

MOVEABLE TRANSACTIONS (SCOTLAND) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Assignment

Chapter 2 – Register of Assignations

Register of Assignations

Section 19 – The Register of Assignations

104. Subsection (1) establishes a new register for the registration of assignment documents which relate to the assignment of claims. The register is to be known as the “Register of Assignations”.
105. Subsection (2) provides that the register is to be under the management of the Keeper of the Registers of Scotland. Various provisions in this Chapter also require payment of a fee to the Keeper for certain things. The Keeper has powers under section 110 of the Land Registration etc. (Scotland) Act 2012 to set the level of fees payable in relation to any register under the Keeper’s management and control. As such, the effect of subsection (2) is also that these powers apply automatically to the RoA.
106. Subsection (3) states that, subject to the requirements laid down by the Act, the Keeper has discretion as to the form in which the register is kept. That would include the RoA being kept in a wholly electronic form.
107. The RoA, as with the other registers under the Keeper’s control, is a public asset. Subsection (4) therefore provides that the Keeper is to take such steps as appear reasonable to protect the RoA from interference, unauthorised access or damage (for example by hacking).
108. See also section 39 of the Act, which provides for the Scottish Ministers by regulations to be able to make rules (“RoA Rules”) as to the keeping of the RoA and related matters.

Structure and contents of the register

Section 20 – The parts of the register

109. This section provides that the Keeper must make up and maintain, as parts of the register, the assignments record and the archive record (see sections 21 and 22).

Section 21 – The assignments record

110. This section sets out the information which must be included in an entry in the assignments record, and provides that the assignments record is the totality of such entries.

111. The information which must be included is largely self-explanatory. However, subsection (1)(k) requires the inclusion of any other information that is required under the Act. That might include, for example, information relating to a correction that is noted on the entry under section 30(2)(a).
112. The details of the assignee will be included in an entry in the assignments record, but a search against the assignee is not permitted under section 33 of the Act (unless the Scottish Ministers specify in RoA Rules made under section 39 of the Act that such a search is permitted). It will, however, be possible for an entitled person (within the meaning given in section 36 of the Act) to request certain information about the assignment from the assignee.
113. An assignor or assignee may be a legal person with an identifying number, such as a UK limited company or limited liability partnership. The Scottish Ministers will be able to specify that these identifying numbers are to be included in the entry in the assignments record: see section 39(2)(a)(ii) of the Act.
114. This section provides that an entry in the assignments record must include a copy of the assignment document. The Scottish Ministers may, however, specify in RoA Rules that information in the record, including information in the assignment document, will not be disclosed in a search of the RoA in order to protect confidential information of the parties (see section 39(2)(f)). Rules can also be made about information which can be redacted in the copy of the assignment document which is submitted (see section 39(2)(d) and (e)).

Section 22 – The archive record

115. This section sets out that the archive record consists of—
 - first, all entries and copy documents which have been transferred to that record from the assignments record as a result of the correction of the assignments record (whether because an entry has been removed from the assignments record in its entirety, or whether a document on the assignments record has been replaced),
 - second, copies of any document which discloses, or contributes to disclosing an inaccuracy in respect of which a correction has been made,
 - third, any other documents the Keeper considers it appropriate to include, and
 - fourth, any other information required to be entered in the record by RoA Rules.
116. Entries will not move from the assignment record to the archive record simply because the claim which is the subject of the assignment is performed. The assignments record is simply a record of assignment documents which have been granted and which the assignee has chosen to register. It is a snapshot of a moment in time, rather than an ongoing reflection of the status of the claim. However, an entry may be transferred to the archive record if a correction is made to reflect the fact that the entry should never have been created. For example, if a fraudulent assignment document is registered, a correction may be made to remove the entry.

Registration process

Section 23 – Application for registration

117. Subsection (1) enables the assignee, and only the assignee (or the assignee's agent – see section 120(4)), to apply to the Keeper to register an assignment document in the RoA.
118. Subsection (2) requires the Keeper to deal with applications for registration of assignment documents in the order in which they are received. The effect is to protect the priority of registration of an assignment document (and therefore of ranking of claims in, for example, an insolvency).

119. Subsection (3) sets out that the Keeper must accept the application if it is submitted with a copy of the assignment document, contains all the information the Keeper requires to make up an entry, conforms to RoA Rules, and the fee due to the Keeper is – or will be – paid. Rules can be made about information which can be redacted in the copy of the assignment document which is submitted (see section 39(2)(d) and (e)).
120. Subsection (4) provides that the Keeper must reject an application if any of the requirements mentioned in subsection (3) are not satisfied.

Section 24 – Application for registration where claims assigned to different assignees

121. This section deals with the case where one assignment document assigns different claims to different assignees. It ensures that individual assignees will still retain control over registration as it relates to the claim assigned to them. It therefore provides that the application for registration will be made only in relation to the claim assigned to that individual.
122. Subsection (2) provides for how various terms in the Act are to be read in cases where an assignment document of this nature is being or has been registered.

Section 25 – Registration

123. Subsection (1) provides that the Keeper must, on accepting an application, make up and maintain the appropriate entry in the RoA, which includes allocating a registration number (as defined in section 120(1) of the Act).
124. Subsection (2) provides that an assignment document is taken to be registered on the date and at the time originally entered for it. In other words, even if the registration of an assignment document is ineffective and becomes effective only once it is corrected (see section 27(3)), the date and time of registration of the assignment document will still be the date and time of the initial (i.e. ineffective) registration. However, it is the time of effective registration that is critical for transfer of the claim (see section 3).

Section 26 – Verification statement

125. Subsection (1) provides that the Keeper must, after registering an assignment document, send a statement to the assignee (i.e. the applicant) and the assignor verifying what has been done – but only if the application contains email addresses for them. If an email address has not been included for either the assignor or the assignee then there is no obligation on the Keeper to send that person a statement. Subsection (2) makes provision about the content of the statement.
126. As the application will have been made by the assignee, it can be assumed that they will provide their correct email address. However, the correct email address may not be given for the assignor. In circumstances where the assignor does not receive a verification statement from the Keeper (for example, because no email address was provided by the assignee or the email address provided was incorrect) the assignor may, under subsection (3), request a copy of the verification statement from the assignee. Under subsection (4), the assignee must supply the copy within 21 days.

Effective registration

Section 27 – Effective registration of assignment document

127. Subsection (1) sets out three cases in which a purported registration of an assignment document in the assignments record is ineffective, with the result that the claim will not transfer by reason of registration—
 - The first case is that the entry does not include a copy of the assignment document.

*These notes relate to the Moveable Transactions (Scotland)
Act 2023 (asp 3) which received Royal Assent on 13 June 2023*

- The second case is that the entry contains an inaccuracy which, as at the time of registration is “seriously misleading” (for which see section 28(1)).
 - The third case is that the assignment document is invalid, for example because it is a forgery.
128. As such, it is crucial that the assignment document is included in the entry (and is valid). If anything else is missing from the entry, the registration will still be effective unless the entry is considered seriously misleading by reason of the omission (i.e. the second case cited above applies, under which missing or incorrect text can lead to the entry being considered seriously misleading).
129. The effect of determining whether or not an entry is seriously misleading as at the time of registration is that a supervening inaccuracy (for example, the record being incorrectly restored after an IT malfunction) will not render ineffective any transfer of the claim which took place by reason of the initial effective registration.
130. Subsection (2) makes subsection (1) subject to section 28(1)(c) and (d), with the effect that a registration may be partially effective as regards the claim or as regards co-assignors or co-assignees.
131. Subsection (3) enables an ineffective registration to become effective by means of a correction. The effect of this provision, when read with section 29(5) of the Act, is that the registration becomes effective (and, subject to the other requirements of section 3 being met, the claim transfers) on the date of the correction.

Section 28 – Seriously misleading inaccuracies in the assignments record

132. This section makes provision as to whether an entry in the assignments record is seriously misleading as a result of an inaccuracy or inaccuracies in it. This applies for determining whether a registration is an effective registration for the purposes of section 27 of the Act. Section 29(3) of the Act provides for the meaning of “inaccuracy” in the assignments record.
133. Subsection (1)(a) of section 28 provides that an inaccuracy will be seriously misleading if any of subsections (2) to (5) apply or if, despite none of them applying, the inaccuracy or inaccuracies are such that a reasonable person would be seriously misled by the entry. In other words, if any of the examples in subsections (2) to (5) apply then the inaccuracy will be seriously misleading (whether or not any person was actually misled), but those examples are not exhaustive and there may be other inaccuracies that are found by the courts to be seriously misleading. Whether an inaccuracy is seriously misleading or not is to be determined objectively.
134. Subsection (1)(b) provides that any inaccuracy is to be disregarded to the extent that it appears in the assignment document but is not replicated elsewhere in the entry. The effect is that the person searching the record does not have to look at the document to determine whether the details in the record are seriously misleading (although a copy of the assignment document must still be part of the entry in the assignments record and can, for instance, be used as evidence to show that the entry itself was inaccurate).
135. Subsections (1)(c) and (d) deal with an inaccuracy that relates only to part of a claim, or to one co-assignor or co-assignee. These provisions have the effect that an inaccuracy in the assignments record may be seriously misleading in that respect only, and therefore the registration of the assignment document will be partly effective.
136. Subsections (2) and (3) focus on whether an entry contains an inaccuracy that prevents it being disclosed by a properly formatted search. Such an inaccuracy will generally be regarded as being seriously misleading. The point at which the search should be able to disclose an entry is by reference to the person’s name at the date the application for registration was made (which, due to the automated nature of the register, will almost

*These notes relate to the Moveable Transactions (Scotland)
Act 2023 (asp 3) which received Royal Assent on 13 June 2023*

always be virtually the same time as the time at which the entry for the assignment was made up in the RoA). This is necessary given that the Act does not require (as opposed to permit) the updating of an entry to correct a supervening inaccuracy such as a change of name by the assignor (for example, on marriage).

137. Subsection (2) has the effect that an entry is seriously misleading where the assignor (or co-assignor) is a person required by RoA rules to be identified in the assignments record by an identifying number (e.g. a company is likely to be required to be identified by their company number) and where, if a search of the record were to be carried out for that number using the search facility provided under section 33 of the Act, it would not disclose the entry. Given that a company's number should not change, this situation is only likely to arise where a typo has been made in completing the initial application form, or where the data has been transferred to the register incorrectly. However, it does not matter if the company's name is wrong as the expectation is that it should be searched for by reference to its number (which will not change in the way that its name might).
138. Subsection (3) has the effect that an entry is seriously misleading where the assignor (or co-assignor) is not a person required by RoA rules to be identified in the assignments record by an identifying number and where, if a search of the record were to be carried out for the assignor's proper name at the date the application for registration was made, or their name at that date together with their month and year of birth, it would not disclose the entry. This might arise where, for example, there has been an error in completing the application form (or in transferring that data onto the register) and the assignee's and assignor's names have been swapped around, or where a typo has been made in providing the assignor's name or date of birth, etc. Under subsection (3), an error will be seriously misleading if it means that the search function would not find the entry. As such, if the search function is set up to allow close matches (e.g. to show entries with the surname "Thompson" when a search is made for "Thomson") then a typo in a register entry may not lead to the entry being considered seriously misleading, but if the search function provides exact matches only then a typo of this nature in the information in the register will lead to the entry being considered seriously misleading.
139. Under subsection (3), it is both the assignor's name and their month and year of birth which matter. This means that even if the search function is programmed to be more forgiving of errors in names if the month and year of birth are also included in the search (and are correct), the entry will still be seriously misleading if the name is wrong to the extent that a search by name alone would not disclose the entry, because it ought to be possible to find the entry by the name alone. However, it is also not enough for the name to be correct; if it is correct but the month/year of birth is wrong, this will also be seriously misleading.
140. Subsection (4) has the effect that an entry is seriously misleading where the name of the assignee (or co-assignee) at the date of application is incorrectly reflected in such a way that a reasonable person would be seriously misled. This might arise in much the same way that an error in the assignor's name might arise. Because it will not be possible to search by assignee under section 33 (unless RoA Rules alter the position), the position is not determined by reference to whether a search result would return the entry. The application of the reasonable person test means that minor errors such as typos might be disregarded, particularly if other information is correct, but the position will be viewed as a whole in the circumstances of each case. However, the test applies by reference to the assignee's name at the date of the application. If their name has since changed, there is no obligation on them to update the register to reflect that.
141. Subsection (5) has the effect that an entry is seriously misleading where there is a requirement (by virtue of section 21(1)(g)) for the entry to specify the type of claim assigned but the claim is described as being of the wrong type, or left blank. For example, if the type of claim is a claim to payment of royalties but by mistake it is

instead entered as a claim to payment of rent or left unspecified, that would be seriously misleading.

142. Subsection (6) applies the rules in this section to circumstances where there are co-assignors and co-assignees.
143. Subsection (7) enables the Scottish Ministers to modify this section to make provision about what does, and what does not, make an entry seriously misleading and how that is to be determined.
144. Subsection (8) provides that the proper name of a person means the person's name in the form required by RoA Rules, which might also prescribe a hierarchy of document that could be used to evidence a proper name: for example, a passport, driving licence, or a birth certificate.

Corrections

Section 29 – Correction of the assignments record

145. Subsection (1) of this section provides that where a court determines that the assignments 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 assignment 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 assignments record.

Example 2

An entry is created in the assignments record for an assignment document granted by P Ltd in favour of Q Ltd. But in the application form for registration of the assignment, 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 assignments 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.

Searches and extracts

Section 33 – Searching the assignments 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 assignments record may be searched.
160. Subsection (2) sets out that only such searches in the assignments 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 assignments 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 assignments 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 assignments 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.

Request for information

Section 36 – Assignee’s duty to respond to request for information

168. This section provides for an entitled person (as defined) to be able to request information about an assignation from the person identified as the assignee in the assignations record. The request does not require to be in writing, but the response does.
169. Subsection (1) sets out that the information that may be requested is, first, whether a particular claim is assigned by the assignation document, second, whether the registered assignee has granted an assignation document which will further assign the claim and, third, whether a condition to which the assignation is subject has been satisfied. The right to request these types of information is of particular importance where a claim is assigned before it is held by the assignor (a “future” claim) or in the case of a conditional assignation.
170. Subject to subsection (8) (which enables the Scottish Ministers to modify this section so as to specify further entitled persons), by virtue of subsections (2) and (3), an entitled person is:
- (a) a person who may have a right to execute diligence against the claim (including, in the case of a charge for payment, where that right will only arise once the days of charge expire without payment),
 - (b) a person who has the consent of the registered assignor to make the request.
171. Subsection (4) gives the person named as assignee in the assignations record 21 days to respond. An exception to the obligation to respond applies where—
- it is clear that the registration of the assignation document is ineffective in relation to the claim being enquired about,
 - if the request relates to whether the claim is assigned by the assignation document, it is clear from the entry that the claim is not assigned by the document, or
 - the information has been given to the person within the last three months and it has not changed.
172. Subsection (5) allows the reasonable costs of responding to the request to be charged to the person making the request.
173. If the person of whom the request is made wishes to, they can apply to the court for either an exemption from complying (in whole or in part) or an extension. Subsection (6) gives the court power to grant either of these things. For example, depending on the circumstances, 21 days may be too short a period to assemble the necessary information.
174. If the entitled person does not receive a response, they can apply to the court in respect of that failure. Subsection (7) enables the court to order the person named as the assignee to comply with the request for information within 14 days or such other period as the

court specifies. Failure to comply with such an order would risk the person being held to be in contempt of court.

175. The effect of this section is that persons with a legitimate interest in a claim that may be the subject of an assignation document will be able to obtain information that might not otherwise be available by searching the RoA.

Example

D Ltd is a plumbing business. It assigns its “future” customer invoices to B Ltd, to be identified on schedules to be sent to B Ltd. Subsequently D Ltd becomes insolvent. Its liquidator requires to see whether certain invoices have been assigned and makes an information request under this section.

176. Where incorrect information is supplied under this section, there may be consequences under section 38.

Entitlement to compensation

Section 37 – Liability of Keeper

177. This section provides for the Keeper to compensate any person who has suffered a loss in consequence of a matter specified in subsection (1). Liability under subsection (1) is strict, in that the person does not have to show that the Keeper is at fault (as opposed to, say, arising from an unavoidable malfunction of the Keeper’s automated systems). However, subsection (2) limits the losses that can be recovered by excluding certain types of claim.
178. Subsection (3) provides more information about what is meant in subsection (1)(a) by “an inaccuracy which is attributable to the making up, maintenance or operation of the register”. It provides that an inaccuracy in information included in an entry in the assignments record when the entry is made up or corrected is not covered by subsection (1)(a) to the extent that the Keeper has been misled into making the inaccuracy and reasonably believed the information to be accurate. Subsection (4) provides that circumstances in which the Keeper is entitled to reasonably believe information to be accurate include if it is provided in connection with an application to which the entry relates, or by the court. As such, if the Keeper faithfully replicates the information provided in an application form and that information proves to be incorrect, that is not an inaccuracy for which the Keeper is liable, though the person who submitted the application may be liable under section 38. Subsection (4) is not exhaustive of the circumstances in which the Keeper is entitled to reasonably believe that information is accurate.

Section 38 – Liability of certain other persons

179. This section provides for certain persons to be liable, on fault being shown, for losses suffered by another person in consequence of a matter specified in subsection (1).
180. Subsection (1)(a) applies where a person suffers loss as a result of an inaccuracy in an entry in the assignments record. It applies where the person who made the application which led to the entry did not exercise reasonable care, or where the person notified the Keeper of an apparent inaccuracy without taking reasonable care.

Example

Bruce maliciously registers a forged assignation bearing to be granted by Claire in an effort to affect her credit rating. Claire has a claim against Bruce if she suffers loss.

181. Subsection (1)(b) applies where, as a result of a failure to take reasonable care, there is an inaccuracy in responding to an information request under section 36 of the Act.

Example

Information is supplied by Brian that a certain claim is not carried by an assignation from Andrew to Brian. But Brian does not take reasonable care, and the information is wrong. The person who receives the information then takes an assignation of the claim from Andrew, which will be invalid because it has already been transferred to Brian. That person will have a claim against Brian.

182. Subsection (1)(c) applies where a person has failed, without reasonable cause, to provide information under section 36 of the Act.

Example

Alan has granted an assignation document of certain claims to Bob. The Selkirk Bank is considering whether or not to lend money to Alan, and seeks information from Bob (with the consent of Alan) about which claims are assigned. Bob does not comply with the request, and the bank obtains a court order. Bob still does not comply, and the bank decides not to make the loan. Alan has a claim against Bob for loss suffered due to being unable to obtain a loan from the bank.

183. Subsection (2) imposes the same restrictions on liability as those set out in section 37(2) of the Act.

Rules

Section 39 – RoA Rules

184. This section sets out that the Scottish Ministers may, by regulations, make rules (RoA Rules) providing for the operation of the RoA. They must consult the Keeper before doing so.
185. The power to make RoA Rules includes the power to authorise the redaction of information or signatures from an entry in the RoA (paragraphs (d) and (e) of subsection (2)), as well as the power in subsection (2)(f) to make certain information unavailable to searchers (which might include an individual's date of birth). Subsection (1)(c) would also permit the rules to specify the specificity with which the search mechanism for the register is to operate – for example, whether it returns close results or only exact matches. If a correction application route is introduced under section 32, the rules could also make provision about the procedure in relation to such applications.