



Conveyancing and Feudal Reform (Scotland) Act 1970

1970 CHAPTER 35

PART II

THE STANDARD SECURITY

Modifications etc. (not altering text)

- C1** Pt. II explained by [Redemption of Standard Securities \(Scotland\) Act 1971 \(c. 45\), s. 2](#)
- C2** Pt. II (ss. 9-32) applied (with modifications) (12.4.1993) by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\), s. 23\(6\)](#); S.I. 1992/2974, art. 2, [Sch.](#)
Pt. II (ss. 9-32) applied (with modifications) (16.7.1993) by [S.I. 1993/1516, art. 5](#)
- C3** The provisions of Pt. II, other than ss. 9(1) and (2), 12 and 14, applied (with modifications) by [S.I. 1987/381, reg. 40\(5\)](#)

9 The standard security.

- (1) The provisions of this Part of this Act shall have effect for the purpose of enabling a new form of heritable security to be created to be known as a standard security.
- (2) It shall be competent to grant and record in the Register of Sasines a standard security over any [^{F1}land or real right in land,] to be expressed in conformity with one of the forms prescribed in Schedule 2 to this Act.
- [^{F2}(2B) It shall not be competent to grant a standard security over a personal pre-emption burden or personal redemption burden (both within the meaning of Part 4 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5).]
- (3) A grant of any right over [^{F1}land or a real right] in land for the purpose of securing any debt by way of a heritable security shall only be capable of being effected at law if it is embodied in a standard security.

Status: Point in time view as at 30/09/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Conveyancing and Feudal Reform (Scotland) Act 1970, Part II is up to date with all changes known to be in force on or before 06 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (4) Where for the purpose last-mentioned any deed which is not in the form of a standard security contains a disposition or assignment [^{F1}of land or of a real right] in land, it shall to that extent be void and unenforceable, and where that deed has been duly recorded the creditor in the purported security may be required, by any person having an interest, to grant any deed which may be appropriate to clear the Register of Sasines of that security.
- (5) A standard security may be used for any other purpose for which a heritable security may be used if any of the said forms is appropriate to that purpose, and for the purpose of any enactment affecting heritable securities a standard security, if so used, or if used as is required by this Act instead of a heritable security as defined therein, shall be a heritable security for the purposes of that enactment.
- (6) The ^{M1}Bankruptcy Act 1696, in so far as it renders a heritable security of no effect in relation to a debt contracted after the recording of that security, and any rule of law which requires that a real burden for money may only be created in respect of a sum specified in the deed of creation, shall not apply in relation to a standard security.
- ^{F3}(7)
- (8) For the purposes of this Part of this Act—
- (a) “heritable security (except in subsection (5) of this section if the context otherwise requires) means any security capable of being constituted over any [^{F1}land or real right] in land by disposition or assignment of that [^{F1}land or real right] in security of any debt and of being recorded in the Register of Sasines; [^{F4}“real right in land” has the same meaning as it has for the purposes of sections 1 and 2 of this Act;] [^{F5}“real right in land” means any such right, other than ownership or a real burden, which is capable of being held separately and to which a title may be recorded in the Register of Sasines;]
- (c) “debt” means any obligation due, or which will or may become due, to repay or pay money, including any such obligation arising from a transaction or part of a transaction in the course of any trade, business or profession, and any obligation to pay an annuity *orad factum praestandum*, but does not include an obligation to pay any [^{F6}feuduty, ground annual,] rent or other periodical sum payable in respect of land, and “creditor” and “debtor”, in relation to a standard security, shall be construed accordingly.

Textual Amendments

- F1** Words in s. 9(2)-(4)(8)(a) substituted (28.11.2004) by 2000 asp 5, ss. 76(1), 77(2)(c) {sch. 12 Pt. 1 para. 30(6)(a)-(d)(i)} (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**
- F2** S. 9(2B) inserted "after subsection (2A)" (28.11.2004) by virtue of Title Conditions (Scotland) Act 2003 (asp 9), ss. 122(1), 128(1), 129(2), **sch. 14 para. 4(2)(a)** (with ss. 119, 121); S.S.I. 2003/456, **art. 2**
- F3** S. 9(7) repealed by Tenants' Rights, Etc. (Scotland) Act 1980 (c. 52, SIF 61), **Sch. 5**
- F4** S. 9(8)(b): definition of "real right in land" substituted (28.11.2004) for "interest in land" by 2000 asp 5, ss. 76(1), 77(2)(c), **sch. 12 Pt. 1 para. 30(6)(d)(ii)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**
- F5** S. 9(8)(b): definition of "real right in land" substituted (28.11.2004) by virtue of Title Conditions (Scotland) Act 2003 (asp 9), ss. 122(1), 128(1), 129(2), **sch. 14 para. 4(2)(b)** (with ss. 119, 121); S.S.I. 2003/456, **art. 2**
- F6** Words in s. 9(8)(c) repealed (28.11.2004) by 2000 asp 5, ss. 76(1)(2), 77(2)(c)(d), sch. 12 Pt. 1 para. 30(6)(d)(iii), **sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

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Marginal Citations

M1 Act of the Parliament of Scotland 1696, cap. 5.

10 Import of forms of, and certain clauses in, standard security.

- (1) The import of the clause relating to the personal obligation contained in Form A of Schedule 2 to this Act expressed in any standard security shall, unless specially qualified, be as follows—
 - (a) where the security is for a fixed amount advanced or payable at, or prior to, the delivery of the deed, the clause undertaking to make payment to the creditor shall import an acknowledgment of receipt by the debtor of the principal sum advanced or an acknowledgment by the debtor of liability to pay that sum and a personal obligation undertaken by the debtor to repay or pay to the creditor on demand in writing at any time after the date of delivery of the standard security the said sum, with interest at the rate stated payable on the dates specified, together with all expenses for which the debtor is liable by virtue of the deed or of this Part of this Act;
 - (b) where the security is for a fluctuating amount, whether subject to a maximum amount or not and whether advanced or due partly before and partly after delivery of the deed or whether to be advanced or to become due wholly after such delivery, the clause undertaking to make payment to the creditor shall import a personal obligation by the debtor to repay or pay to the creditor on demand in writing the amount, not being greater than the maximum amount, if any, specified in the deed, advanced or due and outstanding at the time of demand, with interest on each advance from the date when it was made until repayment thereof, or on each sum payable from the date on which it became due until payment thereof, and at the rate stated payable on the dates specified, together with all expenses for which the debtor is liable by virtue of the deed or of this Part of this Act.
- (2) The clause of warrandice in the forms of standard security contained in Schedule 2 to this Act expressed in any standard security shall, unless specially qualified, import absolute warrandice as regards the [F7]land or real right] in land over which the security is granted and the title deeds thereof, and warrandice from fact and deed as regards the rents thereof.
- (3) The clause relating to consent to registration for execution contained in Form A of Schedule 2 to this Act expressed in any standard security shall, unless specially qualified, import a consent to registration in the Books of Council and Session, or, as the case may be, in the books of the appropriate sheriff court, for execution.
- (4) The forms of standard security contained in Schedule 2 to this Act shall, unless specially qualified, import an assignation to the creditor of the title deeds, including searches, and all conveyances not duly recorded, affecting the security subjects or any part thereof, with power to the creditor in the event of a sale under the powers conferred by the security, but subject to the rights of any person holding prior rights to possession of those title deeds, to deliver them, so far as in the creditor's possession, to the purchaser, and to assign to the purchaser any right he may possess to have the title deeds made forthcoming.

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Textual Amendments

F7 Words in s. 10(2) substituted (28.11.2004) by 2000 asp 5, ss. 76(1)(2), 77(2)(c)(d), **sch. 12 Pt. 1 para. 30(7)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

11 Effect of recorded standard security, and incorporation of standard conditions.

- (1) Where a standard security is duly recorded, it shall operate to vest [^{F8}in the grantee a real right in security] for the performance of the contract to which the security relates.
- (2) Subject to the provisions of this Part of this Act, the conditions set out in Schedule 3 to this Act, either as so set out or with such variations as have been agreed by the parties in the exercise of the powers conferred by the said Part (which conditions are hereinafter in this Act referred to as “the standard conditions”), shall regulate every standard security.
- (3) Subject to the provisions of this Part of this Act, the creditor and debtor in a standard security may vary any of the standard conditions, other than [^{F9}standard condition 11 (procedure on redemption) and] the provisions of Schedule 3 to this Act relating to the powers of sale, . . . ^{F10} and foreclosure and to the exercise of those powers, but no condition capable of being varied shall be varied in a manner inconsistent with any condition which may not be varied by virtue of this subsection.
- (4) In this Part of this Act—
 - (a) any reference to a variation of the standard conditions shall include a reference to the inclusion of an additional condition and to the exclusion of a standard condition;
 - (b) any purported variation of a standard condition which contravenes the provisions of subsection (3) of this section shall be void and unenforceable.

Textual Amendments

F8 Words in s. 11(1) substituted (28.11.2004) by 2000 asp 5, ss. 76(1), 77(2)(c), **sch. 12 Pt. 1 para. 30(8)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

F9 Words inserted by [Redemption of Standard Securities \(Scotland\) Act 1971 \(c. 45\), s. 1\(a\)](#)

F10 Words repealed by [Redemption of Standard Securities \(Scotland\) Act 1971 \(c. 45\), s. 1\(a\)](#)

12 Standard security may be granted by person uninfert.

- (1) Notwithstanding any rule of law, a standard security may be granted over [^{F11}land or a real right] in land by a person ^{F12}. . . whose title thereto has not been completed by being duly recorded, if in the deed expressing that security the grantor deduces his title to that [^{F11}land or real right] from the person who appears in the Register of Sasines as having the last recorded title thereto.
- (2) A deduction of title in a deed for the purposes of the foregoing subsection shall be expressed in the form prescribed by Note 2 or 3 of Schedule 2 to this Act, and on such a deed being recorded as aforesaid the title of the grantee shall, for the purposes of the rights and obligations between the grantor and the grantee thereof and those deriving right from them, but for no other purpose, in all respects be of the same effect as if the title of the grantor of the deed to the [^{F13}land or real right in land] to which he has

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deduced title therein had been duly completed; and any references to a proprietor or to a person [^{F13}having the last recorded title] shall in this Part of this Act be construed accordingly.

- (3) There may be specified for the purposes of any deduction of title in pursuance of any provision of this Part of this Act any writing which it is competent to specify as a title, midcouple, or link in title for the purposes of section 5 of the ^{M2}Conveyancing (Scotland) Act 1924 (deduction of title).

Textual Amendments

- F11** Words in s. 12(1) substituted (28.11.2004) by 2000 asp 5, ss. 76(1), 77(2)(c), **sch. 12 Pt. 1 para. 30(9)(a)(i)(iii)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**
- F12** Words in s. 12(1) repealed (28.11.2004) by 2000 asp 5, ss. 76(1)(2), 77(2)(c)(d), sch. 12 Pt. 1 para. 30(9)(a)(ii), **sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**
- F13** Words in s. 12(2) substituted (28.11.2004) by 2000 asp 5, ss. 76(1), 77(2)(c), **sch. 12 Pt. 1 para. 30(9)(b)(i)(ii)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

Modifications etc. (not altering text)

- C4** S. 12 excluded by [Land Registration \(Scotland\) Act 1979 \(c. 33, SIF 31:3\)](#), **s. 15(3)**

Marginal Citations

- M2** 1924 c. 27.

13 Ranking of standard securities.

- (1) Where the creditor in a standard security duly recorded has received notice of the creation of a subsequent security over the same [^{F14}land or real right in land or over any part thereof, or of the subsequent assignation or conveyance of that land or real right,] in whole or in part, being a security, assignation or conveyance so recorded, the preference in ranking of the security of that creditor shall be restricted to security for [^{F15}(a) the present debt incurred (whenever payable); and (b) any future debt which, under the contract to which the security relates, he is required to allow the debtor in the security to incur,] and interest present or future due thereon (including any such interest which has accrued or may accrue) and for any expenses or outlays (including interest thereon) which may be, or may have been, reasonably incurred in the exercise of any power conferred on any creditor by the deed expressing the existing security.
- (2) For the purposes of the foregoing subsection—
- (a) a creditor in an existing standard security duly recorded shall not be held to have had any notice referred to in that subsection, by reason only of the subsequent recording of the relevant deed in the Register of Sasines;
- (b) any assignation, conveyance or vesting in favour of or in any other person of the interest of the debtor in the security subjects or in any part thereof resulting from any judicial decree, or otherwise by operation of law, shall constitute sufficient notice thereof to the creditor.
- (3) Nothing in the foregoing provisions of this section shall affect—
- (a) any preference in ranking enjoyed by the Crown; and

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- (b) any powers of the creditor and debtor in any heritable security to regulate the preference to be enjoyed by creditors in such manner as they may think fit.

Textual Amendments

- F14** Words in s. 13(1) substituted (28.11.2004) by 2000 asp 5, ss. 76(1), 77(2)(c), **sch. 12 Pt. 1 para. 30(10)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**
- F15** Words in s. 13(1) substituted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. {111}, 129(3) (with ss. 119, 121)

Modifications etc. (not altering text)

- C5** S. 13 excluded by Housing (Scotland) Act 1987 (c. 26, SIF 61), **s. 71(5)**

14 Assignment of standard security.

- (1) Any standard security duly recorded may be transferred, in whole or in part, by the creditor by an assignment in conformity with Form A or B of Schedule 4 to this Act, and upon such an assignment being duly recorded, the security, or, as the case may be, part thereof, shall be vested in the assignee as effectually as if the security or the part had been granted in his favour.
- (2) An assignment of a standard security shall, except so far as otherwise therein stated, be deemed to convey to the grantee all rights competent to the grantor to the writs, and shall have the effect *inter alia* of vesting in the assignee—
- the full benefit of all corroborative or substitutional obligations for the debt, or any part thereof, whether those obligations are contained in any deed or arise by operation of law or otherwise,
 - the right to recover payment from the debtor of all expenses properly incurred by the creditor in connection with the security, and
 - the entitlement to the benefit of any notices served and of all procedure instituted by the creditor in respect of the security to the effect that the grantee may proceed as if he had originally served or instituted such notices or procedure.

Modifications etc. (not altering text)

- C6** Ss. 14-30 applied (with modifications) (28.11.2004) by 2000 asp 5, **ss. 69, 77(2)(a)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

15 Restriction of standard security.

- (1) The security constituted by any standard security duly recorded may be restricted, as regards any part of the [^{F16}land or real right] in land burdened by the security, by a deed of restriction in conformity with Form C of Schedule 4 to this Act, and, upon that deed being duly recorded, the security shall be restricted [^{F17}to the land or real right contained in the standard security other than the part of that land or real right disburdened by the deed; and the land or real right] thereby disburdened shall be released from the security wholly or to the extent specified in the deed.

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- (2) A partial discharge and deed of restriction of a standard security, which has been duly recorded, may be combined in one deed, which shall be in conformity with Form D of the said Schedule 4.

Textual Amendments

F16 Words in s. 15(1) substituted (28.11.2004) by 2000 asp 5, ss. 76(1), 77(2)(c)(d), **sch. 12 Pt. 1 para. 30(11)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

F17 Words in s. 15(1) substituted (28.11.2004) by 2000 asp 5, ss. 76(1), 77(2)(c)(d), **sch. 12 Pt. 1 para. 30(11)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

Modifications etc. (not altering text)

C7 Ss. 14-30 applied (with modifications) (28.11.2004) by 2000 asp 5, **ss. 69, 77(2)(a)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

16 Variation of standard security.

- (1) Any alteration in the provisions (including any standard condition) of a standard security duly recorded, other than an alteration which may appropriately be effected by an assignation, discharge or restriction of that standard security, or an alteration which involves an addition to, or an extension of, the [^{F18}land or real right] in land mentioned therein, may be effected by a variation endorsed on the standard security in conformity with Form E of Schedule 4 to this Act, or by a variation contained in a separate deed in a form appropriate for that purpose, duly recorded in either case.

- (2) Where a standard security has been duly recorded, but the personal obligation or any other provision (including any standard condition) relating to the security has been created or specified in a deed which has not been so recorded, nothing contained in this section shall prevent any alteration in that personal obligation or provision, other than an alteration which may be appropriately effected by an assignation, discharge or restriction of the standard security, or an alteration which involves an addition to, or an extension of, the [^{F18}land or real right] in land mentioned therein, by a variation contained in any form of deed appropriate for that purpose, and such a variation shall not require to be recorded in the Register of Sasines.

- (3) ^{F19}

- (4) Any variation effected in accordance with this section shall not prejudice any other security or right over the same [^{F20}land or real right in land, or over] any part thereof, effectively constituted before the variation is recorded, or, where the variation is effected by an unrecorded deed, before that deed is executed, as the case may be.

Textual Amendments

F18 Words in s. 16(1)(2) substituted (28.11.2004) by 2000 asp 5, ss. 76(1), 77(2)(c), **sch. 12 Pt. 1 para. 30(12)(a)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

F19 S. 16(3) repealed by Finance Act 1971 (c. 68), **Sch. 14**, pt. VI

F20 Words in s. 16(4) substituted (28.11.2004) by 2000 asp 5, ss. 76(1), 77(2)(c), **sch. 12 Pt. 1 para. 30(12)(b)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

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Modifications etc. (not altering text)

- C8** Ss. 14-30 applied (with modifications) (28.11.2004) by 2000 asp 5, ss. 69, 77(2)(a) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

17 Discharge of standard security.

A standard security duly recorded may be discharged, and the [^{F21}land or real right] in land burdened by that security may be disburdened thereof, in whole or in part, by a discharge in conformity with Form F of Schedule 4 to this Act, duly recorded.

Textual Amendments

- F21** Words in s. 17 substituted (28.11.2004) by 2000 asp 5, ss. 76(1), 77(2)(c), sch. 12 Pt. 1 para. 30(13) (with ss. 58, 62, 75); S.S.I. 2003/465, art. 2

Modifications etc. (not altering text)

- C9** Ss. 14-30 applied (with modifications) (28.11.2004) by 2000 asp 5, ss. 69, 77(2)(a) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

18 Redemption of standard security.

- (1) [^{F22}Subject to the provisions of subsection (1A) of this section,] The debtor in a standard security or, where the debtor is not the proprietor, the proprietor of the security subjects shall be entitled to redeem the security [^{F22}on giving two months' notice of his intention so to do, and] in conformity with the terms of standard condition 11 and the appropriate Forms of Schedule 5 to this Act.

[^{F23}(1A) [^{F24}Without prejudice to section 11 of the Land Tenure Reform (Scotland) Act 1974]the provisions of the foregoing subsection shall be subject to any agreement to the contrary, but any right to redeem the security shall be exercisable in conformity with the terms and Forms referred to in that subsection.]

- (2) Where owing to the death or absence of the creditor, or to any other cause, the debtor in a standard security or, as the case may be, the proprietor of the security subjects [^{F25}(being in either case a person entitled to redeem the security)] is unable to obtain a discharge under the [^{F26}foregoing provisions of this section] may—
- (a) where the security was granted in respect of any obligation to repay or pay money, consign in any bank in Scotland, incorporated by or under Act of Parliament or by Royal Charter, the whole amount due to the creditor on redemption, other than any unascertained expenses of the creditor, for the person appearing to have the best right thereto, and
 - (b) in any other case, apply to the court for declarator that the whole obligations under the contract to which the security relates have been performed.
- (3) On consignation, or on the court granting declarator as aforesaid, a certificate to that effect may be expedite by a solicitor in the appropriate form prescribed by Form D of Schedule 5 to this Act, which on being duly recorded shall disburden the [^{F27}land or real right] in land, to which the standard security relates, of that security.

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- (4) For the purposes of this section, “whole amount due” means the debt to which the security relates, so far as outstanding, and any other sums due thereunder by way of interest or otherwise.

Textual Amendments

- F22** Words inserted by [Redemption of Standard Securities \(Scotland\) Act 1971 \(c. 45\), s. 1\(b\)](#)
F23 [S. 18\(1A\)](#) added by [Redemption of Standard Securities \(Scotland\) Act 1971 \(c. 45\), s. 1\(c\)](#)
F24 Words inserted by [Land Tenure Reform \(Scotland\) Act 1974 \(c. 38, SIF 74:1\), s. 11\(6\)](#)
F25 Words inserted by [Redemption of Standard Securities \(Scotland\) Act 1971 \(c. 45\), s. 1\(d\)](#)
F26 Words substituted by [Redemption of Standard Securities \(Scotland\) Act 1971 \(c. 45\), s. 1\(d\)](#)
F27 Words in [s. 18\(3\)](#) substituted (28.11.2004) by [2000 asp 5, ss. 76\(1\), 77\(2\)\(c\), sch. 12 Pt. 1 para. 30\(14\)](#) (with [ss. 58, 62, 75](#)); [S.S.I. 2003/456, art. 2](#)

Modifications etc. (not altering text)

- C10** [Ss. 14-30](#) applied (with modifications) (28.11.2004) by [2000 asp 5, ss. 69, 77\(2\)\(a\)](#) (with [ss. 58, 62, 75](#)); [S.S.I. 2003/456, art. 2](#)

19 Calling-up of standard security.

- (1) Where a creditor in a standard security intends to require discharge of the debt thereby secured and, failing that discharge, to exercise any power conferred by the security to sell any subjects of the security or any other power which he may appropriately exercise on the default of the debtor within the meaning of standard condition 9(1)(a), he shall serve a notice calling-up the security in conformity with Form A of Schedule 6 to this Act (hereinafter in this Act referred to as a “calling-up notice”), in accordance with the following provisions of this section.
- (2) Subject to the following provisions of this section, a calling-up notice shall be served on the person [^{F28}having the last recorded title to] the security subjects and appearing on the record as the proprietor, and should the proprietor of those subjects, or any part thereof, be dead then on his representative or the person entitled to the subjects in terms of the last recorded title thereto, notwithstanding any alteration of the succession not appearing in the Register of Sasines.
- (3) Where the person [^{F29}having the last recorded title to] the security subjects was an incorporated company which has been removed from the Register of Companies, or a person deceased who has left no representatives, a calling-up notice shall be served on the Lord Advocate and, where the estates of the person [^{F29}having the last recorded title have] been sequestrated under the ^{M3}Bankruptcy (Scotland) Act 1913, the notice shall be served on the trustee in the sequestration (unless such trustee has been discharged) as well as on the bankrupt.
- (4) If the proprietor be a body of trustees, it shall be sufficient if the notice is served on a majority of the trustees [^{F30}having title to] the security subjects.
- (5) It shall be an obligation on the creditor to serve a copy of the calling-up notice on any other person against whom he wishes to preserve any right of recourse in respect of the debt.
- (6) For the purposes of the foregoing provisions of this section, the service of a calling-up notice may be made by delivery to the person on whom it is desired to be served or the notice may be sent by registered post or by the recorded delivery service to him

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at his last known address, or, in the case of the Lord Advocate, at the Crown Office, Edinburgh, and an acknowledgment, signed by the person on whom service has been made, in conformity with Form C of Schedule 6 to this Act, or, as the case may be, a certificate in conformity with Form D of that Schedule, accompanied by the postal receipt shall be sufficient evidence of the service of that notice; and if the address of the person on whom the notice is desired to be served is not known, or if it is not known whether that person is still alive, or if the packet containing a calling-up notice is returned to the creditor with an intimation that it could not be delivered, that notice shall be sent to the Extractor of the Court of Session, and shall be equivalent to the service of a calling-up notice on the person on whom it is desired to be served.

- (7) For the purposes of the last foregoing subsection, an acknowledgment of receipt by the said Extractor on a copy of a calling-up notice shall be sufficient evidence of the receipt by him of that notice.
- (8) A calling-up notice served by post shall be held to have been served on the next day after the day of posting.
- (9) Where a creditor in a standard security has indicated in a calling-up notice that any sum and any interest thereon due under the contract may be subject to adjustment in amount, he shall, if the person on whom notice has been served so requests, furnish the debtor with a statement of the amount as finally determined within a period of one month from the date of service of the calling-up notice, and a failure by the creditor to comply with the provisions of this subsection shall cause the calling-up notice to be of no-effect.
- (10) The period of notice mentioned in the calling-up notice may be effectively dispensed with or shortened by the person on whom it is served, with the consent of the creditors, if any, holding securities *pari passu* with, or postponed to, the security held by the creditor serving the calling-up notice, by a minute written or endorsed upon the said notice, or a copy thereof, in conformity with Form C of Schedule 6 to this Act.

[^{F31}Provided that, without prejudice to the foregoing generality, if the standard security is over a matrimonial home as defined in section 22 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981, the spouse on whom the calling-up notice has been served may not dispense with or shorten the said period without the consent in writing of the other spouse.]

[^{F32}(10A) Subsection (10B) below applies where the calling-up notice relates to a standard security over land or a real right in land used to any extent for residential purposes.

- (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 other consent required by that subsection) of—
- (a) any person entitled to make an application under section 24B(1) of this Act as an entitled resident falling within paragraph (d), (e) or (f) of section 24C(1), 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 or a family home (within the definitions in section 23A(3)), the debtor's spouse or civil partner.]

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- (11) [^{F33}Subject to subsection (12) below,] a calling-up notice shall cease to have effect for the purpose of a sale in the exercise of any power conferred by the security on the expiration of a period of five years, which period shall run—
- (a) in the case where the subjects of the security, or any part thereof, have not been offered for or exposed to sale, from the date of the notice,
 - (b) in the case where there has been such an offer or exposure, from the date of the last offer or exposure.

[^{F34}(12) A calling-up notice calling up a standard security over land or a real right in land used to any extent for residential purposes ceases to have effect on the expiration of a period of 5 years from the date of the notice.]

Textual Amendments

- F28** Words in s. 19(2) substituted (28.11.2004) by 2000 asp 5, ss. 76(1), 77(2)(c), **sch. 12 Pt. 1 para. 30(15)(a)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**
- F29** Words in s. 19(3) substituted (28.11.2004) by 2000 asp 5, ss. 76(1), 77(2)(c), **sch. 12 Pt. 1 para. 30(15)(b)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**
- F30** Words in s. 19(4) substituted (28.11.2004) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 128(1), 129(2), **sch. 14 para. 4(3)** (with ss. 119, 121); S.S.I. 2003/456, **art. 2**
- F31** Proviso added by Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59, SIF 49:6), **s. 20**
- F32** S. 19(10A)(10B) inserted (30.9.2010) by Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), **ss. 8(1)(a), 17(3)** (with s. 14); S.S.I. 2010/314, **art. 3** (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)
- F33** Words in s. 19(11) inserted (30.9.2010) by Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), **ss. 8(1)(b), 17(3)** (with s. 14); S.S.I. 2010/314, **art. 3** (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)
- F34** S. 19(12) inserted (30.9.2010) by Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), **ss. 8(1)(c), 17(3)** (with s. 14); S.S.I. 2010/314, **art. 3** (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)

Modifications etc. (not altering text)

- C11** Ss. 14-30 applied (with modifications) (28.11.2004) by 2000 asp 5, **ss. 69, 77(2)(a)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**
- C12** S. 19: functions transferred (19.5.1999) by virtue of S.I. 1999/678, **art. 2(1), Sch.**
- C13** S. 19 modified (3.12.2001) by 2001 asp 11, **s. 1(8)(a)** (with s. 5); S.S.I. 2001/418, **art. 2** (with transitional provision in **art. 3**) (as amended by S.S.I. 2005/623), {art. 4}

Marginal Citations

- M3** 1913 c. 20.

[^{F35}19A Notice to occupier of calling-up

- (1) Where a creditor in a standard security over [^{F36}land or a real right] in land used to any extent for residential purposes serves a calling-up notice, he shall serve a notice in conformity with Form BB (notice to occupier) of Schedule 6 to this Act together with a copy of the calling-up notice.
- (2) Notices under subsection (1) above shall be sent by recorded delivery letter addressed to “The Occupier” at the security subjects.

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- (3) If a creditor fails to comply with subsections (1) and (2) above, the calling-up notice shall be of no effect.]

Textual Amendments

- F35** S. 19A inserted (3.12.2001) by 2001 asp 11, s. 4(1) (with s. 5); S.S.I. 2001/418, art. 2 (with transitional provision in art. 3)
- F36** Words in s. 19A(1) substituted (28.11.2004) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 122(1), 128(1), 129(2), sch. 14 para. 4(4) (with ss. 119, 121); S.S.I. 2003/456, art. 2

[^{F37}19B Notice to local authority of calling-up

- (1) Where a creditor in a standard security over an interest in land used to any extent for residential purposes serves a calling-up notice, the creditor shall give notice of that fact to the local authority in whose area the security subjects are situated, unless the creditor is that local authority.
- (2) Notice under subsection (1) shall be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003 (asp 10).]

Textual Amendments

- F37** S. 19B inserted (2.10.2008 for specified purposes and 1.4.2009 otherwise) by Homelessness etc. (Scotland) Act 2003 (asp 10), ss. 11(2), 14(1), sch. para. 1(2); S.S.I. 2008/313, art. 2

20 Exercise of rights of creditor on default of debtor in complying with a calling-up notice.

- (1) Where the debtor in a standard security is in default within the meaning of standard condition 9(1)(a), the creditor may exercise such of his rights under the security as he may consider appropriate, and any such right shall be in addition to and not in derogation from any other remedy arising from the contract to which the security relates or from any right conferred by any enactment or by any rule of law on the creditor in a heritable security.
- (2) Where the debtor is in default as aforesaid, the creditor shall have the right to sell the security subjects, or any part thereof, in accordance with the provisions of this Part of this Act.

- [^{F38}(2A) Where the standard security is over land or a real right in land used to any extent for residential purposes, the creditor is entitled to exercise the rights specified in standard condition 10(2) and (3) (and mentioned in subsections (1) and (2) above) only—
- (a) where the conditions in section 23A of this Act are satisfied, or
 - (b) with the warrant of the court, granted on an application under section 24 of this Act.]

- (3) A creditor in a standard security who is in lawful possession of the security subjects may let the security subjects, or any part thereof, for any period not exceeding seven years, or may make application to the court for warrant to let those subjects, or any part thereof, for a period exceeding seven years, and the application shall state the proposed tenant, and the duration and conditions of the proposed lease, and shall be

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served on the proprietor of the subjects and on any other heritable creditor having interest as such a creditor in the subjects.

- (4) The court, on such an application as aforesaid and after such inquiry and such further intimation of the application as it may think fit, may grant the application as submitted, or subject to such variation as it may consider reasonable in all the circumstances of the case, or may refuse the application.
- (5) There shall be deemed to be assigned to a creditor who is in lawful possession of the security subjects all rights and obligations of the proprietor relating to—
 - (a) leases, or any permission or right of occupancy, granted in respect of those subjects or any part thereof, and
 - (b) the management and maintenance of the subjects and the effecting of any reconstruction, alteration or improvement reasonably required for the purpose of maintaining the market value of the subjects.

Textual Amendments

F38 S. 20(2A) inserted (30.9.2010) by Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), ss. 1(1), 17(3) (with s. 14); S.S.I. 2010/314, art. 3 (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)

Modifications etc. (not altering text)

C14 Ss. 14-30 applied (with modifications) (28.11.2004) by 2000 asp 5, ss. 69, 77(2)(a) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

21 Notice of default.

- (1) Where the debtor in a standard security is in default within the meaning of standard condition 9(1)(b), and the default is remediable, the creditor may, without prejudice to any other powers he may have by virtue of this Act or otherwise, proceed in accordance with the provisions of this section to call on the debtor and on the proprietor, where he is not the debtor, to purge the default.
 - (2) For the aforesaid purpose the creditor may serve on the debtor and, as the case may be, on the proprietor a notice in conformity with Form B of Schedule 6 to this Act (hereinafter in this Act referred to as a “notice of default”) which shall be served in the like manner and with the like requirements as to proof of service as a calling-up notice.
- [^{F39}(2A) [^{F40} Sections 19A and 19B of this Act apply]where the creditor serves a notice of default as [^{F41}they apply] where he serves a calling-up notice.]
- (3) For the purpose of dispensing with, or shortening, the period of notice mentioned in a notice of default, [^{F42}subsections (10) and (10B) of section 19 of this Act shall apply as they apply] in relation to a calling-up notice.
 - (4) Notwithstanding the failure to comply with any requirement contained in the notice, a notice of default shall cease to be authority for the exercise of the rights mentioned in section 23(2) of this Act on the expiration of a period of five years from the date of the notice.

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Textual Amendments

- F39** S. 21(2A) inserted (3.12.2001) by 2001 asp 11, s. 4(2) (with s. 5); S.S.I. 2001/418, art. 2 (with transitional provision in art. 3)
- F40** Words in s. 21(2A) substituted (2.10.2008 for specified purposes and 1.4.2009 otherwise) by Homelessness etc. (Scotland) Act 2003 (asp 10), ss. 11(2), 14(1), sch. para. 1(3); S.S.I. 2008/313, art. 2
- F41** Words in s. 21(2A) substituted (2.10.2008 for specified purposes and 1.4.2009 otherwise) by Homelessness etc. (Scotland) Act 2003 (asp 10), ss. 11(2), 14(1), sch. para. 1(3); S.S.I. 2008/313, art. 2
- F42** Words in s. 21(3) substituted (30.9.2010) by Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), ss. 8(2), 17(3) (with s. 14); S.S.I. 2010/314, art. 3 (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)

Modifications etc. (not altering text)

- C15** S. 21 modified (3.12.2001) by 2001 asp 11, s. 1(8)(b) (with s. 5); S.S.I. 2001/418, art. 2 (with transitional provision in art. 3)
- C16** Ss. 14-30 applied (with modifications) (28.11.2004) by 2000 asp 5, ss. 69, 77(2)(a) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

22 Objections to notice of default.

- (1) Where a person on whom a notice of default has been served considers himself aggrieved by any requirement of that notice he may, within a period of fourteen days of the service of the notice, object to the notice by way of application to the court; and the applicant shall, not later than the lodging of that application, serve a copy of his application on the creditor, and on any other party on whom the notice has been served by the creditor.
- (2) On any such application the court, after hearing the parties and making such inquiry as it may think fit, may order the notice appealed against to be set aside, in whole or in part, or otherwise to be varied, or to be upheld.
- (3) The respondent in any such application may make a counter-application craving for any of the remedies conferred on him by this Act or by any other enactment relating to heritable securities, and the court may grant any such remedy as aforesaid as it may think proper.
- (4) For the purposes of such a counter-application as aforesaid, a certificate which conforms with the requirements of Schedule 7 to this Act may be lodged in court by the creditor, and that certificate shall be *prima facie* evidence of the facts directed by the said Schedule to be contained therein.

Modifications etc. (not altering text)

- C17** Ss. 14-30 applied (with modifications) (28.11.2004) by 2000 asp 5, ss. 69, 77(2)(a) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

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23 Rights and duties of parties after service of notice of default to which objection is not taken, or where the notice is not set aside.

- (1) Where a person does not object to a notice of default in accordance with the provisions of the last foregoing section, or where he has so objected and the notice has been upheld or varied under that section, it shall be his duty to comply with any requirement, due to be performed or fulfilled by him, contained in the notice or, as the case may be, in the notice as so varied.
- (2) Subject to the provisions of section 21(4) of this Act [^{F43}and subsection (4) below], where a person fails to comply as aforesaid, the creditor, subject to the next following subsection, may proceed to exercise such of his rights on default under standard condition 10(2), (6) and (7) as he may consider appropriate.
- (3) At any time after the expiry of the period stated in a notice of default, or in a notice varied as aforesaid, but before the conclusion of any enforceable contract to sell the security subjects, or any part thereof, by virtue of the last foregoing subsection, the debtor or proprietor [^{F44}(being in either case a person entitled to redeem the security)] may, subject to any agreement to the contrary, redeem the security without the necessity of observance of any requirement as to notice.
- [^{F45}(4) Where the standard security is over land or a real right in land used to any extent for residential purposes—
 - (a) the creditor is entitled to exercise the right specified in standard condition 10(2) only—
 - (i) where the conditions in section 23A of this Act are satisfied, or
 - (ii) with the warrant of the court, granted on an application under section 24 of this Act, and
 - (b) subsection (3) above has effect as if the reference to the last foregoing subsection were a reference to section 24 of this Act.]

Textual Amendments

- F43** Words in s. 23(2) inserted (30.9.2010) by [Home Owner and Debtor Protection \(Scotland\) Act 2010 \(asp 6\)](#), **ss. 8(3), 17(3)** (with s. 14); S.S.I. 2010/314, **art. 3** (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)
- F44** Words inserted by [Redemption of Standard Securities \(Scotland\) Act 1971 \(c. 45\)](#), **s. 1(e)**
- F45** S. 23(4) inserted (30.9.2010) by [Home Owner and Debtor Protection \(Scotland\) Act 2010 \(asp 6\)](#), **ss. 1(2), 17(3)** (with s. 14); S.S.I. 2010/314, **art. 3** (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)

Modifications etc. (not altering text)

- C18** Ss. 14-30 applied (with modifications) (28.11.2004) by [2000 asp 5](#), **ss. 69, 77(2)(a)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

[^{F46}23A Voluntary surrender of residential property following calling-up notice or notice of default

- (1) The conditions referred to in sections 20(2A)(a) and 23(4)(a)(i) are that—
 - (a) the security subjects are unoccupied; and
 - (b) each of the persons specified in subsection (2) below has, in writing—

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- (i) certified that that person does not occupy the security subjects and is not aware of the security subjects being occupied by any other person;
 - (ii) consented to the exercise by the creditor of the creditor's rights on default; and
 - (iii) certified that the consent is given freely and without coercion of any kind.
- (2) Those persons are—
- (a) the debtor;
 - (b) the proprietor of the security subjects (where the proprietor is not the debtor);
 - (c) the non-entitled spouse of the debtor or the proprietor of security subjects which are (in whole or in part) a matrimonial home;
 - (d) the non-entitled civil partner of the debtor or the proprietor of security subjects which are (in whole or in part) a family home; and
 - (e) a person who has occupancy rights in the security subjects by virtue of an order under section 18(1) (occupancy rights of cohabiting couples) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981.
- (3) In this section—
- “family home” has the meaning given by section 135(1) of the Civil Partnership Act 2004;
 - “matrimonial home” has the meaning given by section 22 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981;
 - “non-entitled civil partner” has the same meaning as “non-entitled partner” in section 101(1) of the Civil Partnership Act 2004;
 - “non-entitled spouse” has the meaning given by section 1 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981.]

Textual Amendments

F46 S. 23A inserted (30.9.2010) by [Home Owner and Debtor Protection \(Scotland\) Act 2010 \(asp 6\)](#), ss. [1\(3\)](#), [17\(3\)](#) (with s. 14); S.S.I. 2010/314, [art. 3](#) (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)

24 Application by creditor to court for remedies on default.

- (1) Without prejudice to his proceeding by way of notice of default in respect of a default within the meaning of standard condition 9(1)(b), a creditor in a standard security, where the debtor is in default within the meaning of that standard condition or standard condition 9(1)(c), may apply to the court for warrant to exercise any of the remedies which he is entitled to exercise on a default within the meaning of standard condition 9(1)(a).

[^{F47}(1A) Subsection (1) above does not apply in relation to a creditor in a standard security over land or a real right in land used to any extent for residential purposes.

- (1B) A creditor in a standard security of that kind may, where the debtor is in default within the meaning of paragraph (a), (b) or (c) of standard condition 9(1), apply to the court for warrant to exercise any of the remedies which the creditor is entitled to exercise on a default within the meaning of standard condition 9(1)(a).

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- (1C) Before making an application under subsection (1B) above the creditor must comply with the pre-action requirements imposed by section 24A of this Act.
- (1D) An application under subsection (1B) above is to be made by summary application (regardless of whether it includes a crave for any other remedy).]
- (2) For the purposes of [^{F48}an application under subsection (1) or (1B)] in respect of a default within the meaning of standard condition 9(1)(b), a certificate which conforms with the requirements of Schedule 7 to this Act may be lodged in court by the creditor, and that certificate shall be *prima facie* evidence of the facts directed by the said Schedule to be contained therein.
- [^{F49}(3) Where the creditor applies to the court under [^{F50}subsection (1B)] above, he shall,
^{F51} . . . —
- (a) serve on the debtor and (where the proprietor is not the debtor) on the proprietor a notice in conformity with Form E of Schedule 6 to this Act, ^{F52} . . .
 - (b) serve on the occupier of the security subjects a notice in conformity with Form F of that Schedule [^{F53}, and
 - (c) give notice of the application to the local authority in whose area the security subjects are situated, unless the creditor is that local authority.]
- (4) Notices under subsection [^{F54}(3)(a) or (b)] above shall be sent by recorded delivery letter addressed—
- (a) in the case of a notice under subsection (3)(a), to the debtor or, as the case may be, the proprietor at his last known address,
 - (b) in the case of a notice under subsection (3)(b), to “The Occupier” at the security subjects.]
- [^{F55}(4A) Notice under subsection (3)(c) above shall be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003 (asp 10).]
- [^{F56}(5) The court may, on an application under subsection (1B) above, continue the proceedings or make any other order that it thinks fit; but it may not grant the application unless it is satisfied that—
- (a) the creditor has complied with subsection (1C) above; and
 - (b) it is reasonable in the circumstances of the case to do so.
- (6) In considering an application under subsection (1B) above where the debtor appears or is represented, the court is to have regard in particular to the matters set out in subsection (7) below.
- (7) Those matters are—
- (a) the nature of and reasons for the default;
 - (b) the ability of the debtor to fulfil within a reasonable time the obligations under the standard security in respect of which the debtor is in default;
 - (c) any action taken by the creditor to assist the debtor to fulfil those obligations;
 - (d) where appropriate, participation by the debtor in a debt payment programme approved under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002; and
 - (e) the ability of the debtor and any other person residing at the security subjects to secure reasonable alternative accommodation.
- (8) Subsections (5) and (6) above do not affect—

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- (a) any power that the court may have; or
 - (b) any rights that the debtor may have,
- by virtue of any other enactment or rule of law.

(9) Where—

- (a) the default in respect of which an application is made under subsection (1B) above is a default within the meaning of paragraph (a) or (b) of standard condition 9(1); and
 - (b) before a decree is granted on the application, 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.]

Textual Amendments

- F47** S. 24(1A)-(1D) inserted (30.9.2010) by Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), ss. 2(2), 17(3) (with s. 14); S.S.I. 2010/314, art. 3 (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)
- F48** Words in s. 24(2) substituted (30.9.2010) by Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), ss. 2(3), 17(3) (with s. 14); S.S.I. 2010/314, art. 3 (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)
- F49** S. 24(3)(4) inserted (3.12.2001) by 2001 asp 11, s. 4(3) (with s. 5); S.S.I. 2001/418, art. 2 (with transitional provision in art. 3)
- F50** Words in s. 24(3) substituted (30.9.2010) by Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), ss. 2(4), 17(3) (with s. 14); S.S.I. 2010/314, art. 3 (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)
- F51** Words in s. 24(3) repealed (30.9.2010) by Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), ss. 2(4), 17(3) (with s. 14); S.S.I. 2010/314, art. 3 (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)
- F52** Word in s. 24(3)(a) repealed (2.10.2008 for specified purposes and 1.4.2009 otherwise) by Homelessness etc. (Scotland) Act 2003 (asp 10), ss. 11(2), 14(1), sch. para. 1(4)(a)(i); S.S.I. 2008/313, art. 2
- F53** S. 24(3)(c) and preceding word inserted (2.10.2008 for specified purposes and 1.4.2009 otherwise) by Homelessness etc. (Scotland) Act 2003 (asp 10), ss. 11(2), 14(1), sch. para. 1(4)(a)(ii); S.S.I. 2008/313, art. 2
- F54** Words in s. 24(4) substituted (2.10.2008 for specified purposes and 1.4.2009 otherwise) by Homelessness etc. (Scotland) Act 2003 (asp 10), ss. 11(2), 14(1), sch. para. 1(4)(b); S.S.I. 2008/313, art. 2
- F55** S. 24(4A) inserted (2.10.2008 for specified purposes and 1.4.2009 otherwise) by Homelessness etc. (Scotland) Act 2003 (asp 10), ss. 11(2), 14(1), sch. para. 1(4)(c); S.S.I. 2008/313, art. 2
- F56** S. 24(5)-(9) inserted (30.9.2010) by Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), ss. 2(5), 17(3) (with s. 14); S.S.I. 2010/314, art. 3 (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)

Modifications etc. (not altering text)

- C19** S. 24 modified (3.12.2001) by 2001 asp 11, s. 2(1)(b) (with s. 5); S.S.I. 2001/418, art. 2 (with transitional provision in art. 3)
- C20** Ss. 14-30 applied (with modifications) (28.11.2004) by 2000 asp 5, ss. 69, 77(2)(a) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

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[^{F57}24A Section 24(1B) proceedings: pre-action requirements

- (1) The pre-action requirements referred to in section 24(1C) of this Act are set out in subsections (2) to (6) below.
- (2) The creditor must provide the debtor with clear information about—
 - (a) the terms of the standard security;
 - (b) the amount due to the creditor under the standard security, including any arrears and any charges in respect of late payment or redemption; and
 - (c) any other obligation under the standard security in respect of which the debtor is in default.
- (3) The creditor must make reasonable efforts to agree with the debtor proposals in respect of future payments to the creditor under the standard security and the fulfilment of any other obligation under the standard security in respect of which the debtor is in default.
- (4) The creditor must not make an application under section 24(1B) of this Act if the debtor is taking steps which are likely to result in—
 - (a) the payment to the creditor within a reasonable time of any arrears, or the whole amount, due to the creditor under the standard security; and
 - (b) fulfilment by the debtor within a reasonable time of any other obligation under the standard security in respect of which the debtor is in default.
- (5) The creditor must provide the debtor with information about sources of advice and assistance in relation to management of debt.
- (6) The creditor must encourage the debtor to contact the local authority in whose area the security subjects are situated.
- (7) In complying with the pre-action requirements the creditor must have regard to any guidance issued by the Scottish Ministers.
- (8) The Scottish Ministers may by order made by statutory instrument make further provision about the pre-action requirements, including provision—
 - (a) specifying particular steps to be taken, or not to be taken, by a creditor in complying with any requirement;
 - (b) modifying or removing any requirement;
 - (c) making different provision for different circumstances.
- (9) A statutory instrument containing an order under subsection (8) above is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.]

Textual Amendments

F57 S. 24A inserted (30.9.2010) by [Home Owner and Debtor Protection \(Scotland\) Act 2010 \(asp 6\)](#), **ss. 4(1), 17(3)** (with s. 14); [S.S.I. 2010/314](#), **art. 3** (subject to transitional and saving provisions in [S.S.I. 2010/316](#), arts. 4-7)

Modifications etc. (not altering text)

C21 S. 24A(2)(b) modified (30.9.2010) by [The Applications by Creditors \(Pre-Action Requirements\) \(Scotland\) Order 2010 \(S.S.I. 2010/317\)](#), **art. 2**

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^{F58}24B Section 24(1B) applications: application to court by entitled residents

- (1) An entitled resident may, in proceedings on an application under section 24(1B) of this Act, apply to the court to continue the proceedings or make any other order that the court thinks fit, despite not being called as a defender in the application.
- (2) In determining an application under subsection (1) above the court is to have regard in particular to the matters set out in subsection (7) of section 24, reading the first reference to the debtor in paragraph (b) as including a reference to the entitled resident.
- (3) Subsection (2) above does not affect—
 - (a) any power that the court may have; or
 - (b) any rights that an entitled resident may have, under any other enactment or rule of law.

Textual Amendments

F58 Ss. 24B, 24C inserted (30.9.2010) by [Home Owner and Debtor Protection \(Scotland\) Act 2010 \(asp 6\)](#), ss. 5(1), 17(3) (with s. 14); S.S.I. 2010/314, art. 3 (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)

24C Entitled residents: definition

- (1) For the purposes of sections 24B, 24D and 24E, an entitled resident is a person whose sole or main residence is the security subjects (in whole or in part) and who is—
 - (a) the proprietor of the security subjects (where the proprietor is not the debtor in the standard security);
 - (b) the non-entitled spouse of the debtor or the proprietor of security subjects which are (in whole or in part) a matrimonial home;
 - (c) the non-entitled civil partner of the debtor or the proprietor of security subjects which are (in whole or in part) a family home;
 - (d) a person living together with the debtor or the proprietor as husband and wife;
 - (e) a person living together with the debtor or the proprietor in a relationship which has the characteristics of the relationship between civil partners;
 - (f) a person who lived together with the debtor or the proprietor in a relationship described in paragraph (d) or (e) if—
 - (i) the security subjects (in whole or in part) are not the sole or main residence of the debtor or the proprietor;
 - (ii) the person lived together with the debtor or the proprietor throughout the period of 6 months ending 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 aged under 16 who is a child of both parties in that relationship.
- (2) In this section—

“child” includes a stepchild and any person brought up, or treated, by both parties to the relationship as their child;

“family home” has the meaning given by section 135(1) of the Civil Partnership Act 2004;

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“matrimonial home” has the meaning given by section 22 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981;

“non-entitled civil partner” has the same meaning as “non-entitled partner” in section 101(1) of the Civil Partnership Act 2004;

“non-entitled spouse” has the meaning given by section 1 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981.]

Textual Amendments

F58 Ss. 24B, 24C inserted (30.9.2010) by [Home Owner and Debtor Protection \(Scotland\) Act 2010 \(asp 6\)](#), [ss. 5\(1\), 17\(3\)](#) (with [s. 14](#)); [S.S.I. 2010/314](#), [art. 3](#) (subject to transitional and saving provisions in [S.S.I. 2010/316](#), [arts. 4-7](#))

[^{F59}24D Section 24(1B) proceedings: recall of decree

- (1) A person mentioned in subsection (2) below may apply to the court for recall of a decree granted on an application under section 24(1B) of this Act.
- (2) Those persons are—
 - (a) the creditor;
 - (b) the debtor, but only if the debtor did not appear and was not represented in the proceedings on the application under section 24(1B);
 - (c) an entitled resident, but only if the entitled resident did not make an application under section 24B(1) in the proceedings.
- (3) An application under subsection (1) may be made at any time before the decree has been fully implemented.
- (4) An application by any person under subsection (1) above is not competent if an application under that subsection has already been made by that person in relation to the application under section 24(1B).
- (5) An applicant under subsection (1) above must give notice of the application to—
 - (a) the creditor (unless the applicant is the creditor);
 - (b) the debtor (unless the applicant is the debtor);
 - (c) every entitled resident (or, if the applicant is an entitled resident, every other entitled resident).]

Textual Amendments

F59 S. 24D inserted (30.9.2010) by [Home Owner and Debtor Protection \(Scotland\) Act 2010 \(asp 6\)](#), [ss. 6\(1\), 17\(3\)](#) (with [s. 14](#)); [S.S.I. 2010/314](#), [art. 3](#) (subject to transitional and saving provisions in [S.S.I. 2010/316](#), [arts. 4-7](#))

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VALID FROM 03/10/2010

[^{F60}24E Lay representation in section 24(1B) proceedings etc.

- (1) In proceedings under sections 24(1B) and 24D(1) of this Act, the debtor and any entitled resident may be represented by an approved lay representative except in prescribed circumstances.
- (2) An approved lay representative must throughout the proceedings satisfy the sheriff that the representative is a suitable person to represent the debtor or entitled resident and is authorised by the debtor or entitled resident to do so.
- (3) References in this section to an approved lay representative are to an individual (other than an advocate or solicitor) approved for the purposes of this section by a person or body prescribed, or of a description prescribed, by the Scottish Ministers by order made by statutory instrument.
- (4) An order under subsection (3) above may—
 - (a) prescribe persons or bodies, or descriptions of persons or bodies, for the purposes of that subsection;
 - (b) make provision about the procedure for, and form and manner of—
 - (i) approval,
 - (ii) withdrawal of approval,
 of an individual for the purposes of this section;
 - (c) make provision requiring a prescribed person or body, or a person or body of a prescribed description, to provide information to the Scottish Ministers about approvals and withdrawals of approval;
 - (d) prescribe circumstances in which an approved lay representative may not represent a debtor or entitled resident.
- (5) Before making an order under subsection (3) above the Scottish Ministers must consult the Lord President of the Court of Session.
- (6) A statutory instrument containing an order under subsection (3) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.]

Textual Amendments

F60 S. 24E inserted (3.10.2010) by [Home Owner and Debtor Protection \(Scotland\) Act 2010 \(asp 6\)](#), **ss. 7(1), 17(3)** (with s. 14); [S.S.I. 2010/314](#), **art. 4** (subject to transitional and saving provisions in [S.S.I. 2010/316](#), arts. 4-7)

25 Exercise of power of sale.

A creditor in a standard security having right to sell the security subjects may [^{F61}, subject to sections 37(5)(e) or 40(1) of the Land Reform (Scotland) Act 2003 (asp 2) (prohibition of transfer of land registered under that Act except in accordance with its provisions),] exercise that right either by private bargain or by exposure to sale, and in either event it shall be the duty of the creditor to advertise the sale and to take all

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reasonable steps to ensure that the price at which all or any of the subjects are sold is the best that can be reasonably obtained.

Textual Amendments

F61 Words in s. 25 inserted (14.6.2004) by Land Reform (Scotland) Act 2003 (asp 2), ss. 40(6), 100(3) (with ss. 65(3), 100(2)); S.S.I. 2004/247, art. 2(a)

Modifications etc. (not altering text)

C22 Ss. 14-30 applied (with modifications) (28.11.2004) by 2000 asp 5, ss. 69, 77(2)(a) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

26 Disposition by creditor on sale.

- (1) Where a creditor in a standard security has effected a sale of the security subjects, or any part thereof, and grants to the purchaser of his nominee a disposition of the subjects sold thereby, which bears to be in implement of the sale, then, on that disposition being duly recorded, those subjects shall be disburdened of the standard security and of all other heritable securities and diligences ranking *pari passu* with, or postponed to that security.
- (2) Where on a sale as aforesaid the security subjects remain subject to a prior security, the recording of a disposition under the foregoing subsection shall not affect the rights of the creditor in that security, but the creditor who has effected the sale shall have the like right as the debtor to redeem the security.

Modifications etc. (not altering text)

C23 Ss. 14-30 applied (with modifications) (28.11.2004) by 2000 asp 5, ss. 69, 77(2)(a) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

27 Application of proceeds of sale.

- (1) The money which is received by the creditor in a standard security, arising from any sale by him of the security subjects, shall be held by him in trust to be applied by him in accordance with the following order of priority—
 - (a) first, in payment of all expenses properly incurred by him in connection with the sale, or any attempted sale;
 - (b) secondly, in payment of the whole amount due under any prior security to which the sale is not made subject;
 - (c) thirdly, in payment of the whole amount due under the standard security, and in payment, in due proportion, of the whole amount due under a security, if any, ranking *pari passu* with his own security, which has been duly recorded;
 - (d) fourthly, in payment of any amounts due under any securities with a ranking postponed to that of his own security, according to their ranking,and any residue of the money so received shall be paid to the person entitled to the security subjects at the time of sale, or to any person authorised to give receipts for the proceeds of the sale thereof.

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- (2) Where owing to the death or absence of any other creditor, or to any other cause, a creditor is unable to obtain a receipt or discharge for any payment he is required to make under the provisions of the foregoing subsection, he may, without prejudice to his liability to account therefor, consign the amount due (so far as ascertainable) in the sheriff court for the person appearing to have the best right thereto; and where consignment is so made, the creditor shall lodge in court a statement of the amount consigned.
- (3) A consignment made in pursuance of the last foregoing subsection shall operate as a discharge of the payment of the amount due, and a certificate under the hand of the sheriff clerk shall be sufficient evidence thereof.

Modifications etc. (not altering text)

- C24** Ss. 14-30 applied (with modifications) (28.11.2004) by 2000 asp 5, ss. 69, 77(2)(a) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- C25** S. 27 applied (23.12.1999) by S.S.I. 1999/201, art. 18(1)(c)
S. 27 applied (23.12.1999) by S.S.I. 1999/203, art. 19(1)(c)
- C26** S. 27 applied (2.4.2004) by The Highland Council (Inverie) Harbour Empowerment Order 2004 (S.S.I. 2004/171), art. 18(c)

28 Foreclosure.

- (1) Where the creditor in a standard security has exposed the security subjects to sale at a price not exceeding the amount due under the security and under any security ranking prior to, or *pari passu* with, the security, and has failed to find a purchaser, or where, having so failed, he has succeeded in selling only a part of the subjects at a price which is less than the amount due as aforesaid, he may, on the expiration of a period of two months from the date of the first exposure to sale, apply to the court for a decree of foreclosure.
- (2) In any application under the last foregoing subsection the creditor shall lodge a statement setting out the whole amount due under the security but, without prejudice to the right of the debtor or of the proprietor to challenge that statement, it shall be sufficient for the purposes of the application for the creditor to establish to the satisfaction of the court that the amount so stated is not less than the price at which the security subjects have been exposed to sale or sold, where part of the subjects has been sold as aforesaid.
- (3) Any application under subsection (1) of this section shall be served on the debtor in the standard security, the proprietor of the security subjects (if he is a person other than the debtor) and the creditor in any other heritable security affecting the security subjects as disclosed by a search of the Register of Sasines for a period of twenty years immediately preceding the last date to which the appropriate Minute Book of the said Register has been completed at the time when the application is made [F62 or by an examination of the title sheet of the security subjects in the Land Register of Scotland.]
- (4) The court may order such intimation and inquiry as it thinks fit and may in its discretion allow the debtor or the proprietor of the security subjects a period not exceeding three months in which to pay the whole amount due under the security and, subject to any such allowance, may—

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- (a) appoint the security subjects or the unsold part thereof to be re-exposed to sale at a price to be fixed by the court, in which event the creditor in the security may bid and purchase at the sale, or
 - (b) grant a decree of foreclosure in conformity with the provisions of the next following subsection.
- (5) A decree of foreclosure shall contain a declaration that on the extract of the decree being duly recorded, [^{F63}any right to redeem the security] has been extinguished and that the creditor has right to the security subjects or the unsold part thereof, described by means of a particular description or by reference to a description thereof as in Schedule D to the ^{M4}Conveyancing (Scotland) Act 1924 or in Schedule G to the ^{M5}Titles to Land Consolidation (Scotland) Act 1868, including a reference to any conditions or clauses affecting the subjects or the unsold part thereof [^{F64}or in accordance with section 15 of the Land Registration (Scotland) Act 1979], at the price at which the said subjects were last exposed to sale under deduction of the price received for any part thereof sold, and shall also contain a warrant for recording the extract of the decree in the Register of Sasines.
- (6) Upon an extract of the decree of foreclosure being duly recorded, the following provisions of this subsection shall have effect in relation to the security subjects to which the decree relates—
 - (a) [^{F63}any right to redeem the security] shall be extinguished, and the creditor shall have right to, and be vested in, the subjects as if he had received an irredeemable disposition thereof duly recorded from the proprietor of the subjects at the date of the recording of the extract of the decree;
 - (b) the subjects shall be discharged of the standard security and all securities and diligences postponed thereto;
 - (c) the creditor who has obtained the decree shall have the like right as the debtor to redeem any security prior to, or *pari passu* with, his own security.
- (7) Notwithstanding the due recording of an extract of a decree of foreclosure, any personal obligation of the debtor under the standard security shall remain in full force and effect so far as not extinguished by the price at which the security subjects have been acquired and the price for which any part thereof has been sold.
- (8) Where the security subjects or any part thereof have been acquired by a creditor in the security by virtue of a decree of foreclosure under the provisions of this section, the title thereto of the creditor shall not be challengeable on the ground of any irregularity in the proceedings for foreclosure or on calling-up or default which preceded it; but nothing in the provisions of this subsection shall affect the competency of any claim for damages in respect of such proceedings against the creditor.

Textual Amendments

F62 Words inserted by [Land Registration \(Scotland\) Act 1979 \(c. 33, SIF 31:3\)](#), [Sch. 2 para. 4\(a\)](#)

F63 Words substituted by [Redemption of Standard Securities \(Scotland\) Act 1971 \(c. 45\)](#), [s. 1\(f\)](#)

F64 Words inserted by [Land Registration \(Scotland\) Act 1979 \(c. 33, SIF 31:3\)](#), [Sch. 2 para. 4\(b\)](#)

Modifications etc. (not altering text)

C27 [Ss. 14-30](#) applied (with modifications) (28.11.2004) by [2000 asp 5](#), [ss. 69, 77\(2\)\(a\)](#) (with [ss. 58, 62, 75](#)); [S.S.I. 2003/456](#), [art. 2](#)

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Marginal Citations

M4 1924 c. 27.

M5 1868 c. 101.

29 Procedure.

(1) The court for the purposes of this Part of this Act, and for the operation of section 11 of the ^{M6}Heritable Securities (Scotland) Act 1894 (application by *pari passu* creditor to sell), in relation to a standard security, shall be the sheriff having jurisdiction over any part of the security subjects, and the sheriff shall be deemed to have such jurisdiction whatever the value of the subjects.

(2) ^{F65}

Textual Amendments

F65 S. 29(2)(3) repealed by S.I. 1990/661, para. 5

Modifications etc. (not altering text)

C28 Ss. 14-30 applied (with modifications) (28.11.2004) by 2000 asp 5, ss. 69, 77(2)(a) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

Marginal Citations

M6 1894 c. 44.

30 Interpretation of Part II.

(1) In this Part of this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

“creditor” and “debtor” shall include any successor in title, assignee or representative of a creditor or debtor;

“debt” and “creditor” and “debtor”, in relation to a standard security, have the meanings assigned to them by section 9(8) of this Act;

“duly recorded” means recorded in the appropriate division of the General Register of Sasines;

“exposure to sale” means exposure to sale by public roup, and exposed or re-exposed to sale shall be construed accordingly;

“heritable security” has the meaning assigned to it by the said section 9(8);

[^{F66}“real right in land” has the meaning assigned to it by the said section 9(8);]

“Register of Sasines” means the appropriate division of the General Register of Sasines;

“the standard conditions” are the conditions (whether varied or not) referred to in section 11(2) of this Act;

“whole amount due” has the meaning assigned to it by section 18(4) of this Act.

(2) For the purpose of construing this Part of this Act in relation to the creation of a security over a registered lease and to any subsequent transactions connected with that security,

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the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

“conveyance” or “disposition” means assignation;

“convey” or “dispone” means assign;

F67

“proprietor” means lessee;

“security subjects” means a registered lease subject to a security.

Textual Amendments

F66 S. 30(1): definition of "real right in land" substituted (28.11.2004) for "interest in land" by 2000 asp 5, ss. 76(1), 77(2)(c), **sch. 12 Pt. 1 para. 30(16)(a)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

F67 S. 30(2): definition of "infert" repealed (28.11.2004) by 2000 asp 5, ss. 76(1)(2), 77(2)(c)(d), sch. 12 Pt. 1 para. 30(16)(b), **sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

Modifications etc. (not altering text)

C29 Ss. 14-30 applied (with modifications) (28.11.2004) by 2000 asp 5, **ss. 69, 77(2)(a)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

31 Saving.

Nothing in the provisions of this Part of this Act shall affect the validity of any heritable security within the meaning of this Part which has been duly recorded before the commencement of this Act, and any such security may be dealt with, and shall be as capable of being enforced, as if this Part had not been passed.

32 Application of enactments.

The provisions of any enactment relating to a bond and disposition or assignation in security shall apply to a standard security, except in so far as such provisions are inconsistent with the provisions of this Part of this Act, but, without prejudice to the generality of that exception, the enactments specified in Schedule 8 to this Act shall not so apply.

Status:

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