reform Committee**