



Conveyancing and Feudal Reform (Scotland) Act 1970

1970 CHAPTER 35

PART II

THE STANDARD SECURITY

19 Calling-up of standard security.

- (1) Where a creditor in a standard security intends to require discharge of the debt thereby secured and, failing that discharge, to exercise any power conferred by the security to sell any subjects of the security or any other power which he may appropriately exercise on the default of the debtor within the meaning of standard condition 9(1)(a), he shall serve a notice calling-up the security in conformity with Form A of Schedule 6 to this Act (hereinafter in this Act referred to as a “calling-up notice”), in accordance with the following provisions of this section.
- (2) Subject to the following provisions of this section, a calling-up notice shall be served on the person [^{F1}having the last [^{F2}registered or] recorded title to] the security subjects and appearing [^{F3}in the Land Register of Scotland or] on the record [^{F4}of the Register of Sasines] as the proprietor, and should the proprietor of those subjects, or any part thereof, be dead then on his representative or the person entitled to the subjects in terms of the last [^{F2}registered or] recorded title thereto, notwithstanding any alteration of the succession not appearing in the [^{F5}Land Register of Scotland or] Register of Sasines.
- (3) Where the person [^{F6}having the last [^{F7}registered or] recorded title to] the security subjects was an incorporated company which has been removed from the Register of Companies, or a person deceased who has left no representatives, a calling-up notice shall be served on the Lord Advocate and, where the estates of the person [^{F6}having the last [^{F7}registered or] recorded title have] been sequestrated under the Bankruptcy (Scotland) Act [^{F8}2016], the notice shall be served on the trustee in the sequestration (unless such trustee has been discharged) as well as on the bankrupt.
- (4) If the proprietor be a body of trustees, it shall be sufficient if the notice is served on a majority of the trustees [^{F9}having title to] the security subjects.

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- (5) It shall be an obligation on the creditor to serve a copy of the calling-up notice on any other person against whom he wishes to preserve any right of recourse in respect of the debt.
- (6) For the purposes of the foregoing provisions of this section, the service of a calling-up notice may be made by delivery to the person on whom it is desired to be served or the notice may be sent by registered post or by the recorded delivery service to him at his last known address, or, in the case of the Lord Advocate, at the Crown Office, Edinburgh, and an acknowledgment, signed by the person on whom service has been made, in conformity with Form C of Schedule 6 to this Act, or, as the case may be, a certificate in conformity with Form D of that Schedule, accompanied by the postal receipt shall be sufficient evidence of the service of that notice; and if the address of the person on whom the notice is desired to be served is not known, or if it is not known whether that person is still alive, or if the packet containing a calling-up notice is returned to the creditor with an intimation that it could not be delivered, that notice shall be sent to the Extractor of the Court of Session, and shall be equivalent to the service of a calling-up notice on the person on whom it is desired to be served.
- (7) For the purposes of the last foregoing subsection, an acknowledgment of receipt by the said Extractor on a copy of a calling-up notice shall be sufficient evidence of the receipt by him of that notice.
- (8) A calling-up notice served by post shall be held to have been served on the next day after the day of posting.
- (9) Where a creditor in a standard security has indicated in a calling-up notice that any sum and any interest thereon due under the contract may be subject to adjustment in amount, he shall, if the person on whom notice has been served so requests, furnish the debtor with a statement of the amount as finally determined within a period of one month from the date of service of the calling-up notice, and a failure by the creditor to comply with the provisions of this subsection shall cause the calling-up notice to be of no-effect.
- (10) The period of notice mentioned in the calling-up notice may be effectively dispensed with or shortened by the person on whom it is served, with the consent of the creditors, if any, holding securities *pari passu* with, or postponed to, the security held by the creditor serving the calling-up notice, by a minute written or endorsed upon the said notice, or a copy thereof, in conformity with Form C of Schedule 6 to this Act.

[^{F10}Provided that, without prejudice to the foregoing generality, if the standard security is over a matrimonial home as defined in section 22 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981, the spouse on whom the calling-up notice has been served may not dispense with or shorten the said period without the consent in writing of the other spouse.]

[^{F11}(10A) Subsection (10B) below applies where the calling-up notice relates to a standard security over land or a real right in land used to any extent for residential purposes.

- (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 other consent required by that subsection) of—
- (a) any person entitled to make an application under section 24B(1) of this Act as an entitled resident falling within paragraph (d), (e) or (f) of section 24C(1), and

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- (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 or a family home (within the definitions in section 23A(3)), the debtor's spouse or civil partner.]
- (11) [^{F12}Subject to subsection (12) below,] a calling-up notice shall cease to have effect for the purpose of a sale in the exercise of any power conferred by the security on the expiration of a period of five years, which period shall run—
- (a) in the case where the subjects of the security, or any part thereof, have not been offered for or exposed to sale, from the date of the notice,
 - (b) in the case where there has been such an offer or exposure, from the date of the last offer or exposure.
- [^{F13}(12) A calling-up notice calling up a standard security over land or a real right in land used to any extent for residential purposes ceases to have effect on the expiration of a period of 5 years from the date of the notice.]

Textual Amendments

- F1** Words in s. 19(2) substituted (28.11.2004) by 2000 asp 5, ss. 76(1), 77(2)(c), **sch. 12 Pt. 1 para. 30(15)(a)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**
- F2** Words in s. 19(2) inserted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **sch. 5 para. 17(13)(a)(i)** (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F3** Words in s. 19(2) inserted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **sch. 5 para. 17(13)(a)(ii)** (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F4** Words in s. 19(2) inserted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **sch. 5 para. 17(13)(a)(iii)** (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F5** Words in s. 19(3) inserted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **sch. 5 para. 17(13)(a)(iv)** (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F6** Words in s. 19(3) substituted (28.11.2004) by 2000 asp 5, ss. 76(1), 77(2)(c), **sch. 12 Pt. 1 para. 30(15)(b)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**
- F7** Words in s. 19(3) inserted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **sch. 5 para. 17(13)(b)** (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F8** Word in s. 19(3) substituted (30.11.2016) by Bankruptcy (Scotland) Act 2016 (asp 21), s. 237(2), **sch. 8 para. 5** (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2
- F9** Words in s. 19(4) substituted (28.11.2004) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 128(1), 129(2), **sch. 14 para. 4(3)** (with ss. 119, 121); S.S.I. 2003/456, **art. 2**
- F10** Proviso added by Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59, SIF 49:6), **s. 20**
- F11** S. 19(10A)(10B) inserted (30.9.2010) by Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), **ss. 8(1)(a), 17(3)** (with s. 14); S.S.I. 2010/314, **art. 3** (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)
- F12** Words in s. 19(11) inserted (30.9.2010) by Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), **ss. 8(1)(b), 17(3)** (with s. 14); S.S.I. 2010/314, **art. 3** (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)
- F13** S. 19(12) inserted (30.9.2010) by Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), **ss. 8(1)(c), 17(3)** (with s. 14); S.S.I. 2010/314, **art. 3** (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)

Modifications etc. (not altering text)

- C1** Ss. 14-30 applied (with modifications) (28.11.2004) by 2000 asp 5, **ss. 69, 77(2)(a)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

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- C2** S. 19: functions transferred (19.5.1999) by virtue of S.I. 1999/678, art. 2(1), **Sch.**
- C3** S. 19 modified (3.12.2001) by 2001 asp 11, **s. 1(8)(a)** (with s. 5); S.S.I. 2001/418, **art. 2** (with transitional provision in **art. 3**) (as amended by S.S.I. 2005/623), {art. 4}

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 1(2)(b)(c) inserted by [2000 asp 5 Sch. 12 para. 30\(2\)\(a\)\(iv\)](#) (This amendment has not been applied to legislation.gov.uk. Sch. 12 para. 30(2) repealed (4.4.2003) by 2003 asp 9, ss. 128, 129(5), Sch. 15 (with ss. 119, 121))
- s. 1(7) added by [2000 asp 5 Sch. 12 para. 30\(2\)\(c\)](#) (This amendment has not been applied to legislation.gov.uk. Sch. 12 para. 30(2) repealed (4.4.2003) by 2003 asp 9, ss. 128, 129(5), Sch. 15 (with ss. 119, 121))
- s. 9(2A) inserted by [2000 asp 5 s. 32](#) (This amendment has not been applied to legislation.gov.uk. S. 32 repealed (4.4.2003) by 2003 asp 9, ss. 128, 129(5), Sch. 15 (with ss. 119, 121) and word "32" in s. 77(2)(a) omitted (22.10.2003) by virtue of S.S.I. 2003/503, art. 5)
- s. 13A amendment to earlier affecting provision 2007 asp 3 s. 85 by [2012 asp 5 sch. 5 para. 52\(2\)](#)
- s. 24(1E) inserted by [2014 asp 18 sch. 5 para. 22](#)