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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Delegated powers provisions in the Moveable Transactions (Scotland) Bill at Stage 1



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Introduction

1. At its meetings on 20 September and 25 October 2022, the Delegated Powers and Law Reform Committee considered the delegated powers contained in the [Moveable Transactions \(Scotland\) Bill](#) (“the Bill”) at Stage 1.
2. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders. In this instance, the lead committee is also the Delegated Powers and Law Reform Committee as the Bill was determined as a 'Scottish Law Commission Bill' under Rule 9.17A of the [Scottish Parliament's Standing Orders](#).

Overview of the Bill

3. The Scottish Government Bill was introduced by the Cabinet Secretary for Justice and Veterans, Keith Brown MSP on 25 May 2022.
4. The Scottish Government's [Policy Memorandum](#) states that the purpose of the Bill is to modernise the law of Scotland in relation to transactions concerning moveable property (referred to as the law of moveable transactions). The Bill seeks to make it easier for businesses and consumers to raise finance using their moveable property.
5. It is further stated in the Policy Memorandum that “at present Scottish law in this area is badly outdated, unduly restrictive and unfit to meet the needs of modern Scottish commerce...the Bill, if implemented, will make various types of commercial transactions more efficient, less expensive and less complicated than they currently are”.

Delegated Powers

6. The Bill confers 27 powers to make subordinate legislation on the Scottish Ministers. The Scottish Government has prepared a [Delegated Powers Memorandum](#) ("DPM") which sets out the reasoning for taking the delegated powers in the Bill and the parliamentary scrutiny procedure that has been chosen.
7. At its meeting on 8 March 2022, the Committee considered the delegated powers in the Bill and agreed that it was content with the following powers:
 - Section 8(3)(d) – intimation of the assignment of a claim
 - Section 26(7) – seriously misleading inaccuracies in the assignments record
 - Section 30(1) - power to make provision about applications for corrections
 - Section 37(1) – Rules
 - Section 44(3) – Competence of creating a statutory pledge over certain kinds of property
 - Section 47(4) – Creation of a statutory pledge: insolvency
 - Section 48(5) – Providers who are individuals
 - Section 49(4) – Property encumbered by statutory pledge: transfer by provider
 - Section 52(3) – Acquisition in good faith for personal, domestic or household purposes
 - Section 63(1) – Pledge enforcement notice - Power to prescribe pledge enforcement notice form
 - Section 72(9) – Appropriation with prior agreement – Power to (1) modify section 72 to specify further persons to be served a notice and exceptions to this requirement and (2) require a notice to be in a prescribed form
 - Section 73(7) – Appropriation without prior agreement – Power to (1) modify section 73 to specify further persons to be served a notice and exceptions to this requirement and (2) require a notice to be in a prescribed form
 - Section 92(8) – Seriously misleading inaccuracies in the statutory pledges record – Power to modify section 92 to make further provision regarding seriously misleading entries
 - Section 96(4)(a) – Demand that application for correction be made under section 94 – Power to prescribe a form
 - Section 109(1) – Power to make rules providing for the operation of the Register of Statutory Pledges
 - Section 115(1) – Power to make ancillary provision

- Section 116(3) – Interpretation of Act - Power to modify definitions
8. The Committee, however, agreed to write to the Scottish Government to raise questions in relation to the following delegated powers:
- Section 3(8) – Transfer of claims
 - Section 4(7) – Assignment of claims: insolvency
 - Section 34(8) – Assignee’s duty to respond to request for information
 - Section 53(8) – Acquisition in good faith of motor vehicles
 - Section 63(4) – Pledge enforcement notice - Power to modify section 63 to specify further persons to be served a pledge enforcement notice and set out exceptions to this requirement
 - Section 65(8) – Secured creditor’s right to take possession of, or steps in relation to, corporeal property - Power to specify additional authorised persons
 - Section 75(10) – Application of proceeds from enforcement of pledge – Power to modify section 75 so as to specify further persons to whom must be issued a written statement
 - Section 93(1) – Power of Scottish Ministers as regards duration of statutory pledge
 - Section 105(8) – Secured creditor’s duty to respond to request for information – Power to modify section 105 so as to specify further persons who are entitled persons for the purposes of section 105
9. The Committee considered the Scottish Government’s response at its meeting on 25 October 2022.
10. A copy of all correspondence can be found in the **Annex**.
11. The Committee was content with the Scottish Government's response to all but one of the delegated powers in the Bill. The remaining delegated power in section 53(8) is covered in more detail below.

Section 53(8) – Acquisition in good faith of motor vehicles

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative or negative depending on how exercised

Provisions

12. Section 53 provides protections to persons who have acquired a motor vehicle in good faith that is encumbered property. Section 53(1) sets out the conditions that require to be met for the acquired motor vehicle not to be encumbered property, including there is to be a sale agreement, the vehicle is encumbered property under

a statutory pledge, it is not purchased for business purposes and the purchaser has acted in good faith.

13. Section 53(8) confers power on Scottish Ministers, by regulations, to specify classes of motor vehicle that subsections (1) - (7) do not apply to. Such regulations would be subject to the negative procedure. Regulations made under section 53(8) may also amend sections 51 and 52 to provide that either, or both of those sections, do not apply to the specified classes of motor vehicles. If regulations made under section 53(8) amend these sections, then they would be subject to the affirmative procedure instead.

Committee consideration

14. The Committee asked the Scottish Government for an explanation as to why the negative procedure is considered appropriate when specifying classes of motor vehicle to which subsections (1) - (7) do not apply as this explanation was absent from the DPM. Further, given this is described as a protection in the DPM, whether affirmative procedure may be more appropriate.
15. In its response, Scottish Government stated that Scottish Ministers should have the power to specify classes of motor vehicle which are not to benefit from the rule in Section 53. The rationale being that the Register of Statutory Pledges might in the future become so easy to check electronically that certain classes of acquirer should be expected to check it. The withdrawal of the protection of section 53, such that it does not apply to specified classes of motor vehicle, may depend on the extent to which the registration of vehicle identification numbers becomes compulsory under the rules of procedure which will be brought forward for the Register of Statutory Pledges. It is thought this would only happen if the registration of vehicle identification numbers were to become commonplace.
16. The Scottish Government further stated that the power will only be used rarely and that in circumstances where it is very easy to check the register then it would not be controversial if the protection of section 53 might be withdrawn from some acquirers. An example is given in respect of this potentially applying to commercial vehicles.
17. The Scottish Government advised that as the power would be exercised in such circumstances and would not involve amending primary legislation that the negative procedure was considered appropriate. Particular reference is given to the consideration of the use of parliamentary time. Nevertheless, the Scottish Government advised it would consider amending the procedure if the Committee considered the affirmative procedure to be appropriate.
18. While the Committee welcomes the further explanation as to why the negative procedure is considered appropriate in this instance, it considered that the power will see the withdrawal of protection available to certain purchasers which may have a significant impact on the financial position of those individuals.
19. The Committee accepts that the power will only be used rarely due to it being linked to whether the registration of vehicle identification numbers were to become commonplace. Nevertheless, the power is still available. The Committee considers that the affirmative procedure would ensure that the withdrawal of this protection and the circumstances in which it is intended to be used could be fully considered

and scrutinised at the highest level.

20. **The Committee therefore recommends that the Scottish Government seek to amend the Bill at Stage 2 to make regulations under section 53(8) subject to the affirmative procedure such that there can be enhanced scrutiny of and proposal to specify the classes of motor vehicle that subsections (1) to (7) do not apply to.**

Annex

On 23 September 2022, the Scottish Government was asked:

The Delegated Powers and Law Reform Committee considered the delegated powers in the above Bill at its meeting on 20 September 2022 and seeks an explanation of the following matters:

Section 3(8) - Transfer of claims

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative procedure

Paragraph 19 of the Delegated Powers Memorandum (DPM) outlines that the vast majority of assignments will be likely to be effected by registration in the Register of Assignations rather than by intimation. However, the DPM also highlights that the combined system of intimation or registration “is intended to provide assignees with flexibility and a choice as to how they give effect to the assignment of a claim.”.

The Committee would therefore be grateful for a further explanation of:

- **why this power is considered necessary to be delegated as it could be used to exclude claims from being able to be transferred by way of intimation, and therefore reduce, or remove the flexibility that the Bill currently provides for.**

Section 4(7) - assignment of claims: insolvency

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative procedure

The DPM highlights in paragraph 26 that the Scottish Law Commission (SLC) considered that there were “many different types of insolvency and similar processes in Scotland, and elsewhere”. So, while the Bill provides for a comprehensive list of insolvency processes, the SLC considered that it was difficult to decide on exactly what processes should be subject to the rules relating to an assignor’s insolvency was not easy and agreed that there should be a power to add further cases such as equivalent processes in other jurisdictions.

The Committee notes that the Scottish Government consider the power to be narrow in scope and may be required to be used at relatively infrequent intervals.

While the Committee acknowledges that it might be considered appropriate for a power to enable equivalent processes from other jurisdictions to be subject to these provisions, it is a power to modify subsections (4), (5) and (6). It therefore allows amendment to specifying when the assignment is ineffective in relation to the claim, what circumstances that applies to and what constitutes insolvency, which may impact on the financial position of assignors and debtors.

The Committee would therefore be grateful for a further explanation of:

- **why these powers are considered necessary to be delegated as they appear to be wide and could be used to make significant modifications to the Bill.**

Section 53(8) – Acquisition in good faith of motor vehicles

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative or negative depending on how exercised

The Committee notes that the effect of specifying classes of motor vehicles to which subsections (1)-(7) of section 53 do not apply may remove a protection available for a purchaser to receive property unencumbered where it has been purchased in good faith, which may have a significant impact on the financial position of individuals.

Consequently, while the Committee acknowledges from paragraph 94 of the DPM that the Scottish Government considers that negative procedure should apply, the DPM does not provide an explanation for the choice of the negative procedure in this case.

The Committee would therefore be grateful for an explanation of:

- **why, in the absence of an explanation in the DPM, the negative procedure is considered appropriate when specifying classes of motor vehicle to which subsections (1) - (7) do not apply, and whether affirmative procedure may be more appropriate.**

Section 93(1) – Power of Scottish Ministers as regards duration of statutory pledge

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative procedure

The Committee notes the SLC's view outlined in paragraph 141 of the DPM that registration in the statutory pledges record "in principle should be for an indefinite period, as is the case for standard securities and floating charges." The SLC did suggest that "the legislation should be future-proofed since there may come a time when the statutory pledges record needs to be decluttered and so proposed that the Scottish Ministers should have power to set a period after which a statutory pledge would be extinguished, unless the entry for it is renewed."

Paragraph 142 of the DPM states that the power could be used in the event that a large number of pledges continue to appear in the record many years after registration but are believed to have been extinguished or restricted off-register. The power only affects entries in the statutory pledges record and not the archive record and the Scottish Government state that similar powers are found in comparator legislation in other jurisdictions.

The DPM states at paragraph 140 that the SLC's consultees "mostly opposed the suggestion that registration should lapse after a certain period unless renewed."

The Committee would therefore be grateful to know:

- **whether, given the views of the SLC’s consultees and the impact this power could have if exercised, there should be a consultation requirement, not only with the Keeper, but also with other stakeholders, before this power is exercised.**

Finally, the delegated powers in sections 34(8), 63(4), 65(8), 75(10) and 105(8) of the Bill amend various lists for different purposes. For each of these powers to be exercised the DPM highlights a number of people, or groups of people, that the legislation could be amended to add to those lists.

The Committee would therefore be grateful for a further explanation as to:

Section 34(8) - Assignee’s duty to respond to request for information

- **why, if there are further categories of person able to be identified at this time, such as insolvency officials and executors, they are not specified on the face of the Bill;**

Section 63(4) – Pledge enforcement notice - Power to modify section 63 to specify further persons to be served a pledge enforcement notice and set out exceptions to this requirement

- **why, if there are further categories of person able to be identified at this time, such as insolvency officials, they are not specified on the face of the Bill;**

Section 65(8) – Secured creditor’s right to take possession of, or steps in relation to, corporeal property - Power to specify additional authorised persons

- **why, if there are further categories of person able to be identified at this time, such as insolvency practitioners with a relevant interest, they are not specified on the face of the Bill;**

Section 75(10) – Application of proceeds from enforcement of pledge – Power to modify section 75 so as to specify further persons to whom must be issued a written statement

- **why, if there are further categories of person able to be identified at this time, such as insolvency officials, they are not specified on the face of the Bill; and**

Section 105(8) – Secured creditor’s duty to respond to request for information – Power to modify section 105 so as to specify further persons who are entitled persons for the purposes of section 105

- **why, if there are further categories of person identified at this time such as insolvency practitioners with a relevant interest, they are not provided for on the face of the Bill.**

I would be grateful if you could please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 12 noon on **Thursday 6 October 2022**.

On 6 October 2022, the Scottish Government responded:

Thank you for your letter of 23 September to Alison Irvine seeking an explanation of the following matters in relation to the Bill. On behalf of the Scottish Government, I am pleased to respond as follows.

Section 3(8) - Transfer of claims

The Committee has asked for a further explanation of why this power is considered necessary to be delegated as it could be used to exclude claims from being able to be transferred by way of intimation, and therefore reduce, or remove, the flexibility that the Bill currently provides for.

Paragraph 18 of the Delegated Powers Memorandum (DPM) states that “Assignations in favour of financiers will almost invariably be registered because this will be simpler, easier and cheaper than intimations to multiple debtors. Intimation will also not be an option for future claims.”

Paragraph 19 notes that “It may therefore be that the vast majority of assignations will be effected by registration in the Register of Assignations and intimation may become increasingly rare.”

The DPM also acknowledged, however, that some creditors will prefer to continue to assign by means of intimation since they will not want to publicise the assignation of a debt in a public register and would prefer the confidentiality offered by intimation.

The Scottish Law Commission (SLC) noted that, while financial institutions would know about registration, those involved in one-off transactions may not. For these reasons, the Scottish Government decided to introduce a combined system of intimation or registration in order to provide assignees with flexibility and a choice as to how they give effect to the assignation of a claim.

Paragraph 19 goes on to explain, however, that “the existence of the possibility of assignation by means of intimation means that third parties cannot rely on a search of the register since this will not disclose an assignation which has been effected by intimation. There may be support in the future for removing the option of intimation as this would mean that all assignations would be registered and a third party would be able to rely on a search of the register.”

As this demonstrates, the benefits of flexibility provided by a dual system which allows intimation or registration have to be weighed against the benefits of clarity of a system which allows the register to serve as a comprehensive and authoritative record. At the moment, the benefits of flexibility are considered to carry greater weight. However, that balance may well shift over time in relation to certain types of claim and if that happens then it is considered appropriate that it should be possible to finesse the rules in relation to particular types of claim without the need for further primary legislation.

Section 3(8) therefore gives Scottish Ministers the option in the future of prescribing certain types of claim for which registration would be compulsory to transfer the claim. The SLC noted that in some jurisdictions, assignation of invoices that have yet to be paid must be registered to have third party effect. They also observed that if the registration of what are called “trade receivables” in England (the equivalent of “claims” under the Bill) was to become required south of the border then there may be support for this to be the position in Scotland as well.

It is not thought likely that use of the power in section 3(8) would even be contemplated for some time. This would be in order to allow usage of the Register of Assignations to become understood and well-used as a means of raising finance on the basis of debts which can be sold.

Given feedback from potential users of the Register, it is thought to be unlikely that intimation will cease to be used in all circumstances. It is not anticipated that the power in section 3(8) would remove the option of intimation entirely: it would operate only in the case of certain types of claim which will be specified in regulations (subject to the affirmative procedure). The kinds of claim which may require to be so prescribed may become obvious as time passes as the law in relation to assignation by intimation or registration is better understood and as practice in other modern jurisdictions develops. This would have the effect that searchers will know that, if certain kinds of claims can only be transferred by registration of the assignation, then they can rely on a search of the register if they are only interested in whether a party has assigned a particular kind of claim.

Section 4(7) - assignation of claims: insolvency

The Committee has asked for a further explanation of why these powers are considered necessary to be delegated as they appear to be wide and could be used to make significant modifications to the Bill.

Paragraph 26 of the DPM indicated that the SLC noted that there are many different types of insolvency and similar processes both within Scotland and elsewhere, with variations within some of the processes. The Commission commented that deciding on exactly which processes should be subject to the rules relating to an assignor's insolvency was not easy. Although section 4(6) of the introduced Bill provides a relatively comprehensive list of Scottish insolvency processes, the Commission believed, and the Scottish Government agrees, that Scottish Ministers should have the power to amend the list of provisions by secondary legislation (for example, it may be necessary to clarify what constitutes an equivalent process in other jurisdictions). Further, it should be noted that there is an existing power in section 223 of the Bankruptcy (Scotland) Act 2016 which allows insolvency disqualification provisions in any enactment to be reduced or extended. However, the Bill would not be able to benefit from that power, as this section is not about disqualification provisions. It is considered though that there should be a similar ability to extend or remove provisions in response to changes in the law or shifting views/practices in relation to different insolvency measures. As such, it is viewed as appropriate that there should be an ability to modify what is defined as "insolvency" for the purposes of this section.

The section also allows for the modification of subsections (4) and (5). As the Committee notes, that would allow adjustment of when the assignation is ineffective in relation to a claim and what circumstances that applies to. However, the SLC felt, and the Scottish Government agreed, that it is necessary to be able to specify further circumstances by reference to which an assignation is to be ineffective as regards a claim. It may also be necessary to modify the existing provision that is made in this regard. This power is required in particular so that if a further insolvency process is specified under subsection (6), the existing rules about ineffective assignments are capable of accommodating that new process appropriately.

The power in section 4(7) may require to be used at relatively infrequent intervals, but the Scottish Government agrees with the Committee's assessment that the power could be used to make relatively significant modifications to the Bill, as the regulations may impact on the financial position of assignors and debtors. But it is essential that the Bill properly and accurately identifies and applies applicable insolvency processes, some of which may not be in existence at present and may replace existing procedures. However, for all of these reasons it was considered that regulations under section 4(7) should be subject to

affirmative parliamentary procedure so that any changes which need to be made to the Bill can be fully and effectively scrutinised.

Section 53(8) – Acquisition in good faith of motor vehicles

The Committee has asked for an explanation of why, in the absence of an explanation in the Delegated Powers Memorandum, the negative procedure is considered appropriate when specifying classes of motor vehicle to which subsections (1) - (7) do not apply, and whether affirmative procedure may be more appropriate.

The SLC suggested, and the Scottish Government agrees, that the Scottish Ministers should have the power to specify classes of motor vehicle which are not to benefit from the rule in section 53. The rationale for this was that the Register of Statutory Pledges might in the future become so easy to check electronically that certain classes of acquirer should be expected to check it. In New Zealand, for example, good faith private purchasers from licensed motor dealerships are protected, but purchasers from private individuals are expected to check the register.

The withdrawal of the protection of section 53 may, however, depend on the extent to which the registration of vehicle identification numbers becomes compulsory under the rules of procedure which will be brought forward for the Register of Statutory Pledges.

It is thought that this would only happen if the registration of vehicle identification numbers were to become commonplace. The power will therefore be used only rarely and the Scottish Government believed that in circumstances where it became very easy to check the register then it would not be a matter of controversy if the protection of section 53 might be withdrawn from some acquirers (for example, it could be withdrawn in relation to commercial vehicles). Given that the power would be being exercised in such circumstances and would also not involve an amendment to primary legislation, it was considered that the negative procedure was appropriate in terms of not infringing unduly upon valuable parliamentary time. However, if the Committee nevertheless feels, in spite of this explanation, that the affirmative procedure would be an appropriate use of the Committee's time then the Government is happy to consider amending this accordingly.

Section 93(1) – Power of Scottish Ministers as regards duration of statutory pledge

The Committee has asked to know whether, given the views of the SLC's consultees and the impact this power could have if exercised, there should be a consultation requirement, not only with the Keeper, but also with other stakeholders, before this power is exercised.

It is hoped (and UK Finance have suggested this to the Scottish Government) that, although it will not be compulsory to register assignments, restrictions or discharges and these will take place legally off-register, commercial pressures will lead to the register being corrected to reflect the true legal position. A subsequent lender on the basis of a specific asset is likely to demand that previous, extinguished pledges which relate to that asset are removed from the register so that their pledge will have prior ranking in the event of default. This will have the effect of decluttering the register.

It is anticipated that, if the power in section 93(1) is proposed to be used, the period set under it would be many years after registration where there is little likelihood that the statutory pledge is outstanding. Paragraph 143 of the DPM noted that the power would allow for the creation of an application route which would allow the secured creditor to

renew the pledge and thus avoid its removal from the register if the entry continues to be relevant. Renewal could be on more than one occasion.

The party with the most interest in the register being decluttered is the Keeper of the Registers, particularly as she will be aware of whether the volume of entries is actually having a detrimental and slowing effect on searches in the register. While secured creditors under pledges will of course have an interest in ensuring that those pledges remain valid, any renewal route would be similarly straightforward to the process for registering the pledge initially (i.e. it would be online and automatic). Further, as noted above, it is anticipated that the need for pledges to be renewed would be limited given that it is expected that any duration period would be sufficiently long that the removal process would almost exclusively affect pledges which were no longer in existence anyway.

Given the intention to permit renewal of an entry in the register, and the likelihood that the power in section 93(1) will be used only in relation to pledges which were recorded many years previously, the Scottish Government does not believe that it is necessary to require consultation of stakeholders apart from the Keeper of the Registers. This could lead to consultation being required where no parties were particularly interested due to the detail of the proposal. However, the Scottish Government would of course consult as appropriate if it was considered that the detail of what was being proposed was such that more extensive consultation was necessary. It should also be noted that any regulations made under this power would be subject to the affirmative procedure and would therefore be subject to full scrutiny.

Section 34(8) - Assignee's duty to respond to request for information

Section 63(4) – Pledge enforcement notice

Section 65(8) – Secured creditor's right to take possession of, or steps in relation to, corporeal property

Section 75(10) – Application of proceeds from enforcement of pledge

Section 105(8) – Secured creditor's duty to respond to request for information

The Committee has asked, in relation to all of these provisions, why, if there are further categories of person able to be identified at this time, such as insolvency officials or executors, they are not specified on the face of the Bill.

While broad categories have been identified as possible examples, it is not expected to be as straightforward as simply specifying “insolvency practitioners”, etc. For example, section 34 obliges an assignee to comply with a request made under that section. As noted in the DPM, it is not considered that there should be a general public right to information about assignments. Subsection (2) of that section therefore confines the right to make a request to those who have a direct interest in the claim or who have been authorised by the assignor.

In a similar fashion, it is anticipated that it would be necessary to try to confine insolvency practitioners to those with a relevant interest. It will therefore be necessary to consult with insolvency practitioners or appropriate bodies to ensure that the concept of a relevant interest is correctly captured.

It was not possible in advance of introduction of the Bill to ensure that all relevant interests had been identified and properly defined for the purposes of these specific provisions. In

contrast, consulting the necessary parties once the Bill has been passed will allow consultees to benefit from the evidence heard during the Bill's passage and awareness of any amendments made to it. This will allow them to more reliably assess when they expect to have a relevant interest that would justify inclusion under this provision, based on a greater understanding of the role they are likely to have in relation to this new law.

It is therefore proposed that one set of regulations will be brought forward under these provisions after the Bill is enacted. These regulations will set out all of the categories of insolvency practitioners, authorised or entitled persons, etc, once full consideration has been given to the correct definitions of such persons and the proposed changes have been consulted on to the extent required.

All of the provisions which the Committee has identified contain a power to modify the provision in the primary legislation to which it relates and will therefore be subject to affirmative procedure. The categories of person will appear in the text of the primary legislation, before the new registers and the legislation becomes operational, meaning that there will be a comprehensive list on the face of the Act and there will be no difficulty for users in seeing at a glance who is covered by the provision. The regulations will also have the opportunity to be scrutinised fully by the Parliament.

Given that the proposed new registers which will be the main method of implementation of the reforms in the Bill will not come into operation until the summer of 2024, it is considered that there should be plenty of time for the work in ensuring that insolvency practitioners and others are properly identified and defined in modifications to these provisions. After those regulations have been brought into force, it is expected that these powers will be used but rarely and then only in response to the operation of the Act in practice as time passes.

We hope that these explanations will be useful to the Committee. Please do not hesitate to contact me if you require further information.

Hamish Goodall, Scottish Government Civil Law and Legal System Division

