

# HOME OWNER AND DEBTOR PROTECTION (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### THE ACT

#### **Part 1 – Residential Standard Securities Etc.: Creditor’s Rights on Default**

##### *Section 2 - court applications by creditor for remedies on default*

15. [Section 2](#) makes provision about court applications by a creditor under section 24 of the 1970 Act for warrant to exercise the creditor’s remedies where the borrower defaults in a standard security over residential property. It sets out a new procedure applying to such applications, including applications required as a result of section 1 of the Act (i.e. following a calling-up notice or notice of default).
16. Section 2(2) inserts subsections (1A) to (1D) into section 24 of the 1970 Act. Subsection (1C) requires a creditor to fulfil the pre-action requirements specified at section 24A of the 1970 Act (see section 4(1) of the Act) before making a section 24 application in respect of a residential property.
17. Subsection (1D) provides that a section 24 application in relation to a residential property is to be by summary application procedure. This applies regardless of whether the application includes a crave for some other remedy. That ensures that in all cases the court will set a date on which it will hear the case and on which the debtor will have an opportunity to defend the case or make submissions to the court.
18. Sections 2(3) and 2(4) make minor consequential changes to the 1970 Act.
19. Section 2(5) inserts new subsections (5) to (9) into section 24 of the 1970 Act. Subsection (5) confirms that a court may grant any order that it thinks fit on the application but may only grant it if it is satisfied that the pre-action requirements have been complied with and it is satisfied that it is reasonable in the circumstances of the case to grant the application.
20. Subsections (6) and (7) specify the matters to which the court must have regard when considering a creditor’s application in a case where the debtor appears or is represented (see section 5 of the Act for a case where an entitled resident makes an application). The matters in subsection (7) mirror the matters to which a court currently has regard in an application made under the 2001 Act. The matters are currently set out in section 2(2) of the 2001 Act (as amended by [S.S.I 2004/468](#) to include reference to the Debt Arrangement Scheme established under the Debt Arrangement and Attachment (Scotland) Act 2002).
21. Subsection (9) clarifies the effect of a debtor remedying a default (within the meaning of standard condition 9(1)(a) or (b)) before a creditor has been granted decree in respect of a section 24 application in relation to a residential property. In those circumstances the standard security has effect as if the default had not occurred.