Moveable Transactions (Scotland) Bill

Fairer Scotland Duty Summary

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Summary of aims and expected outcomes of strategy, proposal, programme or policy

This Bill will implement the Scottish Law Commission (SLC) report on Moveable Transactions to make it easier for (particularly) small and medium size businesses to raise finance and to bring current law up to date and more into line with modern practice in other jurisdictions. Moveable transactions law enables businesses and individuals to use their moveable property (i.e. property other than land and buildings) to access finance by:

- Assigning (ie selling) debt owing to them, for example, invoices
- Granting security over corporeal moveable property (such as vehicles, equipment, whisky or livestock) and incorporeal moveable property specifically in the form of intellectual property

The Bill will require the creation of two new registers Register of Assignations and the Register of Statutory Pledges which will be developed and maintained by Registers of Scotland.

The Bill would make various types of commercial transactions more efficient, less expensive and less complicated that they current are. This would lead to greater access to finance for individuals and businesses in Scotland. The Bill would clarify the existing law, encouraging people and businesses in Scotland to use Scots law with confidence.

Although the Bill may be seen as predominantly benefiting businesses, the Bill will also apply to individuals so that they may benefit from its provisions to make it easier for individuals to use their moveable property to access finance, as is the case in many jurisdictions around the world, though this will be subject to specific consumer protections in the Bill.

It is important to point out that there is no obligation to use the provisions in the Bill. The current methods of raising finance will remain available, though these are inefficient and expensive.

Summary of evidence

As this is a very legally complex, technical Bill, no public consultation was carried out in addition to the extensive consultation already carried out by the SLC over an eight year period as part of their process in delivering the Report and draft Bill on Moveable Transactions. Scottish Government officials did, however; meet a range of key stakeholders with a strong interest in this Bill.

Overwhelming support for the reforms was expressed by the Federation of Small Businesses in Scotland, the Law Society of Scotland (and, separately, several firms of solicitors who work in these areas of law), R3 (the Association of Business Recovery Professionals which is an organisation for insolvency, restructuring and turnaround specialists in the UK) and the Committee of Scottish Bankers. Views were also sought from UK Finance (which now incorporates the Asset Based Finance Association) and Citizens Advice Scotland (CAS).

During the last session of the Scottish Parliament, the Economy, Energy and Fair Work Committee sought views on the Moveable Transactions (Scotland) Bill Moveable Transactions - Parliamentary Business : Scottish Parliament

CAS called for consumers to be removed from the provisions of the Bill. They felt that the provisions of the Bill would create high APR and unfair enforcement mechanisms by unscrupulous creditors which would have a big impact on their clients. Concerns were all raised about the fees to be charged by Registers of Scotland for searches in the Register of Assignations.

CAS initially therefore expressed a preference for the Bill to apply to businesses only, excluding individuals and consumers.[1]

Summary of assessment findings

The Bill will not place consumer credit debtors in a worse position as CAS has suggested. It will lead to more options for mainstream lenders who are in fact likely to charge lower interest rates if they have the comfort of a security fixed on the asset which provides the collateral for a loan. Moreover, restricting the effect of the Bill to businesses only would mean that private individuals would not benefit from the new possibility of being able to use their moveable assets as collateral in order to raise finance.

In addition, there are numerous protections for individuals under the Bill. For example, limits are placed upon the household items which an individual can make subject to a statutory pledge. In addition, the rules about enforcement of a pledge are more stringent where an individual is the provider. For example, a court order

[1] EEFW-S5-20-MT-12-CAS.pdf (parliament.scot)

will usually be required in a way it would not otherwise and the enforcement mechanism of appropriation is not available.

There are also special protections for individuals who are interacting with the statutory pledge regime as a third party.

The provisions of the Bill will not affect the existing Consumer Credit Act 1974 as consumer protection is reserved to the Westminster Parliament.

The Law Society of Scotland[2] and the judges of the Court of Session[3] both indicated, in written evidence to the Economy, Energy and Fair Work Committee in the last Parliament, that they thought that the consumer protections in the Bill were adequate.

In addition, academics at the University of Aberdeen posed the question: "Why should a consumer not be able to grant a non-possessory security over their moveable assets? They can grant non-possessory security over land subject to various protections, and the same should apply to security over moveable property. The SLC protections appear adequate to justify allowing consumers to grant statutory pledges. The statutory pledge may be usefully created by consumers to enable them to access finance (on better terms) than is currently the case. This will enable them to continue to use and enjoy the property in a way that is not possible under the current law.".[4]

To remove individuals from the provisions of the Bill would inadvertently capture sole traders, an important group that could potentially benefit from the Bill.

CAS have now indicated (in an email to the Scottish Government) that "Our conclusion is that while the issues we raised in general are valid based on experience and knowledge of how the consumer credit market works in practice, we do not currently have a strong enough evidence base to effectively advance our position. We also note the strong support and corporate business case for the reforms. We note the comments by the Senators of the College of Justice and will monitor the effects of the proposals on our clients once passed in law. The current development of the consumer duty applicable to creditors by the Financial Conduct Authority should ameliorate many of our concerns at the product design stage. We will address any consumer harms engendered by reference to appropriate legislative and regulatory channels as occasion demands."

We are confident that high usage of the registers will drive the costs down to keep search and registration fees to a minimum as estimated in the SLC Business and Regulatory Impact Assessment.

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[2] EEFW-S5-20-MT-09-LawSocietyScotland.pdf (parliament.scot)
[3] EEFW-S5-20-MT-08-SenatorsCollegeJustice.pdf (parliament.scot)
[4] EEFW-S5-20-MT-03-CentreScotsLaw-UniversityAberdeen.pdf (parliament.scot)

Which changes, if any, are being implemented? If no changes are being made, please explain why.

No changes are being made to the Bill on the basis that there was no strong and compelling evidence presented to demonstrate the impact and justify that amendments were required.

It is important to emphasise again is that this is not something being imposed and the current methods of raising finance will remain.

Detailed responses to CAS's concerns and evidence provided to the Committee appears to have provided CAS with some comfort and CAS have stated that the current development of the consumer duty applicable to creditors by the Financial Conduct Authority should further ameliorate many of their concerns.

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