

MOVEABLE TRANSACTIONS (SCOTLAND) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Assignment

Chapter 2 – Register of Assignations

Corrections

Section 29 – Correction of the assignations record

145. Subsection (1) of this section provides that where a court determines that the assignations record is inaccurate, it must direct the Keeper to correct the record, and may give the Keeper any further direction it considers necessary. The Keeper would be expected to act on that direction (as to do otherwise would risk the Keeper being held in contempt of court). Section 120(1) of the Act sets out that “court” means the Court of Session or the sheriff.
146. The Act does not provide for an express right of appeal against, or a review of, a registration decision by the Keeper. However, an issue relating to the accuracy of the register might be raised in other proceedings, including in a judicial review of such a decision.

Example 1

An assignation document is reduced (i.e. annulled) by the court because it has been forged by one of the purported parties to the document. The court can direct the Keeper to correct the entry in the assignations record.

Example 2

An entry is created in the assignations record for an assignation document granted by P Ltd in favour of Q Ltd. But in the application form for registration of the assignation, Q Ltd erroneously states that Z Ltd is the assignor. Z Ltd could ask the court to correct the entry, although if the inaccuracy is manifest (as is likely) then it might prefer to seek a correction under section 29(2) of the Act (or, if applicable, under any application route that might be introduced under section 32 of the Act).

147. In contrast with subsection (2), the court does not require to determine under subsection (1) whether there is a manifest inaccuracy, or indeed whether what is needed to correct the inaccuracy is manifest. The function of the court as provided for by this subsection is to make a determination, and direct accordingly.
148. Subsection (2) provides that where the Keeper becomes aware of an obvious inaccuracy, the Keeper must correct the assignations record provided that what is needed to correct the inaccuracy is also obvious. If the correction needed is not obvious, then the Keeper

must instead note the inaccuracy on the entry in question. This duty does not cover where the Keeper becomes aware of the inaccuracy by way of a direction given by the court, as that situation is already dealt with by subsection (1).

149. Subsection (3) sets out what is meant by an “inaccuracy”. It provides that there is an inaccuracy in the assignments record where the information that an entry is to comprise of is inaccurate or complete, an entry does not include a copy of the assignment document (or includes such a copy but the document is invalid), or an entry has been incorrectly removed from the record.
150. Subsection (4) sets out what a correction of the assignments record may involve.
151. Subsection (5) sets out that a correction is taken to be made at the date and time entered in the RoA for the correction. This is particularly important as regards section 27(3) of the Act, under which an ineffective registration may be made effective by a correction, with the result that the claim will transfer (provided that the other requirements under section 3 are also met).

Section 30 – Correction of assignments record: procedure

152. Subsection (1) provides that where the Keeper corrects the assignments record by removing an entry, the Keeper must transfer the entry to the archive record. The Keeper must also note on the transferred entry whether the Keeper removed the entry because it was directed to by a court, or because the Keeper became aware of an obvious inaccuracy other than as a result of such a direction.
153. Subsection (2) provides that where the Keeper corrects the assignments record by restoring, removing or amending information included in an entry, the Keeper must note on the entry that it has been corrected. In the case of the replacement of a copy document, the Keeper must also transfer the replaced copy to the archive record.
154. In both instances, the Keeper must give details of the correction including the date and time of the removal or (as the case may be) the correction of the entry. The Keeper must also include in the archive record a copy of any document which discloses or contributes to disclosing the inaccuracy which is the subject of the correction.
155. Subsection (3) provides that once the record has been corrected the Keeper must, to the extent that it is reasonable and practicable to do so, notify every person required by RoA Rules and any other person who appears to the Keeper to be affected by it materially that a correction has been made. This is not an objective test and will be confined to facts within the Keeper’s knowledge.
156. Subsection (4) provides that the validity of a correction of the record will not be affected if the Keeper fails to include in the archive record a copy of any document which contributes to disclosing the correction or fails to notify any person of the correction.

Section 31 – Proceedings involving the accuracy of the assignments record

157. This section provides that the Keeper is entitled to appear and be heard in any civil proceedings where a question arises regarding the accuracy of the assignments record, or what is needed to correct it.

Section 32 – Power to make provision about applications for corrections

158. This section provides that the Scottish Ministers may by regulations modify Part 1 of the Act to make provision for or about applications to the Keeper for the correction of an entry in the register. This would allow, for example, provision comparable to the corrections process for statutory pledges in Part 2 of the Act to be introduced in respect of assignment documents (although supervening inaccuracies will not be relevant in the same way here as the RoA is not designed to show the ongoing position in relation to a claim). This section would also allow a fee to be imposed for such applications.