

## PARLIAMENTARY BUREAU

### REFERRAL OF A BILL AT STAGE 1: MOVEABLE TRANSACTIONS (SCOTLAND) BILL

#### Introduction

1. The Moveable Transactions (Scotland) Bill was introduced in the Parliament on 25 May 2022 by the Cabinet Secretary for Justice, Keith Brown MSP.

#### Discussion

2. The Moveable Transactions (Scotland) Bill is based on a Scottish Law Commission report (*Report on Moveable Transactions (Scot Law Com No 249)*<sup>1</sup>). The Bill reforms the law in relation to two elements of moveable property: the assignation of claims (the transference of a claim from one person to another) and the law of pledges (a type of fixed security which is taken over moveable property).
3. The Bill falls within the remit of the following committees:

Delegated Powers and Law Reform Committee (DPLRC)

The Bill is considered to meet the definition of a Scottish Law Commission Bill set out in Rule 9.17A (further detail on this is provided in the Annex). All such Bills fall within the remit of the DPLRC, which is set out in Rule 6.11.1 of Standing orders (paragraph (g) of that Rule refers specifically to Scottish Law Commission (SLC) Bills).

Economy and Fair Work Committee

The remit of the Economy and Fair Work Committee is to consider and report on matters relating to the economy falling within the responsibility of the Cabinet Secretary for Finance and the Economy. A key purpose of the reforms in the Bill is to make it easier for businesses to access finance and the Session 5 Economy, Energy and Fair Work Committee took evidence on the subject matter of the SLC report. The remit of this committee is also engaged.

4. The Bill is considered to meet the criteria set out in Rule 9.17A and the Presiding Officer's determination under Rule 9.17A(b). Therefore, it is recommended that the DPLRC be designated as lead committee.

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1. <sup>1</sup> <https://www.scotlawcom.gov.uk/law-reform/law-reform-projects/completed-projects/security-over-corporeal-and-incorporeal-moveable-property/>

5. We are not aware of any interest on the part of the Economy and Fair Work Committee in being formally designated as a secondary committee. Lack of formal designation does not, of course, prevent any committee from considering the Bill if it subsequently decides to do so.

### **Recommendation**

6. The Bureau is invited to consider recommending to the Parliament by motion that it agrees, under Rule 9.6.1, to designate the Delegated Powers and Law Reform Committee as the lead committee for consideration of the Moveable Transactions (Scotland) Bill at Stage 1.

**Parliamentary Business Team  
June 2022**

### **DRAFT MOTION**

**Designation of Lead Committee:** That the Parliament agrees that the Delegated Powers and Law Reform Committee be designated as the lead committee in consideration of the Moveable Transactions (Scotland) Bill at stage 1.

## Annex

**ASSESSMENT OF THE BILL AGAINST STANDING ORDERS RULE 9.17A AND THE CRITERIA AS DETERMINED BY THE PRESIDING OFFICER FOR QUALIFICATION AS A “SCOTTISH LAW COMMISSION BILL”**

**(a) The Bill must implement all or part of a report of the Scottish Law Commission**

The Bill will implement recommendations contained in the report entitled *Report on Moveable Transactions* (Scot Law Com No 249) which was published on 19 December 2017.

The Bill includes various clarifications and stylistic changes as well as various relatively minor policy adjustments. Due to the level of detail included in the SLC’s recommendations, a small number of these changes constitute departures from the SLC’s recommendations, but the Scottish Government considers that none of these changes are of a level that could be classified as significant.

The most significant difference is the Bill’s treatment of financial instruments and financial collateral arrangements. The reason for this departure from the SLC recommendations is that the Scottish Government has concluded that to make provision to this effect would be outwith the legislative competence of the Scottish Parliament.

The Standing Orders require an SLC Bill to implement all or part of a report. As such, it is considered that this requirement is met.

**(b) The Bill must comply with such criteria as are determined by the Presiding Officer**

The current determination of the Presiding Officer was published in the Scottish Parliament’s Business Bulletin on 24 March 2021. The key elements of this are addressed in turn below.

*A Bill, the primary purpose of which is to (a) simplify, modernise or improve the law to—*

*(i) ensure it is fit for purpose, (ii) respond to developments, or address deficiencies, in the common law, or (iii) respond to other developments in the law*

It is understood that the primary purpose of the Bill is to modernise and improve the law relating to transactions concerning moveable property to ensure it is fit for purpose and to address deficiencies in the current law. As set out in more detail in the SLC report and in the Policy Memorandum, the current law in this area is considered antiquated (dating from 1862) and is no longer considered fit for purpose. Two new registers are being created that will be operated by Registers of Scotland: the Register of Assignations and the Register of Pledges. These will allow registration to be used to complete granting of these rights rather than requiring intimation (in the case of assignations) or delivery (in the case of pledges).

As such, it is considered that this requirement is met.

*A Bill, the primary purpose of which is to (b) make provision which is not likely to generate substantial controversy among stakeholders*

The provision made by the Bill is not expected to generate substantial controversy among stakeholders. As set out more fully in the SLC report, the SLC carried out comprehensive consultation. In addition, evidence was taken on the SLC's draft Bill by the Economy, Energy and Fair Work Committee in the last parliamentary session.<sup>2</sup> The summary of evidence produced by SPICe noted that "There was almost unanimous agreement that the law in this area needed to be reformed, and that it would make a practical difference to the ability of businesses to access finance if it was."<sup>3</sup> While SPICe also referred to some concerns held by Citizens Advice Scotland, it is considered that those are unlikely to be significant enough to prevent the criteria being satisfied given that the rules are concerned with the likelihood of "substantial" controversy. It is understood that, in any event, CAS has since advised that they would seek to withdraw their previous comments to the Committee.<sup>4</sup>

As such, this requirement is considered to be met.

**(c) The Bill must not be a Consolidation, Codification, Statute Law Repeals or Statute Law Revision Bill**

The Bill is not any of the Bill types listed above.

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<sup>2</sup> [Moveable Transactions - Parliamentary Business : Scottish Parliament](#)

<sup>3</sup> [20200727ConvenertoSGreMoveableTransactions.pdf \(parliament.scot\)](#)

<sup>4</sup> [Policy memorandum accessible \(parliament.scot\)](#)