



# Mortgage Rights (Scotland) Act 2001

2001 asp 11

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**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 20th June 2001 and received Royal Assent on 25th July 2001**

An Act of the Scottish Parliament to provide for the suspension in certain circumstances of enforcement rights of a creditor in a standard security over property used for residential purposes and the continuation of proceedings relating to those rights; to make provision for notifying tenants and other occupiers of enforcement action by a creditor in a standard security; and for connected purposes.

**<sup>F1</sup> Application to suspend enforcement of standard security **S****

.....

**Textual Amendments**

**F1** Ss. 1-3 repealed (30.9.2010) by [Home Owner and Debtor Protection \(Scotland\) Act 2010 \(asp 6\)](#), ss. **8(4)(a)**, 17(3) (with s. 14); S.S.I. 2010/314, art. 3 (with transitional provisions and savings in S.S.I. 2010/316, arts. 4, 5)

**<sup>F2</sup> Disposal of application **S****

.....

**Textual Amendments**

**F1** Ss. 1-3 repealed (30.9.2010) by [Home Owner and Debtor Protection \(Scotland\) Act 2010 \(asp 6\)](#), ss. **8(4)(a)**, 17(3) (with s. 14); S.S.I. 2010/314, art. 3 (with transitional provisions and savings in S.S.I. 2010/316, arts. 4, 5)

**<sup>F3</sup> Registration of order under section 2 **S****

.....

*Status: Point in time view as at 30/09/2010.*

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**Textual Amendments**

**F1** Ss. 1-3 repealed (30.9.2010) by [Home Owner and Debtor Protection \(Scotland\) Act 2010 \(asp 6\)](#), **ss. 8(4)(a), 17(3)** (with [s. 14](#)); [S.S.I. 2010/314](#), **art. 3** (with transitional provisions and savings in [S.S.I. 2010/316](#), arts. 4, 5)

**4 Notices to debtors, proprietors and occupiers S**

(1) After section 19 of the 1970 Act there is inserted—

**“19A Notice to occupier of calling-up**

- (1) Where a creditor in a standard security over an interest in land used to any extent for residential purposes serves a calling-up notice, he shall serve a notice in conformity with Form BB (notice to occupier) of Schedule 6 to this Act together with a copy of the calling-up notice.
- (2) Notices under subsection (1) above shall be sent by recorded delivery letter addressed to “The Occupier” at the security subjects.
- (3) If a creditor fails to comply with subsections (1) and (2) above, the calling-up notice shall be of no effect.”

(2) In section 21 (notice of default) of that Act, after subsection (2) there is inserted—

“(2A) Section 19A of this Act applies where the creditor serves a notice of default as it applies where he serves a calling-up notice.”

(3) In section 24 (application by creditor to court for remedies on default) of that Act, after subsection (2) there is inserted—

“(3) Where the creditor applies to the court under subsection (1) above, he shall, if the standard security is over an interest in land used to any extent for residential purposes—

- (a) serve on the debtor and (where the proprietor is not the debtor) on the proprietor a notice in conformity with Form E of Schedule 6 to this Act, and
- (b) serve on the occupier of the security subjects a notice in conformity with Form F of that Schedule.

(4) Notices under subsection (3) above shall be sent by recorded delivery letter addressed—

- (a) in the case of a notice under subsection (3)(a), to the debtor or, as the case may be, the proprietor at his last known address,
- (b) in the case of a notice under subsection (3)(b), to “The Occupier” at the security subjects.”

<sup>F2</sup>(4) .....

<sup>F2</sup>(5) .....

<sup>F2</sup>(5A) .....

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- (6) The schedule to this Act, Part 1 of which amends Schedule 6 to the 1970 Act (forms to be used in relation to calling-up and default) and Part 2 of which sets out the Forms referred to in subsection (4), has effect.
- (7) The Scottish Ministers may, by order made by statutory instrument, amend—
  - (a) the Notes inserted in Forms A and B in Schedule 6 to the 1970 Act by Part 1 of the schedule to this Act,
  - (b) Forms BB, E and F in Schedule 6 to the 1970 Act,
  - (c) the Forms set out in Part 2 of the schedule to this Act.
- (8) A statutory instrument containing an order under subsection (7) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

#### Textual Amendments

- F2** S. 4(4)-(5A) repealed (30.9.2010) by [Home Owner and Debtor Protection \(Scotland\) Act 2010 \(asp 6\)](#), [ss. 8\(4\)\(b\), 17\(3\)](#) (with [s. 14](#)); [S.S.I. 2010/314](#), [art. 3](#) (with transitional provisions and savings in [S.S.I. 2010/316](#), arts. 4, 5)

## 5 Crown application **S**

This Act binds the Crown.

## 6 Interpretation **S**

Except so far as the context otherwise requires, expressions used in this Act and in Part II of the 1970 Act have the same meanings in this Act as they have in that Part.

## 7 Commencement and short title **S**

- (1) The preceding provisions of this Act come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.
- (2) An order under subsection (1) may include such transitional and transitory provisions and savings as the Scottish Ministers think expedient.
- (3) This Act may be cited as the Mortgage Rights (Scotland) Act 2001.

#### Subordinate Legislation Made

- P1** S. 7(1)(2) power fully exercised: 3.12.2001 appointed by [S.I. 2001/418](#), [art. 2](#) (with transitional provisions in [art. 3](#))

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## SCHEDULE S

*(introduced by section 4)*

### NOTICES TO DEBTORS, PROPRIETORS AND OCCUPIERS

#### PART 1 S

##### AMENDMENTS TO SCHEDULE 6 TO THE 1970 ACT

1 Schedule 6 to the 1970 Act (forms to be used in connection with calling-up of, or default under, standard security) is amended as follows.

2 In Form A (notice of calling-up of standard security) there is inserted, at the end of the notice—

“**NOTE:** The Mortgage Rights (Scotland) Act 2001 gives you the right in certain circumstances to apply to the court to suspend the rights of C.D. You have two months (which may be shortened only with your consent) to make an application. The court will have regard in particular to the circumstances giving rise to the service of this notice, your ability to comply with this notice, any action taken by C.D. to assist the debtor in the standard security to fulfil the obligations under it and the ability of you and anyone else residing at the property to find reasonable alternative accommodation. If you wish to make such an application, you should consult a solicitor. You may be eligible for legal aid depending on your circumstances, and you can get information about legal aid from a solicitor. You may also be able to get advice, including advice about how to manage debt, from any Citizens Advice Bureau or from other advice agencies.”

3 In Form B (notice of default under standard security) there is inserted, at the end of the notice—

“**NOTE:** The Mortgage Rights (Scotland) Act 2001 gives you the right in certain circumstances to apply to the court to suspend the rights of C.D. You have two months (which may be shortened only with your consent) to make an application. The court will have regard in particular to the nature of and reasons for the default, your ability to fulfil the obligations under the standard security, any action taken by C.D. to assist the debtor in the standard security to fulfil those obligations and the ability of you and anyone else residing at the property to find reasonable alternative accommodation. If you wish to make such an application, you should consult a solicitor. You may be eligible for legal aid depending on your circumstances, and you can get information about legal aid from a solicitor. You may also be able to get advice, including advice about how to manage debt, from any Citizens Advice Bureau or from other advice agencies.”

4 After Form B there is inserted—

#### “FORM BB S

##### NOTICE TO OCCUPIER

To the Occupier (*address*)

A Notice of Calling-up of a standard security/ Default under a standard security (*delete as appropriate*) has been served by C.D. on A.B. in relation to (*address of subjects*). A copy of the notice is attached.

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If you are a tenant of A.B., in certain circumstances C.D. cannot take possession of the property without a court order. You should obtain legal advice about your rights as a tenant. You may be eligible for legal aid depending on your circumstances, and you can get information about legal aid from a solicitor. You may also be able to get advice from any Citizens Advice Bureau or from other advice agencies.

If you are the spouse or partner of A.B., the Mortgage Rights (Scotland) Act 2001 gives you the right in certain circumstances to apply to the court to suspend the rights of C.D. You have two months (which may be shortened only with your consent) to make an application. The court will have regard in particular to—

*(for a Notice of Calling-up)* the circumstances giving rise to the service of the Notice of Calling-up, your ability to comply with the notice, any action taken by C.D. to assist the debtor in the standard security to fulfil the obligations under it and the ability of you and anyone else residing at the property to find reasonable alternative accommodation.

*(for a Notice of Default)* the nature of and reasons for the default, your ability to fulfil the obligations under the standard security, any action taken by C.D. to assist the debtor in the standard security to fulfil those obligations and the ability of you and anyone else residing at the property to find reasonable alternative accommodation.

*(delete as appropriate)*

If you wish to make such an application, you should consult a solicitor. You may be eligible for legal aid depending on your circumstances, and you can get information about legal aid from a solicitor. You may also be able to get advice, including advice about how to manage debt, from any Citizens Advice Bureau or from other advice agencies.

Dated

*(Signature of C.D., or signature and designation of C.D.'s agent followed by the words Agent of C.D.)”*

5 After Form D there is inserted—

## “FORM E **S**”

To A.B. *(address)*

C.D. *(designation)*, the creditor in a standard security by you *(or by E.F.)* in favour of C.D. *(or of G.H. to which C.D. now has right)* recorded in the Register for» *(or, as the case may be, registered in the Land Register for Scotland)* on *(date)* has applied to the court under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 for warrant to exercise in relation to *(address of security subjects)* remedies to which he is entitled on the following default—

*(specify in detail the default in respect of which the application is made)*

A copy of the application is attached.

Dated

*(Signature of C.D., or signature and designation of C.D.'s agent followed by the words Agent of C.D.)*

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**NOTE:** The Mortgage Rights (Scotland) Act 2001 gives you the right in certain circumstances to apply to the court for suspension of the rights of C.D. The court will have regard in particular to the nature of and reasons for the default, your ability to fulfil the obligations under the standard security, any action taken by C.D. to assist the debtor in the standard security to fulfil those obligations and the ability of you and anyone else residing at the property to find reasonable alternative accommodation. If you wish to make such an application, you should consult a solicitor. You may be eligible for legal aid depending on your circumstances, and you can get information about legal aid from a solicitor. You may also be able to get advice, including advice about how to manage debt, from any Citizens Advice Bureau or from other advice agencies.

## FORM F S

To the Occupier (*address*)

C.D. (*designation*) has applied to the court under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 for warrant to exercise in relation to (*address of security subjects*) remedies to which he is entitled on the default of A.B. (*designation*) in the performance of his obligations under a standard security over (*address of subjects*). A copy of the application is attached.

If you are a tenant of A.B. (*or, if A.B. is not the proprietor of the subjects, of E.F. (being the proprietor)*), in certain circumstances C.D. cannot take possession of the property without a court order. You should obtain legal advice about your rights as a tenant. You may be eligible for legal aid depending on your circumstances, and you can get information about legal aid from a solicitor. You may also be able to get advice from any Citizens Advice Bureau or from other advice agencies.

If you are the spouse or partner of A.B., the Mortgage Rights (Scotland) Act 2001 gives you the right in certain circumstances to apply to the court to suspend the rights of C.D. The court will have regard in particular to the nature of and reasons for the default, your ability to fulfil the obligations under the standard security, any action taken by C.D. to assist the debtor in the standard security to fulfil those obligations and the ability of you and anyone else residing at the property to find reasonable alternative accommodation. If you wish to make such an application, you should consult a solicitor. You may be eligible for legal aid depending on your circumstances, and you can get information about legal aid from a solicitor. You may also be able to get advice, including advice about how to manage debt, from any Citizens Advice Bureau or from other advice agencies.

Dated

(*Signature of C.D., or signature and designation of C.D.'s agent followed by the words Agent of C.D.*)”

## PART 2 S

FORMS RELATING TO PROCEEDINGS UNDER SECTION 5 OF THE 1894 ACT

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FORM 1

NOTICE OF PROCEEDINGS

**IT IS IMPORTANT THAT YOU READ THIS LETTER – YOUR HOME MAY BE  
AT RISK OF REPOSSESSION**

To A.B. (address)

C.D. (designation), the creditor in a security by you (or by E.F.) in favour of C.D. (or of G.H. to which C.D. now has right) recorded in the Register for ..... (or, as the case may be, registered in the Land Register for Scotland) on (date) has commenced proceedings against you under section 5 of the Heritable Securities (Scotland) Act 1894 to eject you from (address of security subjects) in consequence of the following default—

(specify in detail the default in respect of which the application is made)

A copy of the application is attached.

Dated

(Signature of C.D., or signature and designation of C.D.'s agent followed by the words Agent of C.D.)

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### **IT IS STRONGLY RECOMMENDED THAT YOU SEEK ADVICE:**

You can get advice about this Notice and what it means for you from a solicitor, Citizens Advice Bureau or other advice agency or an approved lay representative. A Citizens Advice Bureau or other advice agency may also be able to give you advice about how to manage debt. Take this Notice with you when seeking advice. You may be eligible for legal aid depending on your circumstances. You can get information about legal aid from a solicitor.

A solicitor or approved lay representative may represent you in any court proceedings in relation to an application by C.D for possession and sale of your home. You can find out more about approved lay representatives from the housing department of your local authority or from a Citizens Advice Bureau or other advice agency.

### **YOUR RIGHTS IN RELATION TO RESIDENTIAL PROPERTY ARE PROTECTED BY LAW:**

C.D.'s application is not valid and can be challenged by you (or by E.F) if C.D. has failed to comply with certain pre-action requirements. These requirements include providing specified information and to contacting you (or the debtor) to discuss alternatives to repossession. It is important to discuss with your solicitor or advisor if you have doubts about whether C.D. has complied with these requirements.

### **YOU HAVE THE RIGHT TO BE HEARD IN COURT:**

You are (or the debtor is) entitled to intervene in the court proceedings following from C.D.'s application. You (or the debtor) can appear personally or be represented by a solicitor or approved lay representative. For example, you (or the debtor) might want to argue that the pre-action requirements have not been complied with or that it would not be reasonable for the sheriff to grant the application. Even if they have, you have (or the debtor has) the right to ask the sheriff to continue the proceedings or make any other order. The sheriff will take into account matters such as the nature of and reasons for the default, your (or the debtor's) ability to fulfil your (or the) obligations under the security within a reasonable time, any action taken by C.D. to assist you (or the debtor) to fulfil your (or the) obligations, your (or the debtor's) participation in a relevant debt payment programme and your (or the debtor's) ability, or the ability of any other person residing in the property, to secure reasonable alternative accommodation.

### **YOU MAY WISH TO VOLUNTARILY SURRENDER YOUR HOME:**

It is open to you (or the debtor), in certain circumstances, to voluntarily surrender the property to C.D. if all entitled residents in it consent. If you wish to consider voluntary surrender you should discuss with your solicitor or advisor whether this option is right for you. You should not proceed with voluntary surrender unless you understand the consequences of doing so, for example that you may still owe money to C.D.

### **WHAT IF AN ORDER FOR REPOSSESSION HAS ALREADY BEEN GRANTED AND I HAVE JUST BECOME AWARE OF THE APPLICATION?**

It may not be too late to intervene so you should urgently seek advice. You have the right to apply to the court to ask for the order to be recalled at any time before repossession has taken place. If the court recalls the order it will fix a hearing, giving you (or the debtor) the opportunity to appear or be represented.



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F<sup>3</sup>Form 2

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## FORM 2

### NOTICE OF PROCEEDINGS TO THE OCCUPIER

#### **IT IS IMPORTANT THAT YOU READ THE LETTER – YOUR HOME MAY BE AT RISK OF REPOSSESSION**

To the Occupier (including any Tenant) (address)

C.D. (designation) has commenced proceedings under section 5 of the Heritable Securities (Scotland) Act 1894 to eject A.B. from (address of security subjects). A copy of the initial writ is attached.

Dated

(Signature of C.D., or signature and designation of C.D.'s agent followed by the words Agent of C.D.)

#### **IT IS STRONGLY RECOMMENDED THAT YOU SEEK ADVICE:**

You can get advice about this Notice and what it means for you from a solicitor, Citizens Advice Bureau or other advice agency or, in certain cases, an approved lay representative. Take this Notice with you when seeking advice. You may be eligible for legal aid depending on your circumstances. You can get information about legal aid from a solicitor.

#### **YOUR RIGHTS IN RELATION TO RESIDENTIAL PROPERTY ARE PROTECTED BY LAW:**

C.D. must comply with statutory pre-action requirements before being allowed to apply to the court. These requirements include providing A.B. with specified information and contacting A.B. to discuss alternatives to repossession. It is important to discuss with your solicitor or advisor any doubts you have about whether C.D. has complied with these requirements.

#### **IF YOU ARE OR WERE THE SPOUSE, CIVIL PARTNER OR PARTNER OF A.B. OR ARE THE OWNER OF THE HOUSE:**

You may be an ENTITLED RESIDENT and should discuss this with your solicitor or advisor. This means that A.B. cannot voluntarily surrender the property if you or anyone else is living there or without your written consent. You may be asked to give your consent – it is recommended that you do not do so until you have discussed this with a solicitor or other advisor.

You have the RIGHT TO BE HEARD IN COURT. You are entitled to intervene to ask the court to continue the proceedings or to make any other order (for example an order suspending C.D.'s rights or refusing C.D.'s application). For example, you might want to argue that the pre-action requirements have not been complied with or that it would not be reasonable for the sheriff to grant the application. Even if they have, you have the right to ask the sheriff to continue the proceedings or make any other order. The sheriff will take into account matters such as the nature of and reasons for the default, your or the debtor's ability to fulfil the obligations under the security within a reasonable time, any action taken by C.D. to assist the debtor to fulfil the obligations, the debtor's participation in a relevant debt payment programme and the your ability, or the ability of any other person residing in the property (including you), to secure reasonable alternative accommodation.

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You may represent yourself, or be represented by a solicitor or approved lay representative. You can find out more about approved lay representatives from the housing department of your local authority or from a Citizens Advice Bureau or other advice agency.

IF YOU ARE A TENANT OF A.B.:

You should contact C.D. to let them know about your tenancy as soon as possible as they may not be aware that you live in the property.

If you have an assured or short assured tenancy you may have rights under the Housing (Scotland) Act 1988 - in certain circumstances C.D. cannot take possession of the property or evict you without making a separate application to court under that Act. The sheriff may also permit you to intervene in the proceedings for possession as an interested party. Whatever your type of tenancy, you should obtain legal advice about your rights as a tenant.

**WHAT IF AN ORDER FOR REPOSSESSION HAS ALREADY BEEN GRANTED AND I HAVE JUST BECOME AWARE OF THE APPLICATION?**

If you are an ENTITLED RESIDENT it may not be too late to intervene so you should urgently seek advice. You have the right to apply to court to ask for the order to be recalled at any time before repossession has taken place. If the court recalls the order it will fix a hearing, giving you the opportunity to appear or be represented.

If you are a TENANT, C.D. may need to obtain a separate order for eviction, depending on your tenancy type. You should urgently obtain legal advice about your rights as a tenant.

**Status:**

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**Changes to legislation:**

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