

Moveable Transactions (Scotland) Bill — Stage 2

Section 1

Jeremy Balfour

- 54 In section 1, page 1, line 14, after <claim> insert <including by making reference in the assignation document to another document, the terms of which are not reproduced, or to data not reproduced>

Jeremy Balfour

- 55 In section 1, page 1, line 20, leave out subsection (5)

Jeremy Balfour

- 56 In section 1, page 1, line 20, leave out from <Nothing> to <arrangement> in line 21 and insert <The provisions in this Part are without prejudice to the rules in respect of financial collateral arrangements>

After section 3

Jeremy Balfour

- 57 After section 3, insert—

<Financial collateral arrangements

- (1) Subsection (2) applies if an assignation document evidences a security financial collateral arrangement or a title transfer financial collateral arrangement in respect of a claim.
- (2) The claim is transferred either—
 - (a) on the requirements mentioned in subsection (3) all being met, or
 - (b) as mentioned in section 3(1).
- (3) Those requirements are that—
 - (a) the assignor is holder of the claim,
 - (b) the financial collateral in question is in the possession, or under the control, of the collateral-taker or of a person authorised to act on the collateral-taker's behalf,
 - (c) the claim is identifiable as a claim to which the assignation document relates, and
 - (d) if the assignation is subject to a condition such as is mentioned in section 2(1), the condition is satisfied.
- (4) If the claim is transferred by virtue of subsection (2)(a), the requirements of section 1(1) as to execution or authentication do not apply.
- (5) Any rule of law as to accretion is to be disregarded in determining any matter which relates to the transfer, by virtue of subsection (2)(a), of a claim such as is mentioned in section 1(5).

- (6) Without prejudice to the generality of subsection (1), for the purposes of that subsection the assignation document may, in the case of a claim transferred by virtue of subsection (2)(a), be created—
- (a) as writing transcribed by electronic or other means in a durable medium, or
 - (b) as sounds recorded in such a medium.
- (7) This section is to be construed as one with regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226).>

Section 4

Jeremy Balfour

58 In section 4, page 3, leave out lines 35 and 36 and insert—

<() the Accountant in Bankruptcy registers a Protected Trust Deed in relation to the assignor;>

Jeremy Balfour

59 In section 4, page 4, line 7, after <assignor> insert <which includes the claim>

Jeremy Balfour

60 In section 4, page 4, line 15, at end insert—

<() 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 (being a part which includes the claim) of the property of the assignor.>

Section 8

Jeremy Balfour

61 In section 8, page 7, line 8, after first <is> insert <subject always to the terms of the determination of the method of service>

Section 10

Jeremy Balfour

62 In section 10, page 8, leave out lines 20 and 21

Jeremy Balfour

63 In section 10, page 8, line 21, at end insert—

<() Where an assignation of a claim has been intimated in accordance with section 8, it will be presumed that the debtor is not in good faith in respect of payment to any previous holders of the claim unless the debtor is able to demonstrate otherwise.>

Section 31

Jeremy Balfour

- 64 In section 31, page 18, line 9, at end insert—
- <(4) No fee is payable for the search of the assignments record when the search is conducted by a not-for-profit money adviser who is not charging individuals for the services that they provide.
 - (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).>

Section 39

Jeremy Balfour

- 65 In section 39, page 23, line 1, after <assigned,> insert <or a trustee or agent of the assignee (where the context so requires),>

Section 40

Jeremy Balfour

- 66 In section 40, page 24, line 11, at end insert—
- <() Without prejudice to the application of subsection (3) as respects the creation of a pledge over a financial instrument, a pledge may be created over a financial instrument in a way mentioned in section (*Creation of statutory pledge over financial instrument*)(2)(a).>

Section 43

Jeremy Balfour

- 67 In section 43, page 25, line 28, at end insert—
- <() For the purposes of subsections (2) and (3), the ways in which the encumbered property or the secured obligation can be identified in the constitutive document including by making reference in the constitutive document to another document, the terms of which are not reproduced or (in addition in the case of encumbered property) to data not reproduced.>

Section 44

Jeremy Balfour

- 68 In section 44, page 26, line 4, at end insert—
- <() a financial instrument.>

After section 46

Jeremy Balfour

- 69 After section 46, insert—

<Creation of statutory pledge over financial instrument

- (1) Subsection (2) applies if a constitutive document, or an amendment document, evidences a security financial collateral arrangement in respect of a financial instrument.
- (2) A statutory pledge is created over the financial instrument either—
 - (a) on the requirements mentioned in subsection (3) all being met, or
 - (b) as mentioned in, as the case may be, section 45 or 46.
- (3) Those requirements are that—
 - (a) the instrument is the property of the provider,
 - (b) the instrument is in the possession, or under the control, of the collateral-taker or of a person authorised to act on the collateral-taker's behalf, and
 - (c) the instrument is identifiable as an instrument to which the constitutive document, or amendment document, relates.
- (4) If a statutory pledge is created by virtue of subsection (2)(a), the requirements of section 43(2), or as the case may be of section 56(1), as to execution or authentication do not apply.
- (5) Without prejudice to the generality of subsection (1), for the purposes of that subsection a constitutive document, or an amendment document, may be evidenced—
 - (a) in writing transcribed by electronic or other means in a durable medium, or
 - (b) in sounds recorded in such a medium.
- (6) This section is to be construed as one with regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226).>

Section 47

Jeremy Balfour

70 In section 47, page 27, leave out lines 15 and 16 and insert—

<() the Accountant in Bankruptcy registers a Protected Trust Deed in relation to the provider,>

Jeremy Balfour

71 In section 47, page 27, line 23, at end insert—

<() an order under section 901F of the Companies Act 2006 sanctioning a compromise or arrangement entered into by the provider comes into effect over all or part (being a part which includes the encumbered property) of the property of the provider,>

Jeremy Balfour

72 In section 47, page 27, line 25, after <provider> insert <which includes the property>

After section 53

Jeremy Balfour

73 After section 53, insert—

<Acquisition of certain financial instruments in ordinary course of trading

- (1) Subsection (2) applies where—
 - (a) a person, in the ordinary course of trading on a specified financial market, acquires a financial instrument of a specified kind, and
 - (b) that financial instrument is encumbered property.
- (2) The person acquires the instrument unencumbered by the statutory pledge, despite the consent mentioned in section 49(2) not having been obtained, provided that—
 - (a) at the time of acquisition the person does not know of the statutory pledge, and
 - (b) the acquisition takes place in accordance with the rules of the specified financial market.
- (3) In subsections (1)(a) and (2)(b), “specified” means specified, for the purposes of those provisions, by the Scottish Ministers by regulations.
- (4) Regulations under subsection (3) may specify different markets, or descriptions of market, in relation to different kinds of financial instrument.>

Section 56

Jeremy Balfour

74 In section 56, page 32, line 22, at end insert—

- <() For the purposes of subsection (3) and (4), the ways in which property added can be identified in the amendment document include by making reference in the amendment document to another document, the terms of which are not reproduced, or to data not reproduced.>

After section 57

Jeremy Balfour

75 After section 57, insert—

<Restriction or extinction of statutory pledge created under section (*Creation of statutory pledge over financial instrument*)(2)(a)

- (1) Subject to the provisions of this section, a statutory pledge created under section (*Creation of statutory pledge over financial instrument*)(2)(a)—
 - (a) is extinguished in relation to the financial instrument over which the pledge is created on the financial instrument ceasing to be in the possession, or under the control—
 - (i) of the collateral-taker, or
 - (ii) of a person authorised to act on behalf of the collateral-taker, and

- (b) may be—
 - (i) restricted to only part of the encumbered property, or
 - (ii) discharged, by means of an evidenced statement by or on behalf of the collateral-taker.
- (2) Subsection (1) is to be construed as one with regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226).>

After section 65

Jeremy Balfour

76 After section 65, insert—

<Secured creditor’s right to take possession of certificate of financial instrument

- (1) Subsection (2) applies in relation to a certificated financial instrument in respect of which a secured creditor in a statutory pledge has served a Pledge Enforcement Notice.
- (2) The secured creditor is entitled to take possession of the certificate of the instrument—
 - (a) with the consent—
 - (i) of the provider given after the pledge becomes enforceable, and
 - (ii) of any third party who for the time being either is in direct possession of, or has custody of, that certificate,
 - (b) through the agency of an authorised person, or
 - (c) personally, if authorised to do so by the court.
- (3) Subsection (2) is subject to subsection (4).
- (4) The secured creditor has no entitlement under subsection (2) if the certificate is for the time being in the possession of a person—
 - (a) who has a right in security over the instrument, being a right in security which has priority over, or ranks equally with, the pledge to which the Pledge Enforcement Notice relates, or
 - (b) who has executed diligence against the instrument and by virtue of that diligence has priority in ranking over, or ranks equally with, the secured creditor.
- (5) But in the circumstances mentioned in subsection (4) the secured creditor may—
 - (a) with the consent of the person who has the right in security over, or has executed diligence against, the instrument,
 - (b) with the consent of the court, through such agency as is mentioned in subsection (2)(b), or
 - (c) personally, if authorised to do so by the court, take possession of the certificate for the instrument.
- (6) In subsection (2)(b), “authorised person” has the meaning given to that expression by subsection (7) of section 65.
- (7) This section is subject to section 64.>

Section 70

Jeremy Balfour

- 77 In section 70, page 38, line 19, at end insert—
- <() where the property consists of, or includes, a financial instrument, exercise any voting rights in relation to the financial instrument,>

Section 71

Jeremy Balfour

- 78 In section 71, page 38, line 35, after first <property,> insert <or a financial instrument payable to bearer,>

Section 76

Jeremy Balfour

- 79 In section 76, page 43, line 10, after <pledge> insert <which ranks prior to the statutory pledge>

After section 76

Jeremy Balfour

- 80 After section 76, insert—
- <Sections 62 to 75: saving**
- Nothing in sections 62 to 75 is to be taken to derogate from such rights as a secured creditor may have by virtue of Part 4 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226).>

Section 102

Jeremy Balfour

- 81 In section 102, page 55, line 29, at end insert—
- <(4) No fee is payable for the search of the statutory pledges record when the search is conducted by a not-for-profit money adviser who is not charging individuals for the services that they provide.
- (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).>

Section 111

Jeremy Balfour

- 82 In section 111, page 61, line 4, at end insert—

<“financial instrument” is to be construed in accordance with the definition of “financial instruments” in regulation 3(1) of the Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226),>

Jeremy Balfour

- 83 In section 111, page 61, line 25, after <representative,> insert <trustee or agent,>

After section 113

Jeremy Balfour

- 84 After section 113, insert—

<Report on financial instruments and financial collateral

Report on financial instruments and financial collateral

- (1) If an order under section 104 of the Scotland Act 1998 has not been made in respect of financial instruments and financial collateral within 18 months of Royal Assent, the Scottish Ministers must produce a report setting out—
 - (a) the steps the Scottish Ministers have taken towards securing an order,
 - (b) the progress that has been made in discussions between the Scottish Ministers and the UK Ministers relating to the making of an order,
 - (c) when the Scottish Ministers expect an order to be made.
- (2) The report under subsection (1) must be—
 - (a) published in such a manner as the Scottish Ministers consider appropriate, and
 - (b) laid before the Scottish Parliament.>

Jeremy Balfour

- 85 After section 113, insert—

<Review of the Act

Review of the Act

- (1) The Scottish Ministers must, 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 Scottish Ministers must, as soon as practicable after the end of the review period—
 - (a) publish the report under subsection (1)(a),
 - (b) lay the report before the Scottish Parliament.
- (3) For the purposes of this section, “the review period” is the period of 3 years beginning with the day of Royal Assent.>