



Mortgage Rights (Scotland) Act 2001

2001 asp 11

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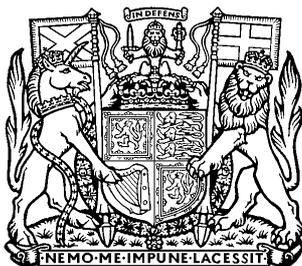
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Mortgage Rights (Scotland) Act 2001

2001 asp 11

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 20th June 2001 and received Royal Assent on 25th July 2001

An Act of the Scottish Parliament to provide for the suspension in certain circumstances of enforcement rights of a creditor in a standard security over property used for residential purposes and the continuation of proceedings relating to those rights; to make provision for notifying tenants and other occupiers of enforcement action by a creditor in a standard security; and for connected purposes.

1 Application to suspend enforcement of standard security

- (1) This section applies where a creditor in a standard security over an interest in land used to any extent for residential purposes has—
 - (a) served—
 - (i) a calling-up notice under section 19 (calling-up of standard security), or
 - (ii) a notice of default under section 21 (notice of default),of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35) (in this Act referred to as “the 1970 Act”),
 - (b) made an application to the court under section 24 (application to court for remedies on default) of that Act, or
 - (c) commenced proceedings under section 5 (power to eject proprietor in personal occupancy) of the Heritable Securities (Scotland) Act 1894 (c.44) (in this Act referred to as “the 1894 Act”).
- (2) The following persons may apply to the court for an order under section 2 of this Act—
 - (a) the debtor in the standard security or the proprietor of the security subjects (where the proprietor is not the debtor), if the security subjects (in whole or in part) are that person’s sole or main residence,
 - (b) the non-entitled spouse of the debtor or the proprietor, where the security subjects (in whole or in part) are a matrimonial home and the sole or main residence of the non-entitled spouse,
 - (c) a person living together with the debtor or the proprietor as husband or wife or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex, if the security subjects (in whole or in part) are that person’s sole or main residence,

- (d) a person who has lived together with the debtor or the proprietor as mentioned in paragraph (c), if—
 - (i) the security subjects (in whole or in part) are the sole or main residence of that person but not of the debtor or, as the case may be, the proprietor,
 - (ii) that person lived together with the debtor or the proprietor as mentioned in that paragraph 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 under the age of 16 years who is a child of that person and of the debtor or the proprietor.
- (3) In paragraph (d)(iii) of subsection (2), “child” includes a stepchild and any person brought up or treated by the person mentioned in that paragraph and the debtor or the proprietor as their child.
- (4) An application under subsection (2) must be made—
 - (a) in the case mentioned in subsection (1)(a)(i), before the expiry of the period of notice in relation to the calling-up notice,
 - (b) in the case mentioned in subsection (1)(a)(ii), not later than one month after the expiry of the period of notice specified in the notice of default,
 - (c) in a case mentioned in subsection (1)(b) or (c), before the conclusion of the proceedings.
- (5) The period of one month mentioned in subsection (4)(b) may be dispensed with or shortened by the person on whom the notice of default has been served, but only with the consent in writing of—
 - (a) any other person on whom the notice of default has been served,
 - (b) if the standard security is over a matrimonial home, the spouse of each person on whom the notice of default has been served, and
 - (c) any person entitled to make an application under subsection (2) by virtue of paragraph (c) or (d) of that subsection.
- (6) An application under subsection (2) in a case mentioned in subsection (1)(a) must be made by summary application.
- (7) Any rights which the creditor has, or acquires, by virtue of the enactments mentioned in subsection (1)(a) to (c) may not be exercised—
 - (a) at any time when an application under subsection (2) is competent,
 - (b) at any time when such an application has been made but has not been determined.
- (8) In a case mentioned in subsection (1)(a)—
 - (a) section 19 (calling-up of standard security) of the 1970 Act has effect as if—
 - (i) in subsection (10), the words “effectively dispensed with or” and “dispense with or” were omitted,
 - (ii) after subsection (10) there were inserted—

“(10A) Subsection (10) above does not permit the period of notice mentioned in the calling-up notice to be shortened to a period of less than one month.

- (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 consent required by that subsection) of—
- (a) any person entitled to make an application under subsection (2) of section 1 (application to suspend enforcement of standard security) of the Mortgage Rights (Scotland) Act 2001 (asp 11) by virtue of paragraph (c) or (d) of that subsection, 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 (within the definition referred to in that subsection), the debtor's spouse.”,
 - (b) section 21 (notice of default) of that Act has effect as if subsection (3) of that section were omitted, and
 - (c) Form C in Schedule 6 (procedures as to calling up and default) to that Act has effect as if the words “dispensed with (*or*” were omitted.

2 Disposal of application

- (1) On an application under section 1(2) the court may—
- (a) suspend the exercise of the rights which the creditor has, or may acquire, by virtue of the enactments mentioned in subsection (1)(a) to (c) of that section—
 - (i) to such extent,
 - (ii) for such period, and
 - (iii) subject to such conditions,as the court thinks fit,
 - (b) if the application is made in proceedings under section 24 of the 1970 Act or section 5 of the 1894 Act, continue those proceedings to such date as the court thinks fit.
- (2) The court may make an order under this section only where it considers it reasonable in all the circumstances to do so; and the court, in considering whether to make such an order and what its terms should be, is to have regard in particular to—
- (a) the nature of and reasons for the default,
 - (b) the applicant's ability to fulfil within a reasonable period 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, and
 - (d) the ability of the applicant and any other person residing at the security subjects to secure reasonable alternative accommodation.
- (3) If, while an order under this section is in force, 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.
- (4) In relation to an application under section 1(2) in the case mentioned in subsection (1)(a)(i) of that section, the preceding provisions of this section have effect with the following modifications—

- (a) the power to specify a period in pursuance of subsection (1)(a) includes, without prejudice to the generality of that provision, power to specify the period which expires on the calling-up notice ceasing to have effect by virtue of section 19(11) of the 1970 Act,
 - (b) subsection (2)(a) is to be read as referring to the circumstances giving rise to the service of the calling-up notice,
 - (c) subsection (2)(b) is to be read as referring to the ability of the applicant to comply with the notice within a reasonable period,
 - (d) subsection (2)(c) is to be read as referring to any action taken by the creditor to assist the debtor to fulfil the debtor's obligations under the standard security, and
 - (e) subsection (3) does not apply.
- (5) The court may, if requested to do so by the creditor or the applicant—
- (a) vary or revoke an order made under subsection (1)(a),
 - (b) further continue proceedings continued under subsection (1)(b).
- (6) Section 1 and this section are without prejudice to any rights which a debtor, proprietor or non-entitled spouse may have under any other enactment or rule of law.
- (7) In section 1 and this section—
- “applicant” means the person who makes an application under section 1(2),
 - “court” means the sheriff court,
 - “matrimonial home” and “non-entitled spouse” are to be construed in accordance with the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59).

3 Registration of order under section 2

- (1) Where the court makes an order under section 2 the clerk of court must, as soon as possible, send to the Keeper of the Register of Inhibitions and Adjudications, for recording in that Register—
- (a) a certified copy of the order, and
 - (b) a notice complying with subsection (2).
- (2) A notice referred to in subsection (1)(b)—
- (a) must be in such form, and
 - (b) must contain such particulars of the order, the proceedings in which it was made and the standard security,
- as may be prescribed by the Scottish Ministers by order made by statutory instrument.
- (3) A statutory instrument containing an order under subsection (2) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

4 Notices to debtors, proprietors and occupiers

- (1) After section 19 of the 1970 Act there is inserted—

“19A Notice to occupier 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, 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.
 - (3) If a creditor fails to comply with subsections (1) and (2) above, the calling-up notice shall be of no effect.”
- (2) In section 21 (notice of default) of that Act, after subsection (2) there is inserted—

“(2A) Section 19A of this Act applies where the creditor serves a notice of default as it applies where he serves a calling-up notice.”
 - (3) In section 24 (application by creditor to court for remedies on default) of that Act, after subsection (2) there is inserted—

“(3) Where the creditor applies to the court under subsection (1) above, he shall, if the standard security is over an interest in land used to any extent for residential purposes—

 - (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, and
 - (b) serve on the occupier of the security subjects a notice in conformity with Form F of that Schedule.

(4) Notices under subsection (3) 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.”
 - (4) Where a creditor in a standard security over an interest in land used to any extent for residential purposes commences proceedings under section 5 (power to eject proprietor in personal occupancy) of the 1894 Act, the creditor must—
 - (a) serve on the proprietor a notice in conformity with Form 1 in Part 2 of the schedule to this Act, and
 - (b) serve on the occupier of the security subjects a notice in conformity with Form 2 in that Part of that schedule.
 - (5) Notices under subsection (4) must be sent by recorded delivery letter addressed—
 - (a) in the case of a notice under subsection (4)(a), to the proprietor at the proprietor’s last known address,
 - (b) in the case of a notice under subsection (4)(b), to “The Occupier” at the security subjects.
 - (6) The schedule to this Act, Part 1 of which amends Schedule 6 to the 1970 Act (forms to be used in relation to calling-up and default) and Part 2 of which sets out the Forms referred to in subsection (4), has effect.

- (7) The Scottish Ministers may, by order made by statutory instrument, amend—
- (a) the Notes inserted in Forms A and B in Schedule 6 to the 1970 Act by Part 1 of the schedule to this Act,
 - (b) Forms BB, E and F in Schedule 6 to the 1970 Act,
 - (c) the Forms set out in Part 2 of the schedule to this Act.
- (8) A statutory instrument containing an order under subsection (7) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

5 Crown application

This Act binds the Crown.

6 Interpretation

Except so far as the context otherwise requires, expressions used in this Act and in Part II of the 1970 Act have the same meanings in this Act as they have in that Part.

7 Commencement and short title

- (1) The preceding provisions of this Act come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.
- (2) An order under subsection (1) may include such transitional and transitory provisions and savings as the Scottish Ministers think expedient.
- (3) This Act may be cited as the Mortgage Rights (Scotland) Act 2001.

SCHEDULE
(introduced by section 4)

NOTICES TO DEBTORS, PROPRIETORS AND OCCUPIERS

PART 1

AMENDMENTS TO SCHEDULE 6 TO THE 1970 ACT

1 Schedule 6 to the 1970 Act (forms to be used in connection with calling-up of, or default under, standard security) is amended as follows.

2 In Form A (notice of calling-up of standard security) there is inserted, at the end of the notice—

“**NOTE:** The Mortgage Rights (Scotland) Act 2001 gives you the right in certain circumstances to apply to the court to suspend the rights of C.D. You have two months (which may be shortened only with your consent) to make an application. The court will have regard in particular to the circumstances giving rise to the service of this notice, your ability to comply with this notice, any action taken by C.D. to assist the debtor in the standard security to fulfil the obligations under it and the ability of you and anyone else residing at the property to find reasonable alternative accommodation. If you wish to make such an application, you should consult a solicitor. You may be eligible for legal aid depending on your circumstances, and you can get information about legal aid from a solicitor. You may also be able to get advice, including advice about how to manage debt, from any Citizens Advice Bureau or from other advice agencies.”

3 In Form B (notice of default under standard security) there is inserted, at the end of the notice—

“**NOTE:** The Mortgage Rights (Scotland) Act 2001 gives you the right in certain circumstances to apply to the court to suspend the rights of C.D. You have two months (which may be shortened only with your consent) to make an application. The court will have regard in particular to the nature of and reasons for the default, your ability to fulfil the obligations under the standard security, any action taken by C.D. to assist the debtor in the standard security to fulfil those obligations and the ability of you and anyone else residing at the property to find reasonable alternative accommodation. If you wish to make such an application, you should consult a solicitor. You may be eligible for legal aid depending on your circumstances, and you can get information about legal aid from a solicitor. You may also be able to get advice, including advice about how to manage debt, from any Citizens Advice Bureau or from other advice agencies.”

4 After Form B there is inserted—

“FORM BB

NOTICE TO OCCUPIER

To the Occupier (*address*)

A Notice of Calling-up of a standard security/ Default under a standard security (*delete as appropriate*) has been served by C.D. on A.B. in relation to (*address of subjects*). A copy of the notice is attached.

If you are a tenant of A.B., in certain circumstances C.D. cannot take possession of the property without a court order. You should obtain legal advice about your rights as a tenant. You may be eligible for legal aid depending on your circumstances, and you can get information about legal aid from a solicitor. You may also be able to get advice from any Citizens Advice Bureau or from other advice agencies.

If you are the spouse or partner of A.B., the Mortgage Rights (Scotland) Act 2001 gives you the right in certain circumstances to apply to the court to suspend the rights of C.D. You have two months (which may be shortened only with your consent) to make an application. The court will have regard in particular to—

(for a Notice of Calling-up) the circumstances giving rise to the service of the Notice of Calling-up, your ability to comply with the notice, any action taken by C.D. to assist the debtor in the standard security to fulfil the obligations under it and the ability of you and anyone else residing at the property to find reasonable alternative accommodation.

(for a Notice of Default) the nature of and reasons for the default, your ability to fulfil the obligations under the standard security, any action taken by C.D. to assist the debtor in the standard security to fulfil those obligations and the ability of you and anyone else residing at the property to find reasonable alternative accommodation.

(delete as appropriate)

If you wish to make such an application, you should consult a solicitor. You may be eligible for legal aid depending on your circumstances, and you can get information about legal aid from a solicitor. You may also be able to get advice, including advice about how to manage debt, from any Citizens Advice Bureau or from other advice agencies.

Dated

(Signature of C.D., or signature and designation of C.D.'s agent followed by the words Agent of C.D.)

5 After Form D there is inserted—

“FORM E

To A.B. *(address)*

C.D. *(designation)*, the creditor in a standard security by you *(or by E.F.)* in favour of C.D. *(or of G.H. to which C.D. now has right)* recorded in the Register for *(or, as the case may be, registered in the Land Register for Scotland)* on *(date)* has applied to the court under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 for warrant to exercise in relation to *(address of security subjects)* remedies to which he is entitled on the following default—

(specify in detail the default in respect of which the application is made)

A copy of the application is attached.

Dated

(Signature of C.D., or signature and designation of C.D.'s agent followed by the words Agent of C.D.)

NOTE: The Mortgage Rights (Scotland) Act 2001 gives you the right in certain circumstances to apply to the court for suspension of the rights of C.D. The court will have regard in particular to the nature of and reasons for the default, your ability to fulfil the obligations under the standard security, any action taken by C.D. to assist the debtor in the standard security to fulfil those obligations and the ability of you and anyone else residing at the property to find reasonable alternative accommodation. If you wish to make such an application, you should consult a solicitor. You may be eligible for legal aid depending on your circumstances, and you can get information about legal aid from a solicitor. You may also be able to get advice, including advice about how to manage debt, from any Citizens Advice Bureau or from other advice agencies.

FORM F

To the Occupier (*address*)

C.D. (*designation*) has applied to the court under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 for warrant to exercise in relation to (*address of security subjects*) remedies to which he is entitled on the default of A.B. (*designation*) in the performance of his obligations under a standard security over (*address of subjects*). A copy of the application is attached.

If you are a tenant of A.B. (*or, if A.B. is not the proprietor of the subjects, of E.F. (being the proprietor)*), in certain circumstances C.D. cannot take possession of the property without a court order. You should obtain legal advice about your rights as a tenant. You may be eligible for legal aid depending on your circumstances, and you can get information about legal aid from a solicitor. You may also be able to get advice from any Citizens Advice Bureau or from other advice agencies.

If you are the spouse or partner of A.B., the Mortgage Rights (Scotland) Act 2001 gives you the right in certain circumstances to apply to the court to suspend the rights of C.D. The court will have regard in particular to the nature of and reasons for the default, your ability to fulfil the obligations under the standard security, any action taken by C.D. to assist the debtor in the standard security to fulfil those obligations and the ability of you and anyone else residing at the property to find reasonable alternative accommodation. If you wish to make such an application, you should consult a solicitor. You may be eligible for legal aid depending on your circumstances, and you can get information about legal aid from a solicitor. You may also be able to get advice, including advice about how to manage debt, from any Citizens Advice Bureau or from other advice agencies.

Dated

(*Signature of C.D., or signature and designation of C.D.'s agent followed by the words Agent of C.D.*)”

PART 2

FORMS RELATING TO PROCEEDINGS UNDER SECTION 5 OF THE 1894 ACT

FORM 1

To A.B. (*address*)

C.D. (*designation*), the creditor in a standard security by you (*or* by E.F.) in favour of C.D. (*or* of G.H. to which C.D. now has right) recorded in the Register for (*or, as the case may be, registered in the Land Register for Scotland*) on (*date*) has commenced proceedings against you under section 5 of the Heritable Securities (Scotland) Act 1894 to eject you from (*address of security subjects*). A copy of the initial writ is attached.

Dated

(*Signature of C.D., or signature and designation of C.D.'s agent followed by the words Agent of C.D.*)

NOTE: The Mortgage Rights (Scotland) Act 2001 gives you the right in certain circumstances to apply to the court for suspension of the rights of C.D. The court will have regard in particular to the nature of and reasons for the default, your ability to fulfil the obligations under the standard security, any action taken by C.D. to assist the debtor in the standard security to fulfil those obligations and the ability of you and anyone else residing at the property to find reasonable alternative accommodation. If you wish to make such an application, you should consult a solicitor. You may be eligible for legal aid depending on your circumstances, and you can get information about legal aid from a solicitor. You may also be able to get advice, including advice about how to manage debt, from any Citizens Advice Bureau or from other advice agencies.

FORM 2

To the Occupier (*address*)

C.D. (*designation*) has commenced proceedings under section 5 of the Heritable Securities (Scotland) Act 1894 to eject A.B. from (*address of security subjects*). A copy of the initial writ is attached.

If you are a tenant of A.B., in certain circumstances C.D. cannot take possession of the property without a court order. You should obtain legal advice about your rights as a tenant. You may be eligible for legal aid depending on your circumstances, and you can get information about legal aid from a solicitor. You may also be able to get advice from any Citizens Advice Bureau or from other advice agencies.

If you are the spouse or partner of A.B., the Mortgage Rights (Scotland) Act 2001 gives you the right in certain circumstances to apply to the court to suspend the rights of C.D. The court will have regard in particular to the nature of and reasons for the default, your ability to fulfil the obligations under the standard security, any action taken by C.D. to assist the debtor in the standard security to fulfil those obligations and the ability of you and anyone else residing at the property to find reasonable alternative accommodation. If you wish to make such an application, you should consult a solicitor. You may be eligible for legal aid depending on your circumstances, and you can get information about legal aid from a solicitor. You may also be able to get advice, including advice about how to manage debt, from any Citizens Advice Bureau or from other advice agencies.

Dated

*(Signature of C.D., or signature and designation of C.D.'s agent followed by the words
Agent of C.D.)*

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