



Mortgage Rights (Scotland) Act 2001

2001 asp 11

2 Disposal of application

- (1) On an application under section 1(2) the court may—
 - (a) suspend the exercise of the rights which the creditor has, or may acquire, by virtue of the enactments mentioned in subsection (1)(a) to (c) of that section—
 - (i) to such extent,
 - (ii) for such period, and
 - (iii) subject to such conditions,as the court thinks fit,
 - (b) if the application is made in proceedings under section 24 of the 1970 Act or section 5 of the 1894 Act, continue those proceedings to such date as the court thinks fit.
- (2) The court may make an order under this section only where it considers it reasonable in all the circumstances to do so; and the court, in considering whether to make such an order and what its terms should be, is to have regard in particular to—
 - (a) the nature of and reasons for the default,
 - (b) the applicant's ability to fulfil within a reasonable period the obligations under the standard security in respect of which the debtor is in default [^{F1}and where appropriate to participation by the debtor in a debt payment programme approved under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002],
 - (c) any action taken by the creditor to assist the debtor to fulfil those obligations, and
 - (d) the ability of the applicant and any other person residing at the security subjects to secure reasonable alternative accommodation.
- (3) If, while an order under this section is in force, the obligations under the standard security in respect of which the debtor is in default are fulfilled, the standard security has effect as if the default had not occurred.
- (4) In relation to an application under section 1(2) in the case mentioned in subsection (1)(a)(i) of that section, the preceding provisions of this section have effect with the following modifications—
 - (a) the power to specify a period in pursuance of subsection (1)(a) includes, without prejudice to the generality of that provision, power to specify the

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Changes to legislation: There are currently no known outstanding effects for the Mortgage Rights (Scotland) Act 2001, Section 2. (See end of Document for details)

- period which expires on the calling-up notice ceasing to have effect by virtue of section 19(11) of the 1970 Act,
- (b) subsection (2)(a) is to be read as referring to the circumstances giving rise to the service of the calling-up notice,
 - (c) subsection (2)(b) is to be read as referring to the ability of the applicant to comply with the notice within a reasonable period,
 - (d) subsection (2)(c) is to be read as referring to any action taken by the creditor to assist the debtor to fulfil the debtor's obligations under the standard security, and
 - (e) subsection (3) does not apply.
- (5) The court may, if requested to do so by the creditor or the applicant—
- (a) vary or revoke an order made under subsection (1)(a),
 - (b) further continue proceedings continued under subsection (1)(b).
- (6) Section 1 and this section are without prejudice to any rights which a debtor, proprietor or non-entitled spouse may have under any other enactment or rule of law.
- (7) In section 1 and this section—
- “applicant” means the person who makes an application under section 1(2),
 - “court” means the sheriff court,
 - “matrimonial home” and “non-entitled spouse” are to be construed in accordance with the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59).
 - [^{F2} “family home” and “civil partner” are to be construed in accordance with the Civil Partnership Act 2004 (c. 33) .]

Textual Amendments

- F1** Words in s. 2(2)(b) inserted (30.11.2004) by [Debt Arrangement Scheme \(Scotland\) Regulations 2004 \(S.S.I. 2004/468\)](#), reg. 1, **Sch. 3 para. 3** (as amended by [S.S.I. 2004/470](#), reg. 3)
- F2** Words in s. 2(7) inserted (5.12.2005) by [Civil Partnership Act 2004 \(Consequential Amendments\) \(Scotland\) Order 2005 \(S.S.I. 2005/623\)](#), arts. 1, **22**

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