

HOME OWNER AND DEBTOR PROTECTION (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 1 – Residential Standard Securities Etc.: Creditor’s Rights on Default

Section 3 - court powers in action for possession of residential property

22. Section 3(1)(b) inserts subsections (2) and (3) into section 5 of the 1894 Act. Subsection (2) provides for summary application procedure for proceedings under section 5 in relation to a residential property. This applies regardless of whether the application includes a crave for any other remedy.
23. Subsection (3) requires a creditor to comply with pre-action requirements before making an application. The requirements themselves are inserted as section 5B of the 1894 Act by section 4(2) of the Act.
24. Section 3(2) inserts section 5A into the 1894 Act, which relates to proceedings relating to residential property brought under the 1894 Act. In section 5A—
 - Subsections (2), (3) and (4) provide for the notification that a creditor must give, and the form that it must take, when bringing such proceedings. This sets out in the 1894 Act the requirements which were previously in section 4(4), (5) and (5A) of the 2001 Act.
 - Subsection (5) confirms that a court may grant any order that it thinks fit on the application but may only grant it if it is satisfied that the pre-action requirements have been complied with and it is satisfied that it is reasonable in the circumstances of the case to grant the application.
 - Subsections (6) and (7) specify the matters to which the court must have regard when considering an application in a case where the debtor appears or is represented (see section 5 of the Act for a case where an entitled resident makes an application). They mirror the matters to which the court would currently have regard in an application made under the 2001 Act, and are identical to the matters introduced into the 1970 Act by section 2(5) of the Act.