



Conveyancing and Feudal Reform (Scotland) Act 1970

1970 CHAPTER 35

PART II

THE STANDARD SECURITY

19 Calling-up of standard security

- (1) Where a creditor in a standard security intends to require discharge of the debt thereby secured and, failing that discharge, to exercise any power conferred by the security to sell any subjects of the security or any other power which he may appropriately exercise on the default of the debtor within the meaning of standard condition 9(1)(a), he shall serve a notice calling-up the security in conformity with Form A of Schedule 6 to this Act (hereinafter in this Act referred to as a "calling-up notice"), in accordance with the following provisions of this section.
- (2) Subject to the following provisions of this section, a calling-up notice shall be served on the person last infert in the security subjects and appearing on the record as the proprietor, and should the proprietor of those subjects, or any part thereof, be dead then on his representative or the person entitled to the subjects in terms of the last recorded title thereto, notwithstanding any alteration of the succession not appearing in the Register of Sasines.
- (3) Where the person last infert in the security subjects was an incorporated company which has been removed from the Register of Companies, or a person deceased who has left no representatives, a calling-up notice shall be served on the Lord Advocate and, where the estates of the person last infert have been sequestrated under the Bankruptcy (Scotland) Act 1913, the notice shall be served on the trustee in the sequestration (unless such trustee has been discharged) as well as on the bankrupt.
- (4) If the proprietor be a body of trustees, it shall be sufficient if the notice is served on a majority of the trustees infert in the security subjects.

Status: This is the original version (as it was originally enacted).

- (5) It shall be an obligation on the creditor to serve a copy of the calling-up notice on any other person against whom he wishes to preserve any right of recourse in respect of the debt.
- (6) For the purposes of the foregoing provisions of this section, the service of a calling-up notice may be made by delivery to the person on whom it is desired to be served or the notice may be sent by registered post or by the recorded delivery service to him at his last known address, or, in the case of the Lord Advocate, at the Crown Office, Edinburgh, and an acknowledgment, signed by the person on whom service has been made, in conformity with Form C of Schedule 6 to this Act, or, as the case may be, a certificate in conformity with Form D of that Schedule, accompanied by the postal receipt shall be sufficient evidence of the service of that notice; and if the address of the person on whom the notice is desired to be served is not known, or if it is not known whether that person is still alive, or if the packet containing a calling-up notice is returned to the creditor with an intimation that it could not be delivered, that notice shall be sent to the Extractor of the Court of Session, and shall be equivalent to the service of a calling-up notice on the person on whom it is desired to be served.
- (7) For the purposes of the last foregoing subsection, an acknowledgment of receipt by the said Extractor on a copy of a calling-up notice shall be sufficient evidence of the receipt by him of that notice.
- (8) A calling-up notice served by post shall be held to have been served on the next day after the day of posting.
- (9) Where a creditor in a standard security has indicated in a calling-up notice that any sum and any interest thereon due under the contract may be subject to adjustment in amount, he shall, if the person on whom notice has been served so requests, furnish the debtor with a statement of the amount as finally determined within a period of one month from the date of service of the calling-up notice, and a failure by the creditor to comply with the provisions of this subsection shall cause the calling-up notice to be of no effect.
- (10) The period of notice mentioned in the calling-up notice may be effectively dispensed with or shortened by the person on whom it is served, with the consent of the creditors, if any, holding securities *pari passu* with, or postponed to, the security held by the creditor serving the calling-up notice, by a minute written or endorsed upon the said notice, or a copy thereof, in conformity with Form C of Schedule 6 to this Act.
- (11) A calling-up notice shall cease to have effect for the purpose of a sale in the exercise of any power conferred by the security on the expiration of a period of five years, which period shall run—
 - (a) in the case where the subjects of the security, or any part thereof, have not been offered for or exposed to sale, from the date of the notice,
 - (b) in the case where there has been such an offer or exposure, from the date of the last offer or exposure.