

# **MOVEABLE TRANSACTIONS (SCOTLAND) ACT 2023**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1 – Assignment**

#### **Chapter 2 – Register of Assignations**

#### **Searches and extracts**

#### **Section 33 – Searching the assignations record**

159. The RoA is a public register (see section 19(1) of the Act). Subsection (1) of this section provides that the Keeper must provide a search facility by which the assignations record may be searched.
160. Subsection (2) sets out that only such searches in the assignations record as are specified in this subsection, or as are specified under RoA Rules, are permitted. This restriction on searches has two effects:
- First, it reduces the risk of identity theft by ensuring that it will not be possible to search against date of birth, or against the month and year of birth alone. The Scottish Ministers will also be able (through RoA Rules) to prevent dates of birth from being disclosed on the face of the Register, or to limit the number of searches by reference to the same name and different months and years of birth that can be made in a particular time period.
  - Second, it reduces the risk of unfair commercial practices by not permitting a search against the assignee (typically, a bank or finance company) which might enable a competitor to obtain a list of customers.
161. Subsection (3) provides that any person may search the assignations record on payment of any fee (or making an arrangement to pay).
162. Subsection (4) provides that no fee is payable for a search of the assignations record carried out by a not-for-profit money adviser who does not charge individuals for the services that they provide and who is acting on behalf of an individual in carrying out the search. Under subsection (5), the Scottish Ministers are given the power by regulations (subject to the negative procedure) to make further provision about what “not-for-profit money adviser” means for these purposes.
163. The Act does not make provision for the Keeper to provide a search mechanism for the archive record, nor for a person to be entitled to use that mechanism. The Scottish Ministers may, however, make provision to that effect in RoA Rules made under section 39(1)(c) of the Act. It is also open to any person to obtain from the Keeper an extract of an entry in either the assignations record or archive record under section 35 of the Act.

164. **Section 27** of the Act has the effect that it must be possible to carry out searches for the purposes of the “seriously misleading” test. It will therefore be for the Scottish Ministers to make such RoA Rules as are needed under this section for those purposes. RoA Rules will, amongst other matters, be able to determine whether the search criteria will provide for an exact match or a close match search.

***Section 34 – Admissibility and evidential status of search results***

165. This section provides that a copy of a search result, relating to a search carried out by means of a search facility provided by the Keeper, may be used as evidence of certain matters and, moreover, to prove certain matters unless there is evidence to the contrary. A search result may be in printed or electronic form.
166. This section should be read with section 35, which provides that an extract from the RoA will provide evidence of the contents of the relevant entry at the relevant date. It cannot be rebutted by other evidence (though liability is imposed on the Keeper for errors in extracts under section 37(1)(e) of the Act). It should also be noted that RoA Rules may prescribe by virtue of section 39(2)(f) that certain information on the register (for example, a precise date of birth) is not to be included in search results.

***Section 35 – Extracts and their evidential status***

167. This section enables any person to obtain from the Keeper an extract of any entry or part of an entry in the RoA, on payment of any fee (or making an arrangement to pay). An extract is (irrebuttable) evidence of the contents of an entry at the relevant time (which is either the time the extract is issued or, in the case of a point-in-time extract requested by virtue of subsection (3), the time to which the extract relates), and can be used for the purpose of proving a fact in any court or tribunal proceedings. Liability is imposed on the Keeper for errors in extracts under section 37(1)(e) of the Act. It should also be noted that the ability to obtain an extract is subject to the ability under section 39(2)(f) for RoA Rules to prescribe that certain information on the register (for example, a precise date of birth) is not to be included in an extract.