



Commissioners Clauses Act 1847

1847 CHAPTER 16 10 and 11 Vict

Mortgages

And with respect to the mortgages to be executed by the commissioners, be it enacted as follows:

Modifications etc. (not altering text)

C1 Ss. 75–88 incorporated by [Land Drainage Act 1976 \(c. 70\), s. 87\(5\)](#)

75 Form of mortgage.

Every mortgage or assignation in security of rates or other property authorized to be made under the provisions of this or the special Act shall be by deed duly stamped, in which the consideration shall be truly stated; and every such deed shall be under the common seal of the commissioners, if they be a body corporate, or, if they be not a body corporate, shall be executed by the commissioners, or any five of them, and may be according to the form in the schedule (B.) to this Act annexed or to the like effect; and the respective mortgagees or assignees in security shall be entitled one with another to their respective proportions of the rates and assessments or other property comprised in such mortgages or assignations respectively, according to the respective sums in such mortgages or assignations mentioned to be advanced by such mortgagees or assignees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another by reason of the priority of advancing such monies, or of the dates of any such mortgages or assignations respectively.

[^{F1}(2) This section shall apply to Scotland as if for the words “by deed” to “five of them” there were substituted the words—in a document—

- (a) which is duly stamped;
- (b) in which the consideration is truly stated; and
- (c) which is subscribed, if the commissioners—

(i) are a corporation, in accordance with section 7 of, and paragraph 5 of Schedule 2 to, the Requirements of Writing (Scotland) Act 1995;

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(ii) are not a corporation, in accordance with the said section 7 by the commissioners or any five of them,]

Textual Amendments

F1 S. 75(2) added (S.) (1.8.1995) by virtue of 1995 c.7, ss. 14(1), 15(2), **Sch. 4 para. 5** (with ss. 9(3)(5) (7), 13, 14(3))

Modifications etc. (not altering text)

C2 S. 75 incorporated (E.W.S) (18.6.2001) by S.I. 2001/2184, **art. 2**
S. 75 incorporated (E.W.S) (18.6.2001) by S.I. 2001/2185, **art. 2**

C3 Ss. 69-83 incorporated (E.W.S.) (1.6.2009) by **Berwick Upon Tweed Harbour Revision (Constitution) Order 2009 (S.I. 2009/1231)**, arts. 1(1), 2

76 Register of mortgages to be kept and to be open to inspection.

A register of mortgages or assignments in security shall be kept by the clerk to the commissioners, and where by the special Act the commissioners are authorized or required to raise separate sums on separate rates or other property a separate register shall be kept for each class of mortgages or assignments in security; and within fourteen days after the date of any mortgage or assignment in security an entry or memorial of the number and date thereof, and of the names of the parties thereto, with their proper additions, shall be made in the proper register, and every such register may be perused at all reasonable times by any person interested in any such mortgage or assignment in security, without fee or reward.

Modifications etc. (not altering text)

C3 Ss. 69-83 incorporated (E.W.S.) (1.6.2009) by **Berwick Upon Tweed Harbour Revision (Constitution) Order 2009 (S.I. 2009/1231)**, arts. 1(1), 2

C4 S. 76 incorporated (E.W.S) (18.6.2001) by S.I. 2001/2184, **art. 2**
S. 76 incorporated (E.W.S) (18.6.2001) by S.I. 2001/2185, **art. 2**

77 Transfer of mortgages.

Any person entitled to any such mortgage or assignment may transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be truly stated, and every such transfer may be according to the form in the schedule (C.) to this Act annexed, or to the like effect.

[^{F2}(2) This section shall apply to Scotland as if for the words “by deed duly stamped” there were substituted the words “in a document which is duly stamped and which is subscribed in accordance with the Requirements of Writing (Scotland) Act 1995.”.]

Textual Amendments

F2 S. 77(2) added (s.) (1.8.1995) by virtue of 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 6** (with ss. 9(3)(5) (7), 13, 14(3))

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Modifications etc. (not altering text)

- C3** Ss. 69-83 incorporated (E.W.S.) (1.6.2009) by [Berwick Upon Tweed Harbour Revision \(Constitution\) Order 2009 \(S.I. 2009/1231\)](#), arts. 1(1), 2
- C5** S. 77 incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2184](#), **art. 2**
S. 77 incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2185](#), **art. 2**

78 Register of transfers to be kept.

Within thirty days after the date of every such transfer, if executed within the United Kingdom or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the clerk to the commissioners, and thereupon such clerk shall cause an entry or memorial thereof to be made, in the same manner as in the case of the original mortgage or assignation in security, and for such entry the clerk may demand a sum not exceeding [^{F3}25p]; and after such entry every such transfer shall entitle the transferee, his executors, administrators, or assigns, to the full benefit of the original mortgage or assignation in security, and the principal and interest thereby secured, and such transferee may in like manner assign or transfer the same again toties quoties, and it shall not be in the power of any person, except the person to whom the same shall have been last transferred, his executors, administrators, or assigns, to make void, release, or discharge the mortgage or assignation so transferred, or any money thereby secured.

Textual Amendments

- F3** Words substituted by virtue of [Decimal Currency Act 1969 \(c. 19\)](#), s. 10(1)

Modifications etc. (not altering text)

- C3** Ss. 69-83 incorporated (E.W.S.) (1.6.2009) by [Berwick Upon Tweed Harbour Revision \(Constitution\) Order 2009 \(S.I. 2009/1231\)](#), arts. 1(1), 2
- C6** S. 78 incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2184](#), **art. 2**
S. 78 incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2185](#), **art. 2**

79 Interest on mortgages to be paid half-yearly.

Unless otherwise provided by any mortgage or assignation in security, the interest of the money borrowed thereupon shall be paid half-yearly to the several parties entitled thereto.

Modifications etc. (not altering text)

- C3** Ss. 69-83 incorporated (E.W.S.) (1.6.2009) by [Berwick Upon Tweed Harbour Revision \(Constitution\) Order 2009 \(S.I. 2009/1231\)](#), arts. 1(1), 2
- C7** S. 79 incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2184](#), **art. 2**
S. 79 incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2185](#), **art. 2**

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80 Power to borrow money at a lower rate of interest to pay off securities at a higher rate.

If the commissioners can at any time borrow or take up any sum of money at a lower rate of interest than any securities given by them and then be in force shall bear, they may borrow such sum at such lower rate as aforesaid, in order to pay off and discharge the securities bearing such higher rate of interest, and may charge the rates and other property which they may be authorized to mortgage or assign in security under this or the special Act, or any part thereof, with payment of such sum and such lower rate of interest, in such manner and subject to such regulations as are herein contained with respect to other moneys borrowed on mortgage or assignation in security.

Modifications etc. (not altering text)

- C3** Ss. 69-83 incorporated (E.W.S.) (1.6.2009) by [Berwick Upon Tweed Harbour Revision \(Constitution\) Order 2009 \(S.I. 2009/1231\)](#), arts. 1(1), 2
- C8** [S. 80](#) incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2184](#), [art. 2](#)
[S. 80](#) incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2185](#), [art. 2](#)

81 Repayment of money borrowed at a time and place agreed upon.

The commissioners may, if they think proper, fix a period for the repayment of all principal monies borrowed under the provisions of this or the special Act, with the interest thereof, and in such case the commissioners shall cause such period to be inserted in the mortgage deed or assignation in security; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to receive such principal money and interest, and if no other place of payment be inserted in such deed such principal and interest shall be payable at the office of the commissioners.

Modifications etc. (not altering text)

- C3** Ss. 69-83 incorporated (E.W.S.) (1.6.2009) by [Berwick Upon Tweed Harbour Revision \(Constitution\) Order 2009 \(S.I. 2009/1231\)](#), arts. 1(1), 2
- C9** [S. 81](#) incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2184](#), [art. 2](#)
[S. 81](#) incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2185](#), [art. 2](#)

82 Repayment of money borrowed when no time or place has been agreed upon.

If no time be fixed in the mortgage deed or assignation in security for the repayment of the money so borrowed, the party entitled to receive such money may, at the expiration or at any time after the expiration of twelve months from the date of such deed, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months' previous notice for that purpose, and in the like case the commissioners may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or creditor shall be delivered to the clerk or left at the office of the commissioners, and if given by the commissioners shall be given either personally to such mortgagee or creditor, or left at his residence, or if such mortgagee or creditor be unknown to the commissioners, or cannot be found after diligent inquiry, such notice shall be given by

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advertisement in the London Gazette, if the office of the commissioners is in England, the Edinburgh Gazette, if it is in Scotland, or in the [^{F4}Belfast Gazette], if it is in Ireland.

Textual Amendments

F4 Words substituted by virtue of S. R. & O. 1921/1804 (Rev. XVI p. 967: 1921 p. 422) art. 7(a)

Modifications etc. (not altering text)

C3 Ss. 69-83 incorporated (E.W.S.) (1.6.2009) by [Berwick Upon Tweed Harbour Revision \(Constitution\) Order 2009 \(S.I. 2009/1231\)](#), arts. 1(1), 2

C10 S. 82 incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2184](#), art. 2
S. 82 incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2185](#), art. 2

83 Interest to cease on expiration of notice to pay off a mortgage debt.

If the commissioners shall have given notice of their intention to pay off any such mortgage or assignation in security at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable thereon, unless, on demand of payment made pursuant to such notice, or at any time thereafter, the commissioners fail to pay the principal and interest due at the expiration of such notice on such mortgage or assignation in security.

Modifications etc. (not altering text)

C3 Ss. 69-83 incorporated (E.W.S.) (1.6.2009) by [Berwick Upon Tweed Harbour Revision \(Constitution\) Order 2009 \(S.I. 2009/1231\)](#), arts. 1(1), 2

C11 S. 83 incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2184](#), art. 2
S. 83 incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2185](#), art. 2

84 Monies borrowed on security of rates to be paid off in a limited period.

In order to discharge the principal money borrowed as aforesaid on security of any of the rates, the commissioners shall every year appropriate and set apart out of such rates respectively a sum equal to the prescribed part, and if no part be prescribed one-twentieth part, of the sums so borrowed respectively, as a sinking fund to be applied in paying off the respective principal moneys so borrowed, and shall from time to time cause such sinking fund to be invested in the purchase of ^{F5} . . . government securities, or in Scotland deposited in one of the banks there incorporated by Act of Parliament or royal charter, and to be increased by accumulation in the way of compound interest or otherwise, until the same respectively shall be of sufficient amount to pay off the principal debts respectively to which such sinking fund shall be applicable, or some part thereof which the commissioners shall think ought then to be paid off, at which time the same shall be so applied in paying off the same in manner herein-after mentioned.

Textual Amendments

F5 Words in s. 84 repealed (5.11.1993) by [1993 c. 50, s. 1\(1\)](#), [Sch. 1 Pt. IX](#) Group1

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85 Mode of paying off mortgages.

Whenever the commissioners shall be enabled to pay off one or more of the mortgages or assignments in security which shall be then payable, and shall not be able to pay off the whole of the same class, they shall decide the order in which they shall be paid off by lot among the class to which such one or more of the mortgages or assignments in security belong, and shall cause a notice, signed by their clerk, to be given to the persons entitled to the money to be paid off, pursuant to such lot, and such notice shall express the principal sum proposed to be paid off, and that the same will be paid, together with the interest due thereon, at a place to be specified, at the expiration of six months from the date of giving such notice.

Modifications etc. (not altering text)

- C12** S. 85 incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2184, art. 2](#)
S. 85 incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2185, art. 2](#)
- C13** Ss. 85-88 incorporated (E.W.S.) (1.6.2009) by [Berwick Upon Tweed Harbour Revision \(Constitution\) Order 2009 \(S.I. 2009/1231\), arts. 1\(1\), 2](#)

86 Arrears of interest, when to be enforced by appointment of a receiver. Arrears of principal and interest.

Where by the special Act the mortgagees or assignees in security of the commissioners are empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due to them by the appointment of a receiver, then, if within thirty days after the interest accruing upon any such mortgage or assignment in security has become payable, and after demand thereof in writing, the same be not paid, the mortgagee or assignee in security may, without prejudice to his right to sue for the interest so in arrear in any of the superior courts, require the appointment of a receiver, by an application to be made as herein-after provided; and if within six months after the principal money owing upon any such mortgage or assignment in security has become payable, and after demand thereof in writing, the same be not paid, together with all interest due in respect thereof, the mortgagee or assignee in security, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the superior courts, may, if his debt amount to the prescribed sum, alone, or, if his debt do not amount to the prescribed sum, he may in conjunction with other mortgagees or assignees in security whose debts, being so in arrear, after demand as aforesaid, together with his amount to the prescribed sum, require the appointment of a receiver, by an application to be made as herein-after provided.

Modifications etc. (not altering text)

- C13** Ss. 85-88 incorporated (E.W.S.) (1.6.2009) by [Berwick Upon Tweed Harbour Revision \(Constitution\) Order 2009 \(S.I. 2009/1231\), arts. 1\(1\), 2](#)
- C14** S. 86 incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2184, art. 2](#)
S. 86 incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2185, art. 2](#)

87 As to the appointment of receiver.

Every application for a receiver in the cases aforesaid shall in England or Ireland be made to two justices, and in Scotland to the sheriff, and on any such application such

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justices or sheriff may, by order in writing, after hearing the parties, appoint some person to receive the whole or a competent part of the rates or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the rates or sums aforesaid, be fully paid; and upon such appointment being made all such rates and sums of money as aforesaid, or such part thereof as may be ordered by the said justices or sheriff, shall be paid to the person so to be appointed, and the money so paid shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed, and after such interest and costs, or such principal, interest, and costs, have been so received, the power of such receiver shall cease.

Modifications etc. (not altering text)

- C13** Ss. 85-88 incorporated (E.W.S.) (1.6.2009) by [Berwick Upon Tweed Harbour Revision \(Constitution\) Order 2009 \(S.I. 2009/1231\)](#), arts. 1(1), 2
- C15** S. 87 incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2184](#), [art. 2](#)
S. 87 incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2185](#), [art. 2](#)

88 Account books to be open to the inspection of mortgagees.

The books of account of the commissioners shall be open at all reasonable times to the inspection of the respective mortgagees or assignees in security of the commissioners, with liberty to take extracts therefrom without fee or reward.

Modifications etc. (not altering text)

- C13** Ss. 85-88 incorporated (E.W.S.) (1.6.2009) by [Berwick Upon Tweed Harbour Revision \(Constitution\) Order 2009 \(S.I. 2009/1231\)](#), arts. 1(1), 2
- C16** S. 88 incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2184](#), [art. 2](#)
S. 88 incorporated (E.W.S) (18.6.2001) by [S.I. 2001/2185](#), [art. 2](#)

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