



Scottish Law Commission

promoting law reform

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ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
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IMPROVING ACCESS TO FINANCE IN SCOTLAND REPORT ON MOVEABLE TRANSACTIONS

The Scottish Law Commission today publishes its Report recommending reform of moveable transactions law in Scotland.

The Report is the culmination of one of the most complex projects ever undertaken by the Commission.

Moveable transactions law enables businesses and individuals to use their moveable property (i.e. property other than land and buildings) to access finance. It is a crucial part of commercial law. For example,

- A company can sell to a bank its customer invoices (claims to payment) by means of an assignation and thus obtain immediate finance.
- A business may have tangible assets such as equipment and vehicles. It may also have intangible assets such as patents and other intellectual property. These assets can be used to secure a loan, rather like a house being used for mortgage finance.

Current Scottish law is badly outdated, unclear, and unduly restrictive. It inhibits economic growth by making it harder for entrepreneurs to get the finance they need.

For example, Scotland is home to many intellectual property-rich enterprises in the food and drink, oil and gas, renewable technologies, IT, life sciences and creative sectors. It is difficult under the current law for such enterprises to raise working capital by using their intellectual property as security for a loan.

Reform is long overdue. The Commission has carried out extensive research. It has consulted widely, and its proposed reforms have attracted strong support.

The main recommendations are:

- Claims to payment can transfer by registration of the assignation in a new Register of Assignations,
- Such claims can continue to transfer by intimation of an assignation, but now with clear modern rules on electronic intimation, and
- A new security (a “statutory pledge”) can be created by registration of the pledge in a new Register of Statutory Pledges, without the need for delivery or transfer of the asset.

Dr Andrew Steven, who has been the lead Commissioner on this project, said:

“Modern and effective moveable transactions laws have been shown internationally to have significant economic benefits for countries which adopt them. Current Scottish law here is woefully inadequate. It rests on Victorian legislation and disparate court decisions. There are many gaps and uncertainties. Scotland has fallen considerably behind modern international standards in this area. Our recommendations provide for a new statutory scheme fit for the needs of business in Scotland in the twenty-first century.”

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lord Pentland, a Court of Session judge. The other Commissioners are Caroline Drummond, David Johnston QC, Professor Hector L MacQueen, and Dr Andrew J M Steven. The Chief Executive is Malcolm McMillan.
2. A four-page summary which will accompany the Report is available in advance on request.
3. Further information can be obtained by contacting Andy Crawley, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131; email info@scotlawcom.gsi.gov.uk).
4. The Report will be available on our website at <https://www.scotlawcom.gov.uk> as early as possible on 19 December 2017.