



# Conveyancing and Feudal Reform (Scotland) Act 1970

## 1970 CHAPTER 35

### PART III

#### PROVISIONS AS TO HERITABLE SECURITIES

#### **33 Form of notice calling-up heritable security.**

- (1) For the avoidance of doubt, it is hereby declared that for the purposes of section 33 of the Act of 1924 (notice of calling-up security) a creditor in possession of the land disposed in security may adapt the form of notice contained in Form No. 1 of Schedule M to the said Act by stating that the principal sum and interest thereon specified in that notice is subject to adjustment in amount as calculated in a statement of relevant intromissions.
- (2) The person on whom notice as aforesaid is served may request the creditor to furnish to him a statement as aforesaid, in a case to which the foregoing subsection applies, within a period of one month from the date of service of the notice calling-up the security, and a failure by the creditor to comply with that request shall cause the notice of calling-up to be of no effect.

#### **34 Amendment of s. 34 of Act of 1924.**

With a view to making provision for the service of notices required to be served for the purposes of the said section 33 on persons who are not known to be alive or dead, section 34 of the Act of 1924 (service of notice of calling-up) shall have effect as if after the words “is not known,” there were inserted the words “or if it is not known whether such a person is still alive”.

*Status: Point in time view as at 03/12/2001.*

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### 35 Power of creditor in bond and disposition in security to sell to include power to sell by private bargain.

- (1) The creditor in a bond and disposition in security may exercise his power to sell the land disposed in security by way of sale by private bargain for the best price that can be reasonably obtained.
- (2) In relation to a sale by private bargain, the Act of 1924, except as respects amendments thereto made by this Act, shall have effect subject to the following modifications—
  - (a) any reference to sale by public roup shall include a reference to a sale by private bargain, and any reference to exposure to sale, however worded, shall include a reference to an offer for sale;
  - (b) any reference to the upset price of the land, or any part thereof, shall be omitted;
  - (c) section 39 shall be omitted.
- (3) Nothing in the provisions of this section shall authorise a sale under warrant of the sheriff in pursuance of section 11 of the <sup>M1</sup>Act of 1894 (empowering by sheriff of *pari passu* security holder to sell *pari passu* security) to be by way of private bargain.

#### Marginal Citations

M1 1894 c. 11.

### 36 Alteration of periods during which sale of land held in security is to be advertised.

For section 38 of the Act of 1924 there shall be substituted the following section—

#### “38 Periods during which, and newspapers in which, advertisement required.

- (1) An advertisement for the purposes of an exposure to sale shall be inserted at least once weekly during a period of not less than three consecutive weeks in accordance with the provisions of this section, and the exposure to sale so advertised shall take place within a period of fourteen days beginning with the day following the day of the publication of the third advertisement required under this subsection.
- (2) An advertisement for the purposes of an offer for sale by private bargain shall be inserted in like manner during a period of not less than two consecutive weeks, and it shall be a requirement of a competent sale that an enforceable contract to sell shall be concluded within a period of twenty-eight days beginning with the day following the day of the publication of the second advertisement required under this subsection.
- (3) Insertion of an advertisement for the purposes of the two foregoing subsections shall be as follows, that is to say—
  - (a) in the case of land situated in the county of Midlothian, in at least one daily newspaper published in Edinburgh;
  - (b) in the case of land situated in the county of Lanark, in at least one daily newspaper published in Glasgow;

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- (c) in the case of land situated elsewhere in Scotland, in at least one daily newspaper published in Scotland circulating in the district where the land or the main part thereof is situated and in at least one newspaper (if any) circulating as aforesaid and published either in the county in which the land, or any part thereof, is situated or in a county (being a county in Scotland) adjacent to that county.
- (4) A copy of an advertisement required by this section shall, when supported by a certificate of publication by the publisher, printer, or editor of the newspaper in which that advertisement is inserted, be sufficient evidence of the insertion and publication thereof.
- (5) For the purposes of this section—
  - (a) “a week” means the period between midnight on Saturday night and midnight on the succeeding Saturday night, and
  - (b) “exposure to sale” and “offer for sale” respectively include re-exposure to sale and re-offer for sale.”

**Modifications etc. (not altering text)**

- C1** The text of ss. 2(7), 36, 37, 39, 46, 50, 52(2)(3), Sch. 10 paras. 1, 2–4, 5 and Sch. 11 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**37 Amendment of s. 40 of Act of Act of 1924.**

Section 40 of the Act of 1924 (exposure in lots and apportionment of feu-duty etc.) shall be amended as follows—

- (a) for the words from the beginning to the words “price or prices and,” there shall be substituted the words—
  - “(1) The land, or any part thereof, may be exposed to, or offered for, sale either in whole or in lots, and in the former case at such upset price or prices as the creditor may think proper, and in the latter case at the best price that can be reasonably obtained,” and
- (b) at the end there shall be added the following subsections—
  - “(2) Where there is a sale as aforesaid in lots, the creditor shall have power to create such rights and impose such duties and conditions as he considers may be reasonably required for the proper management, maintenance and use of any part of the land to be held in common by the owners for the time being of the lots.
  - (3) For the purpose of exercising the power conferred by the last foregoing subsection, a creditor shall have the like right as has a proprietor by virtue of section 32 of the <sup>M2</sup>Conveyancing (Scotland) Act 1874 to execute and record to the like effect a deed of declaration of conditions in the manner prescribed by that section.”.

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**Modifications etc. (not altering text)**

- C2** The text of ss. 2(7), 36, 37, 39, 46, 50, 52(2)(3), Sch. 10 paras. 1, 2–4, 5 and Sch. 11 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Marginal Citations**

- M2** 1874 c.94.

**38 Amendment of s. 41 of Act of 1924.**

For subsection (2) of section 41 of the Act of 1924 (protection of purchasers) there shall be substituted the following subsection—

“(2) Where a disposition of land is duly recorded in the appropriate Register of Sasines and that disposition bears to be granted in the exercise of a power of sale contained in a deed granting a bond and disposition in security, and the exercise of that power was *ex facie* regular, the title of *abona fide* purchaser of the land for value shall not be challengeable on the ground that the debt had ceased to exist, unless that fact appeared in the said Register, or was known to the purchaser prior to the payment of the price, or on the ground of any irregularity relating to the sale or in any preliminary procedure thereto; but nothing in the provisions of this subsection shall affect the competency of any claim for damages in respect of the sale of the land against the person exercising the said power.”;

but in relation to a disposition duly recorded before the commencement of this Act the said subsection shall continue to have effect as originally enacted.

**39 Amendment of s. 8 of Act of 1894.**

(1) Section 8 of the Act of 1894 (provisions for security holders becoming proprietors of security subjects) shall be amended as follows—

- (a) in the first sentence the words “or at any lower price” shall be omitted; and
- (b) in the second sentence, after the words “extinguished, and” there shall be inserted the words “as from the date of the said recording”, and for the words “as from the date of such decree” there shall be substituted the words “as from that date”.

(2) In Schedule (D) to the Act of 1894 (form of decree under the said section 8), for the words “this date” there shall be substituted the words “the date on which an extract of this decree is recorded in the appropriate register”, and after the word “petitioner” there shall be inserted the words “as from the said date”.

**Modifications etc. (not altering text)**

- C3** The text of ss. 2(7), 36, 37, 39, 46, 50, 52(2)(3), Sch. 10 paras. 1, 2–4, 5 and Sch. 11 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

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#### **40 Discharge of heritable security constituted by *ex facie* absolute conveyance.**

- (1) Where land is held in security by virtue of a heritable security constituted by *ex facie* absolute conveyance, whether qualified by a back letter or not, a discharge by the creditor in security in conformity with Schedule 9 to this Act, either as a separate deed or as a deed endorsed on the conveyance, shall, as from the date on which that discharge is duly recorded, discharge that heritable security, disburden the land to the extent that it is the subject of the security, and vest that land in the person entitled thereto in like manner and to the like effect as if a conveyance containing a clause of warrandice from fact and deed only and all other usual and necessary clauses had been granted by the creditor to that person and duly recorded.
- (2) Nothing in the provisions of the foregoing subsection shall affect any method of granting a discharge in existence at the commencement of this Act.

#### **41 Restriction on effect of reduction of certain discharges of securities.**

- (1) Where the discharge, in whole or in part, of a security over land is duly recorded, whether before or after the commencement of this Act, and that discharge bears to be granted by a person entitled so to do, the title of a person to any subsequent interest in the land, acquired *bona fide* and for value, shall not be challengeable, after the expiration of a period of five years commencing with the date of the recording of the discharge, by reason only of the recording of an extract of a decree of reduction of the discharge, whether or not the date of that decree was before or after the date on which the acquisition of the interest was duly recorded.
- (2) Section 46 of the Act of 1924 (which requires extract decrees of reduction of certain deeds to be recorded) shall cease to apply in relation to a decree of reduction of a discharge of a security where that discharge has been duly recorded for a period of five years or more, but the provisions of this subsection shall not preclude the recording of such a decree of reduction as provided for in the said section 46.
- (3) Nothing in the provisions of this section shall affect any rights of a creditor in a security as against the debtor therein.
- (4) The provisions of this section shall not be pleadable to any effect in any action begun, whether before or after the date of the commencement of this Act, before the expiry of a period of two years beginning with that date.
- [<sup>F1</sup>(5) This section shall apply to an order under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 rectifying a discharge as it applies to a decree of reduction of a discharge]

##### **Textual Amendments**

- F1** S. 41(5) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 61:1), s. 59, Sch. 2 para. 11

#### **42 Extension of s. 13 to certain existing forms of heritable securities.**

Section 13 of this Act shall apply, in relation to the effect on the preference in ranking of any heritable security, constituted by *ex facie* absolute disposition or assignation, as it applies to the preference in ranking of a standard security.

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### 43 Interpretation of Part III.

- (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—
- “the <sup>M3</sup>Act of 1894” means the Heritable Securities (Scotland) Act 1894;
  - “the Act of 1924” means the <sup>M4</sup>Conveyancing (Scotland) Act 1924;
  - “land” has the meaning assigned to it by section 2(1) of the Act of 1924.
- (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, section 30(2) shall apply as it applies to Part II of this Act, and any reference to a security over land, however expressed, shall be construed as a reference to a registered lease subject to a security, and “land” shall be construed accordingly.

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#### Marginal Citations

**M3** 1894 c. 44.

**M4** 1924 c. 27.

**Status:**

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