



Mortgage Rights (Scotland) Act 2001

2001 asp 11

1 Application to suspend enforcement of standard security

- (1) This section applies where a creditor in a standard security over an interest in land used to any extent for residential purposes has—
- (a) served—
 - (i) a calling-up notice under section 19 (calling-up of standard security),
or
 - (ii) a notice of default under section 21 (notice of default),
of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35) (in this Act referred to as “the 1970 Act”),
 - (b) made an application to the court under section 24 (application to court for remedies on default) of that Act, or
 - (c) commenced proceedings under section 5 (power to eject proprietor in personal occupancy) of the Heritable Securities (Scotland) Act 1894 (c. 44) (in this Act referred to as “the 1894 Act”).
- (2) The following persons may apply to the court for an order under section 2 of this Act—
- (a) the debtor in the standard security or the proprietor of the security subjects (where the proprietor is not the debtor), if the security subjects (in whole or in part) are that person’s sole or main residence,
 - (b) the non-entitled spouse of the debtor or the proprietor, where the security subjects (in whole or in part) are a matrimonial home and the sole or main residence of the non-entitled spouse,
 - (c) a person living together with the debtor or the proprietor as husband or wife or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex, if the security subjects (in whole or in part) are that person’s sole or main residence,
 - (d) a person who has lived together with the debtor or the proprietor as mentioned in paragraph (c), if—
 - (i) the security subjects (in whole or in part) are the sole or main residence of that person but not of the debtor or, as the case may be, the proprietor,
 - (ii) that person lived together with the debtor or the proprietor as mentioned in that paragraph throughout the period of 6 months ending

Status: This is the original version (as it was originally enacted).

- with the date on which the security subjects ceased to be the sole or main residence of the debtor or the proprietor, and
- (iii) the security subjects (in whole or in part) are the sole or main residence of a child under the age of 16 years who is a child of that person and of the debtor or the proprietor.
- (3) In paragraph (d)(iii) of subsection (2), “child” includes a stepchild and any person brought up or treated by the person mentioned in that paragraph and the debtor or the proprietor as their child.
- (4) An application under subsection (2) must be made—
- (a) in the case mentioned in subsection (1)(a)(i), before the expiry of the period of notice in relation to the calling-up notice,
 - (b) in the case mentioned in subsection (1)(a)(ii), not later than one month after the expiry of the period of notice specified in the notice of default,
 - (c) in a case mentioned in subsection (1)(b) or (c), before the conclusion of the proceedings.
- (5) The period of one month mentioned in subsection (4)(b) may be dispensed with or shortened by the person on whom the notice of default has been served, but only with the consent in writing of—
- (a) any other person on whom the notice of default has been served,
 - (b) if the standard security is over a matrimonial home, the spouse of each person on whom the notice of default has been served, and
 - (c) any person entitled to make an application under subsection (2) by virtue of paragraph (c) or (d) of that subsection.
- (6) An application under subsection (2) in a case mentioned in subsection (1)(a) must be made by summary application.
- (7) Any rights which the creditor has, or acquires, by virtue of the enactments mentioned in subsection (1)(a) to (c) may not be exercised—
- (a) at any time when an application under subsection (2) is competent,
 - (b) at any time when such an application has been made but has not been determined.
- (8) In a case mentioned in subsection (1)(a)—
- (a) section 19 (calling-up of standard security) of the 1970 Act has effect as if—
 - (i) in subsection (10), the words “effectively dispensed with or” and “dispense with or” were omitted,
 - (ii) after subsection (10) there were inserted—

“(10A) Subsection (10) above does not permit the period of notice mentioned in the calling-up notice to be shortened to a period of less than one month.

(10B) The period of notice mentioned in the calling-up notice may be shortened under subsection (10) above only with the consent in writing (in addition to any consent required by that subsection) of—

 - (a) any person entitled to make an application under subsection (2) of section 1 (application to suspend enforcement of standard security) of the Mortgage

- Rights (Scotland) Act 2001 (asp 11) by virtue of paragraph (c) or (d) of that subsection, and
- (b) where the debtor in the standard security is not the proprietor—
 - (i) the debtor, and
 - (ii) if the standard security is over a matrimonial home (within the definition referred to in that subsection), the debtor's spouse.”,
 - (b) section 21 (notice of default) of that Act has effect as if subsection (3) of that section were omitted, and
 - (c) Form C in Schedule 6 (procedures as to calling up and default) to that Act has effect as if the words “dispensed with (*or*” were omitted.