



Rent (Scotland) Act 1984

1984 CHAPTER 58

PART IX

HERITABLE SECURITIES

91 Heritable securities to which Part IX applies

- (1) The heritable securities with which this Part of this Act is concerned are heritable securities which—
 - (a) were created before 8th December 1965 ; and
 - (b) are regulated heritable securities as hereinafter defined.
- (2) Any reference in this Part of this Act to a regulated heritable security shall be construed in accordance with section 92 below.

92 Regulated heritable securities

- (1) Subject to subsection (2) below, a heritable security which falls within section 91(1)
 - (a) is a regulated heritable security if—
 - (a) it is a heritable security over land consisting of or including a dwelling-house which is let on or subject to a regulated tenancy ; and
 - (b) the regulated tenancy is binding on the creditor in the heritable security.
- (2) Notwithstanding that a heritable security falls within subsection (1) above, it is not a regulated heritable security if—
 - (a) the rateable value on the appropriate day of the dwelling-house which falls within subsection (1)(a) above, or if there is more than one such dwelling-house comprised in the heritable security, the aggregate of the rateable values of those dwelling-houses on the appropriate day, is less than one-tenth of the rateable value on the appropriate day of the whole of the land comprised in the heritable security ; or
 - (b) the debtor in the heritable security is in breach of agreement, but for this purpose a breach of the agreement for the repayment of the principal money shall be disregarded unless it provides for repayment by instalments.

93 Powers of court to mitigate hardship

- (1) The powers of the court under this section relate only to regulated heritable securities, and those powers become exercisable in relation to such a heritable security only on an application made by the debtor in the security within 21 days, or such longer time as the court may allow, after the occurrence of one of the following events, that is to say,—
 - (a) the rate of interest payable in respect of the heritable security is increased ; or
 - (b) a rent for a dwelling-house comprised in the heritable security is registered under Part V of this Act and the rent so registered is lower than the rent which was payable immediately before the registration; or
 - (c) the creditor in the security, not being a creditor who was in possession on 8th December 1965, demands payment of the principal money secured by the heritable security or takes any steps for exercising any right of foreclosure or sale or for otherwise enforcing his security.
- (2) If the court is satisfied on any such application as is referred to in subsection (1) above that, by reason of the event in question and of the operation of this Act the debtor in the security would suffer severe financial hardship unless relief were given under this section, the court may by order make such provision limiting the rate of interest, extending the time for the repayment of the principal money or otherwise varying the terms of the heritable security or imposing any limitation or condition on the exercise of any right or remedy in respect thereof, as the court thinks appropriate.
- (3) Where the court makes an order under subsection (2) above in relation to a heritable security which comprises other land as well as a dwelling-house or dwelling-houses let on or subject to a regulated tenancy the order may, if the creditor in the security so requests, make provision for apportioning the money secured by the heritable security between that other land and the dwelling-house or dwelling-houses.
- (4) Where such an apportionment is made as is referred to in subsection (3) above, the other provisions of the order made by the court shall not apply in relation to the other land referred to in that subsection and the money secured by the other land, and the heritable security shall have effect for all purposes as two separate heritable securities of the apportioned parts.
- (5) Where the court has made an order under this section it may vary or revoke it by a subsequent order.
- (6) The court for the purposes of this section is the sheriff, except that where an application under subsection (1) above is made in pursuance of any step taken by the creditor in the heritable security in the Court of Session, it is that court.

94 Miscellaneous

- (1) In this Part of this Act the expressions "creditor in a heritable security" and "debtor in a heritable security", however expressed, include any person from time to time deriving title under the original creditor or debtor.
- (2) In the application of this Part of this Act to a dwelling-house subject to a regulated furnished tenancy, for any reference to 8th December 1965 there shall be substituted a reference to 14th August 1974.