

SCHEDULE

PART 2

AMENDMENT OF THE MORTGAGE RIGHTS (SCOTLAND) ACT 2001

1. Part 2 of the Schedule to the Mortgage Rights (Scotland) Act 2001⁽¹⁾ is amended in accordance with paragraph 2.
2. For Forms 1 and 2, substitute—

FORM 1

NOTICE OF PROCEEDINGS

**IT IS IMPORTANT THAT YOU READ THIS LETTER – YOUR HOME MAY BE
AT RISK OF REPOSSESSION**

To A.B. (address)

C.D. (designation), the creditor in a 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) in consequence of 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.)

⁽¹⁾ 2000 asp 11.

IT IS STRONGLY RECOMMENDED THAT YOU SEEK ADVICE:

You can get advice about this Notice and what it means for you from a solicitor, Citizens Advice Bureau or other advice agency or an approved lay representative. A Citizens Advice Bureau or other advice agency may also be able to give you advice about how to manage debt. Take this Notice with you when seeking advice. You may be eligible for legal aid depending on your circumstances. You can get information about legal aid from a solicitor.

A solicitor or approved lay representative may represent you in any court proceedings in relation to an application by C.D for possession and sale of your home. You can find out more about approved lay representatives from the housing department of your local authority or from a Citizens Advice Bureau or other advice agency.

YOUR RIGHTS IN RELATION TO RESIDENTIAL PROPERTY ARE PROTECTED BY LAW:

C.D.'s application is not valid and can be challenged by you (or by E.F) if C.D. has failed to comply with certain pre-action requirements. These requirements include providing specified information and to contacting you (or the debtor) to discuss alternatives to repossession. It is important to discuss with your solicitor or advisor if you have doubts about whether C.D. has complied with these requirements.

YOU HAVE THE RIGHT TO BE HEARD IN COURT:

You are (or the debtor is) entitled to intervene in the court proceedings following from C.D.'s application. You (or the debtor) can appear personally or be represented by a solicitor or approved lay representative. For example, you (or the debtor) might want to argue that the pre-action requirements have not been complied with or that it would not be reasonable for the sheriff to grant the application. Even if they have, you have (or the debtor has) the right to ask the sheriff to continue the proceedings or make any other order. The sheriff will take into account matters such as the nature of and reasons for the default, your (or the debtor's) ability to fulfil your (or the) obligations under the security within a reasonable time, any action taken by C.D. to assist you (or the debtor) to fulfil your (or the) obligations, your (or the debtor's) participation in a relevant debt payment programme and your (or the debtor's) ability, or the ability of any other person residing in the property, to secure reasonable alternative accommodation.

YOU MAY WISH TO VOLUNTARILY SURRENDER YOUR HOME:

It is open to you (or the debtor), in certain circumstances, to voluntarily surrender the property to C.D. if all entitled residents in it consent. If you wish to consider voluntary surrender you should discuss with your solicitor or advisor whether this option is right for you. You should not proceed with voluntary surrender unless you understand the consequences of doing so, for example that you may still owe money to C.D.

WHAT IF AN ORDER FOR REPOSSESSION HAS ALREADY BEEN GRANTED AND I HAVE JUST BECOME AWARE OF THE APPLICATION?

It may not be too late to intervene so you should urgently seek advice. You have the right to apply to the court to ask for the order to be recalled at any time before repossession has taken place. If the court recalls the order it will fix a hearing, giving you (or the debtor) the opportunity to appear or be represented.

FORM 2

NOTICE OF PROCEEDINGS TO THE OCCUPIER

IT IS IMPORTANT THAT YOU READ THE LETTER – YOUR HOME MAY BE AT RISK OF REPOSSESSION

To the Occupier (including any Tenant) (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.

Dated

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

IT IS STRONGLY RECOMMENDED THAT YOU SEEK ADVICE:

You can get advice about this Notice and what it means for you from a solicitor, Citizens Advice Bureau or other advice agency or, in certain cases, an approved lay representative. Take this Notice with you when seeking advice. You may be eligible for legal aid depending on your circumstances. You can get information about legal aid from a solicitor.

YOUR RIGHTS IN RELATION TO RESIDENTIAL PROPERTY ARE PROTECTED BY LAW:

C.D. must comply with statutory pre-action requirements before being allowed to apply to the court. These requirements include providing A.B. with specified information and contacting A.B. to discuss alternatives to repossession. It is important to discuss with your solicitor or advisor any doubts you have about whether C.D. has complied with these requirements.

IF YOU ARE OR WERE THE SPOUSE, CIVIL PARTNER OR PARTNER OF A.B. OR ARE THE OWNER OF THE HOUSE:

You may be an ENTITLED RESIDENT and should discuss this with your solicitor or advisor. This means that A.B. cannot voluntarily surrender the property if you or anyone else is living there or without your written consent. You may be asked to give your consent – it is recommended that you do not do so until you have discussed this with a solicitor or other advisor.

You have the RIGHT TO BE HEARD IN COURT. You are entitled to intervene to ask the court to continue the proceedings or to make any other order (for example an order suspending C.D.'s rights or refusing C.D.'s application). For example, you might want to argue that the pre-action requirements have not been complied with or that it would not be reasonable for the sheriff to grant the application. Even if they have, you have the right to ask the sheriff to continue the proceedings or make any other order. The sheriff will take into account matters such as the nature of and reasons for the default, your or the debtor's ability to fulfil the obligations under the security within a reasonable time, any action taken by C.D. to assist the debtor to fulfil the obligations, the debtor's participation in a relevant debt payment programme and the your ability, or the ability of any other person residing in the property (including you), to secure reasonable alternative accommodation.

You may represent yourself, or be represented by a solicitor or approved lay representative. You can find out more about approved lay representatives from the housing department of your local authority or from a Citizens Advice Bureau or other advice agency.

IF YOU ARE A TENANT OF A.B.:

You should contact C.D. to let them know about your tenancy as soon as possible as they may not be aware that you live in the property.

If you have an assured or short assured tenancy you may have rights under the Housing (Scotland) Act 1988 - in certain circumstances C.D. cannot take possession of the property or evict you without making a separate application to court under that Act. The sheriff may also permit you to intervene in the proceedings for possession as an interested party. Whatever your type of tenancy, you should obtain legal advice about your rights as a tenant.

WHAT IF AN ORDER FOR REPOSSESSION HAS ALREADY BEEN GRANTED AND I HAVE JUST BECOME AWARE OF THE APPLICATION?

If you are an ENTITLED RESIDENT it may not be too late to intervene so you should urgently seek advice. You have the right to apply to court to ask for the order to be recalled at any time before repossession has taken place. If the court recalls the order it will fix a hearing, giving you the opportunity to appear or be represented.

If you are a TENANT, C.D. may need to obtain a separate order for eviction, depending on your tenancy type. You should urgently obtain legal advice about your rights as a tenant.