
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 316

HOUSING

**The Home Owner and Debtor Protection (Scotland) Act
2010 (Transitional and Saving Provisions) Order 2010**

Made - - - - - *3rd September 2010*
Laid before the Scottish
Parliament - - - - - *7th September 2010*
Coming into force - - - - - *30th September 2010*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 15(1) (b) and (2) of the Home Owner and Debtor Protection (Scotland) Act 2010(1) and all other powers enabling them to do so.

Citation, commencement and interpretation

1. This Order may be cited as the Home Owner and Debtor Protection (Scotland) Act 2010 (Transitional and Saving Provisions) Order 2010 and comes into force on 30th September 2010.

2. In this Order—

“the 1894 Act” means the Heritable Securities (Scotland) Act 1894(2);

“the 1970 Act” means the Conveyancing and Feudal Reform (Scotland) Act 1970(3);

“the 1985 Act” means the Bankruptcy (Scotland) Act 1985(4);

“the 2001 Act” means the Mortgage Rights (Scotland) Act 2001(5);

“the 2010 Act” means the Home Owner and Debtor Protection (Scotland) Act 2010; and

“the relevant date” means 30th September 2010.

(1) 2010 asp 6.
(2) 1894 c.44.
(3) 1970 c.35.
(4) 1985 c.66.
(5) 2001 asp 11.

Effect of this Order

3. The coming into force of the provisions specified in the Home Owner and Debtor Protection (Scotland) Act 2010 (Commencement) Order 2010(6) are subject to the transitional and saving provisions in articles 4 to 7 of this Order.

Saving provision relating to court applications made before the relevant date

4. Where a creditor has made an application to the court under section 5 of the 1894 Act or section 24(1) of the 1970 Act before the relevant date, the provisions of Part 1 of the 2010 Act do not apply in respect of that application.

Transitional and saving provisions relating to default before the relevant date

5. Where before the relevant date a creditor has served a calling-up notice under section 19 of the 1970 Act or a notice of default under section 21 of the 1970 Act, in respect of a standard security over land or a real right in land used to any extent for residential purposes—

- (a) the provisions of sections 1 and 8 of the 2010 Act do not apply in relation to the calling-up notice or notice of default; but
- (b) if an application is made to the court under section 24(1B) of the 1970 Act or section 5(1) of the 1894 Act, the repeals made by section 8(4) of the 2010 Act (repeals of sections of the 2001 Act) and the amendments made by section 8(5) of the 2010 Act (amendment of the Homelessness (Scotland) Act 2003(7)) have effect in relation to the court application.

6. Where a debtor has entered into default before the relevant date and—

- (a) an application is to be made to the court under section 5(1) of the 1894 Act by a creditor in a security over land or a real right in land used to any extent for residential purposes; or
- (b) an application is to be made to the court under section 24(1B) of the 1970 Act,

then for the purposes of section 24(1C) of the 1970 Act and section 5(3) of the 1894 Act, article 2(4) of the Application by Creditors (Pre-Action Requirements) (Scotland) Order 2010(8) applies subject to the modification that any required information which has not been provided at any time following the default and before the relevant date must be provided as soon as is reasonably practicable on or after the relevant date.

Transitional and saving provisions in respect of sequestrations and trust deeds

7.—(1) The repeal of section 5(2A) of the 1985 Act, by section 9(1)(a) and (b) of the 2010 Act, does not apply in respect of debtor applications under section 5(2A) of the 1985 Act received by the Accountant in Bankruptcy within 30 days after the coming into force of the repeal provided the concurrence of the qualified creditor or creditors referred to in that subsection was prior to the coming into force of the repeal.

(2) The amendments to the 1985 Act effected by section 10 of the 2010 Act, apply only in respect of trust deeds entered into after the coming into force of section 10 of the 2010 Act.

(3) The repeals of the 1985 Act effected by section 12 of the 2010 Act do not affect sequestrations awarded prior to the coming into force of that section.

(6) S.S.I. 2010/314 (C.16).

(7) 2003 asp 10.

(8) S.S.I. 2010/317.

St Andrew's House,
Edinburgh
3rd September 2010

ALEX NEIL
Authorised to sign by the Scottish Ministers

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes transitional and saving provisions in connection with the coming into force of the provisions of the Home Owner and Debtor Protection (Scotland) Act 2010 (“the Act”).

Article 4 provides that where an application has been made to court before 30th September 2010 the existing arrangements under the Heritable Securities (Scotland) Act 1894 (“the 1894 Act”), the Conveyancing and Feudal Reform (Scotland) Act 1970 (“the 1970 Act”) and the Mortgage Rights (Scotland) Act 2001 (“the 2001 Act”) continue to apply in respect of that application.

Article 5 applies where a calling-up notice or notice of default has been served before 30th September 2010. In such circumstances, the requirement introduced by the Act, that the creditor make a court application for warrant to exercise rights on default, does not apply. This means that the creditor may continue to enforce such a calling-up notice or notice of default without going to court. The rights of debtors and certain others under the 2001 Act are preserved in this situation by virtue of article 5(a).

However, should the creditor choose to apply to court after the relevant date, the provisions of Part 1 of the 2010 Act will apply and the procedure for court applications introduced by the Act must therefore be followed (article 5(b)).

Article 6 provides for a situation where the default occurs before 30th September 2010, but the court action is raised on or after that date. the Act imposes pre-action requirements that must be complied with as soon as is reasonably practicable after the default. Transitionally, those requirements are modified to require compliance as soon as reasonably practicable on or after 30th September 2010, where the material has not already been provided.

Article 7 makes transitional and saving provisions in respect of the commencement of Part 2 of the Act. Article 7(1) makes a transitional provision in respect of debtor applications so that these are still competent by the creditor concurrence route provided the creditor concurrence is prior to the repeal of that route and the application is received by the Accountant in Bankruptcy within 30 days after the repeal. Article 7(2) makes a transitional provision in respect of trust deeds entered into before the amendments to trust deeds come into force. They are not affected by the amended law. Article 7(3) has the effect that sequestrations awarded prior to the commencement of section 12 of the Act still require to be advertised in the Edinburgh Gazette. There is no transitional provision in respect of section 11 of the Act, so that its provisions impose duties on all trustees in sequestration and of trust deeds in respect of all unsold rights in a family home.