

# Moveable Transactions (Scotland) Bill

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## Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

### Groupings of amendments

#### **Content of documents**

54, 67, 74

#### **Financial collateral arrangements and financial instruments**

55, 56, 57, 66, 68, 69, 73, 75, 76, 77, 78, 80, 82, 84

*Notes on amendments on this group*

Amendment 55 pre-empts amendment 56

#### **Assignations: technical amendments**

1, 2, 3, 61, 9, 12, 65

#### **Insolvency**

58, 59, 60, 70, 71, 72

#### **Assignations: debtor protections**

62, 63, 4, 8

#### **Assignations: asserting defence or right of compensation**

47, 5, 48, 49, 50, 6, 7, 51

#### **Fees**

64, 81

#### **Response to information request**

10, 31, 32, 33, 34

#### **Errors in search results**

11, 35

**Report on assignation**

52

**Pledge: technical amendments**

13, 21, 79, 27, 29, 83, 39, 41

**Pledge: individuals**

14, 15, 16, 16A, 16B, 17, 18, 19, 20, 22, 37, 38

**Pledge: supervening inaccuracies**

23, 24, 25, 26, 28, 30

**Electronic documents**

36, 40, 42, 43, 44, 45, 46

**Review of Act**

53, 85

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### Amendments in debating order

#### Content of documents

##### **Jeremy Balfour**

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

##### **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 include 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.>

##### **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.>

#### Financial collateral arrangements and financial instruments

##### **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>

##### **Jeremy Balfour**

- 57 After section 3, insert—

##### **<Financial collateral arrangements**

- (1) Subsection (2) applies if an assignment 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,

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- (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 assignment document relates, and
  - (d) if the assignment 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 assignment 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).>

### 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).>

### Jeremy Balfour

68 In section 44, page 26, line 4, at end insert—

- <( ) a financial instrument.>

### 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

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- (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).>

### 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.>

### 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

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- (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).>

### 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.>

### 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,>

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### Jeremy Balfour

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

### 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).>

### 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

- 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.>

### **Assignations: technical amendments**

#### Tom Arthur

- 1 In section 3, page 2, line 38, after <claim,> insert—

<( ) the claim becoming identifiable as a claim to which the assignation document relates,>

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### Tom Arthur

- 2 In section 5, page 4, line 22, leave out from second <is> to <not> in line 27 and insert <may be assigned in part only if the claim is divisible and either—
- ( ) the debtor consents, or
  - ( ) the assignation is not likely to>

### Tom Arthur

- 3 In section 5, page 4, line 29, leave out <and the assignor agree otherwise> and insert <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)>

### 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>

### Tom Arthur

- 9 After section 22, insert—
- <Application for registration where claims assigned to different assignees**
- (1) Where an assignation 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 assignation 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.>

### Tom Arthur

- 12 Leave out section 38 and insert—
- <Repeal of Transmission of Moveable Property (Scotland) Act 1862**
- The Transmission of Moveable Property (Scotland) Act 1862 is repealed.>

### 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),>



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### Insolvency

#### **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.>

#### **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>

### Assignations: debtor protections

#### **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.>

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**Tom Arthur**

4 After section 12, insert—

**<Performance in good faith where claim assigned subject to condition**

- (1) Subsection (2) applies where—
  - (a) a claim in respect of which an assignation 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).>

**Tom Arthur**

8 In section 14, page 10, line 23, at end insert—

- <( ) Where a debtor who makes a request under subsection (1) or (5) is a co-debtor, the reference in subsection (4) or (as the case may be) (7) to the debtor is to the debtor who made the request and does not include a reference to any co-debtor of that debtor.>

**Assignations: asserting defence or right of compensation**

**Carol Mochan**

47 In section 13, page 9, line 13, leave out from beginning to <claim,> in line 14

**Tom Arthur**

5 In section 13, page 9, leave out lines 18 to 23

**Carol Mochan**

48 In section 13, page 9, line 24, leave out subsection (4).

**Carol Mochan**

49 In section 13, page 9, line 25, at end insert—

- <( ) Such an agreement as is described in subsection (1) cannot be made by individuals not acting in the course of business.>

**Carol Mochan**

50 In section 13, page 9, line 25, at end insert—

- <( ) Such an agreement as is described in subsection (1) cannot be made by—
  - (a) individuals not acting in the course of business,

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(b) sole traders.>

### **Tom Arthur**

6 In section 13, page 9, line 26, leave out subsection (5)

### **Tom Arthur**

7 In section 13, page 9, line 28, at end insert—

<( ) 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 assignation of a claim only because an assignation document is registered in respect of the claim.>

### **Carol Mochan**

51 After section 13, insert—

#### **<Report on waiver of defence**

- (1) Within 3 years of section 13 coming into force, the Scottish Ministers must prepare and publish a report setting out the impact of the waiver of defence clause in section 13(1).
- (2) A report under subsection (1) must set out any steps that the Scottish Ministers intend to take to mitigate any negative impacts that have been identified.>

### **Fees**

#### **Jeremy Balfour**

64 In section 31, page 18, line 9, at end insert—

- <(4) No fee is payable for the search of the assignations 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).>

#### **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).>

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### Response to information request

#### **Tom Arthur**

- 10 In section 34, page 20, line 3, after <days> insert <or such other period (which may be longer or shorter than 14 days) as the court considers appropriate>

#### **Tom Arthur**

- 31 In section 105, page 56, line 24, leave out <(either or both)—>

#### **Tom Arthur**

- 32 In section 105, page 56, leave out line 28

#### **Tom Arthur**

- 33 In section 105, page 57, leave out from beginning of line 14 to <pledge,> on line 15

#### **Tom Arthur**

- 34 In section 105, page 57, line 32, after <days> insert <or such other period (which may be longer or shorter than 14 days) as the court considers appropriate>

### Errors in search results

#### **Tom Arthur**

- 11 In section 35, page 20, line 15, at end insert—
- <( ) a search result which—
    - (i) relates to a search of the assignments 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 assignments record at the time the search was made, and
    - (iii) does not accurately reflect those contents,>

#### **Tom Arthur**

- 35 In section 107, page 58, line 19, at end insert—
- <( ) a search result which—
    - (i) relates to a search of the statutory pledges 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 statutory pledges record at the time the search was made, and
    - (iii) does not accurately reflect those contents,>

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### **Report on assignment**

**Carol Mochan**

52 After section 38, insert—

*<Report on assignment*

#### **Report on assignment**

- (1) Within 3 years of section 1 coming into force, the Scottish Ministers must prepare and publish a report on the assignment of consumer credit debts.
- (2) The report under subsection (1) must consider, in particular, the impact the removal of the need for intimation has had on debtors.>

### **Pledge: technical amendments**

**Tom Arthur**

13 In section 42, page 24, line 36, leave out <an independent third party> and insert <another person>

**Tom Arthur**

21 In section 66, page 37, line 9, after <price> insert <no lower than one>

**Jeremy Balfour**

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

**Tom Arthur**

27 In section 92, page 49, leave out line 36 and insert—

<( ) does not describe the property as being of a type that it is, or>

**Tom Arthur**

29 In section 97, page 52, line 32, at end insert—

<( ) Where the registered creditor is not the secured creditor in relation to the statutory pledge in the entry—

(a) the registered creditor must, in so far as it is reasonable and practicable to do so, promptly notify the secured creditor of the notice received under subsection (3)(a), and

(b) subsection (4) applies to the secured creditor as it applies to the registered creditor.>

**Jeremy Balfour**

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

**Tom Arthur**

39 In section 114, page 62, line 27, after <52(3),> insert <53(8),>

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**Tom Arthur**

- 41 In section 114, page 62, line 29, leave out <53(8),>

**Pledge: individuals**

**Tom Arthur**

- 14 In section 43, page 25, line 21, leave out from beginning to <if> in line 22 and insert—  
<( ) If>

**Tom Arthur**

- 15 In section 43, page 25, line 25, leave out from <and> to first <the> in line 26 and insert—  
<( ) The>

**Tom Arthur**

- 16 After section 43, insert—

**<Competence of individual acting as provider of a statutory pledge**

- (1) It is not competent for an individual to be the provider of a statutory pledge unless—
- (a) the individual is acting in the course of—
    - 5 (i) the individual’s business,
    - (ii) the activities of a charity of which the individual is a trustee, or
    - (iii) the activities of an unincorporated association (other than a charity) of which the individual is a member, and
  - (b) the encumbered property is a permitted asset, or consists only of permitted assets.
- 10 (2) For the purpose of subsection (1)(b), an asset is a “permitted asset” if—
- (a) it is (as the case may be)—
    - (i) used, or to be used, wholly or mainly for the purposes of the individual’s business,
    - (ii) an asset of the charity, or
    - 15 (iii) owned by the individual on behalf of, or jointly with the other members of, the association, and
  - (b) in the case of corporeal property, it has a monetary value exceeding £3,000 immediately before the document under which it will become encumbered property is granted.
- 20 (3) The Scottish Ministers may by regulations—
- (a) modify subsection (2)(b) so as to modify the amount for the time being specified there,
  - (b) modify this section so as to specify types of property which are or are not permitted assets.

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- 25 (4) For the purposes of this section—
- (a) “charity” means—
- (i) a charity within the meaning of section 106 of the Charities and Trustee Investment (Scotland) Act 2005, or
- 30 (ii) an organisation managed or controlled wholly or mainly outwith Scotland and which is registered in a register equivalent to the Scottish Charity Register (kept under section 3 of that Act) for the purposes of the country in which it operates,
- (b) a trustee of a charity is one of the persons having the general control and management of the administration of the charity.>

**Carol Mochan**

**16A** As an amendment to amendment 16, line 19, at end insert—

- <( ) For the purpose of subsection (1)(b), an asset is not a “permitted asset” if it is a household good that is essential for heating, cooking or laundry purposes.>

**Carol Mochan**

**16B** As an amendment to amendment 16, line 19, at end insert—

- <( ) The figure specified in subsection (2)(b) must be read as if annually updated in line with the retail prices index.>

**Tom Arthur**

**17** Leave out section 48

**Tom Arthur**

**18** In section 56, page 32, line 5, leave out from beginning to <if> in line 6 and insert—

- <( ) If>

**Tom Arthur**

**19** In section 56, page 32, line 9, leave out from <and> to first <the> in line 10 and insert—

- <( ) The>

**Tom Arthur**

**20** In section 64, page 35, line 13, leave out from <unless> to end of line 15 and insert <if>

**Tom Arthur**

**22** In section 71, page 38, leave out lines 32 to 34

**Tom Arthur**

**37** In section 114, page 62, line 27, after <34(8),> insert <(Competence of individual acting as provider of a statutory pledge)(3),>

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**Tom Arthur**

- 38** In section 114, page 62, line 27, leave out <48(5),>

**Pledge: supervening inaccuracies**

**Tom Arthur**

- 23** In section 91, page 48, line 5, leave out subsection (1) and insert—

- <(1) Subsection (2) applies where at, some time after a statutory pledge is registered effectively—
  - (a) a person acquires, for value, in good faith and exercising reasonable care—
    - (i) property which is encumbered under the pledge, or
    - (ii) a right in such property, and
  - (b) at the time the person acquires that property or right (“the acquired property”), any one of condition A, condition B or condition C is met.
- (1A) Condition A is that the entry for the pledge in the statutory pledges record has been incorrectly removed from the statutory pledges record (whether or not on transfer of that entry to the archive record) and remains incorrectly absent from the record.
- (1B) Condition B is that—
  - (a) the acquired property does not have an identifying number which, by virtue of RSP Rules, must be used in identifying it, and
  - (b) the entry for the pledge in the statutory pledges record is seriously misleading in respect of the acquired property.
- (1C) Condition C is that—
  - (a) the acquired property has an identifying number which, by virtue of RSP Rules, must be used in identifying it, and
  - (b) if a search of the statutory pledges record were to be carried out for that number using the search facility provided under section 102, it would not disclose the entry.>

**Tom Arthur**

- 24** In section 91, page 48, line 22, leave out from <property> to end of line 23 and insert <acquired property.>

**Tom Arthur**

- 25** In section 91, page 48, line 24, leave out <(1)(c)> and insert (1)(a)>

**Tom Arthur**

- 26** In section 92, page 48, line 28, leave out <91(1)(b)(i)> and insert <91(1B)>

**Tom Arthur**

- 28** In section 92, page 50, line 5, leave out <91(1)(b)(i)> and insert <91(1B)>



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**Tom Arthur**

- 30 In section 102, page 55, line 18, leave out <or permit>

**Electronic documents**

**Tom Arthur**

- 36 After section 112, insert—

*<Registration of electronic documents*

**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.>

**Tom Arthur**

- 40 In section 114, page 62, line 28, leave out <116(3)> and insert <116(1B)>

**Tom Arthur**

- 42 In section 116, page 63, leave out lines 6 and 7

**Tom Arthur**

- 43 In section 116, page 63, line 10, at end insert—

<“electronic signature” has the meaning given by section 12(1) of the Requirements of Writing (Scotland) Act 1995,>

**Tom Arthur**

- 44 In section 116, page 63, leave out lines 11 and 12

**Tom Arthur**

- 45 In section 116, page 63, line 18, at end insert—

<(1A) 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.

(1B) The Scottish Ministers may by regulations modify (either or both) paragraph (a) or paragraph (b) of subsection (1A).>

**THIS IS NOT THE MARSHALLED LIST**

**Tom Arthur**

- 46 In section 116, page 63, line 23, leave out subsection (3)

**Review of Act**

**Carol Mochan**

- 53 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 review under subsection (1)(a) must, in particular, consider the operation of provision relating to statutory pledge on sole traders and small businesses.
- (3) The Scottish Ministers must, as soon as practicable after the end of the review period—
  - (a) publish the report under subsection (1)(b),
  - (b) lay the report before the Scottish Parliament.
- (4) For the purposes of this section, “the review period” is the period of 3 years beginning with the day of Royal Assent.>

**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.>

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