

HOME OWNER AND DEBTOR PROTECTION (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

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

Section 1 - residential standard securities: restriction of creditor’s remedies

10. **Section 1** limits those situations in which a creditor can exercise the rights specified in standard conditions 10(2) and (3) of the standard security (set out in Schedule 3 to the 1970 Act), being the rights to sell or to enter into possession of the security subjects where the borrower is in default. The limitation applies only to property wholly or partially used for residential purposes; rights in relation to other property are unaffected.
11. The limitation provides that the rights can be exercised only where the residential property has been voluntarily surrendered or where a court has granted a warrant under section 24 of the 1970 Act, thereby ensuring that all cases for possession or sale of residential property require a court application. There is an exception for voluntarily surrendered unoccupied property, to allow a debtor to avoid the expense of court proceedings.
12. **Section 1(1)** amends section 20 of the 1970 Act by inserting a new subsection (2A), to apply this limitation of a creditor’s remedies to the service of a notice calling up a standard security.
13. **Section 1(2)** amends section 23 of the 1970 Act by inserting a new subsection (4), to apply this limitation of a creditor’s remedies to the service of a notice of default.
14. **Section 1(3)** of the Act amends the 1970 Act by inserting section 23A. Section 23A(1) specifies the requirements for a residential property to be voluntarily surrendered and section 23A(2) sets out those who must confirm their consent to surrender in writing. Subsections (1) and (2) require that:
 - the property be unoccupied;
 - the debtor and other interested persons (proprietor where not debtor, non entitled spouse or civil partner and cohabitants in terms of section 18 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981) confirm their consent in writing; and
 - the written confirmation certifies that the person: does not occupy the security subjects and is not aware of any occupation; consents to the exercise by the creditor of the creditor’s rights on default; and consents freely and without coercion of any kind.