

HOME OWNER AND DEBTOR PROTECTION (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

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

Section 7 – representation in repossession proceedings

36. [Section 7](#) allows for the representation of the debtor or entitled resident by an approved lay representative in court proceedings in relation to the possession or sale of a residential property.
37. [Section 7\(1\)](#) inserts section 24E into the 1970 Act. Section 24E(1) allows approved lay representation of debtors and entitled residents in proceedings under section 24(1B) of the 1970 Act (i.e. creditor applications) and section 24D(1) (i.e. applications for recall of decree). Lay representation in these proceedings is not available in any circumstances which are prescribed by the Scottish Ministers.
38. Section 24E(2) requires a lay representative to satisfy the sheriff throughout the proceedings that they are competent to represent the debtor or entitled resident and are authorised to do so.
39. Section 24E(3) defines approved lay representative: an individual approved by a person, named body or description of body prescribed by Scottish Ministers by subordinate legislation. Section 24E(4) enables the Scottish Ministers to require organisations with approved lay representatives to provide information about approvals and withdrawals of approval. Under section 24E(4) the subordinate legislation may also, among other things, make provision about the approval and removal of approval process.
40. [Section 7\(2\)](#) inserts section 5F into the 1894 Act. This makes provision for lay representation in respect of applications to which section 5A applies or applications for recall of decree granted in respect of such an application under the 1894 Act, corresponding to the provision made in new section 24E of the 1970 Act. Lay representation in these proceedings is not available in any circumstances which are prescribed by the Scottish Ministers.
41. [Section 7\(3\)](#) amends section 32 of the Solicitors (Scotland) Act 1980 to ensure that approved lay representatives will not be in breach of the restrictions on unqualified persons preparing certain documents.