



# Home Owner and Debtor Protection (Scotland) Act 2010

2010 asp 6

## PART 1

### RESIDENTIAL STANDARD SECURITIES ETC.: CREDITOR'S RIGHTS ON DEFAULT

#### **2 Court applications by creditor for remedies on default**

- (1) Section 24 (application by creditor to court for remedies on default) of the 1970 Act is amended as follows.
- (2) After subsection (1) insert—
  - “(1A) Subsection (1) above does not apply in relation to a creditor in a standard security over land or a real right in land used to any extent for residential purposes.
  - (1B) A creditor in a standard security of that kind may, where the debtor is in default within the meaning of paragraph (a), (b) or (c) of standard condition 9(1), apply to the court for warrant to exercise any of the remedies which the creditor is entitled to exercise on a default within the meaning of standard condition 9(1)(a).
  - (1C) Before making an application under subsection (1B) above the creditor must comply with the pre-action requirements imposed by section 24A of this Act.
  - (1D) An application under subsection (1B) above is to be made by summary application (regardless of whether it includes a crave for any other remedy).”
- (3) In subsection (2), for “such an application as aforesaid” substitute “an application under subsection (1) or (1B)”.
- (4) In subsection (3)—
  - (a) for “subsection (1)” substitute “subsection (1B)”, and
  - (b) the words from “if” to “purposes” are repealed.
- (5) After subsection (4A) insert—

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*Status: This is the original version (as it was originally enacted).*

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- “(5) The court may, on an application under subsection (1B) above, continue the proceedings or make any other order that it thinks fit; but it may not grant the application unless it is satisfied that—
- (a) the creditor has complied with subsection (1C) above; and
  - (b) it is reasonable in the circumstances of the case to do so.
- (6) In considering an application under subsection (1B) above where the debtor appears or is represented, the court is to have regard in particular to the matters set out in subsection (7) below.
- (7) Those matters are—
- (a) the nature of and reasons for the default;
  - (b) the ability of the debtor to fulfil within a reasonable time the obligations under the standard security in respect of which the debtor is in default;
  - (c) any action taken by the creditor to assist the debtor to fulfil those obligations;
  - (d) where appropriate, participation by the debtor in a debt payment programme approved under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002; and
  - (e) the ability of the debtor and any other person residing at the security subjects to secure reasonable alternative accommodation.
- (8) Subsections (5) and (6) above do not affect—
- (a) any power that the court may have; or
  - (b) any rights that the debtor may have,
- by virtue of any other enactment or rule of law.
- (9) Where—
- (a) the default in respect of which an application is made under subsection (1B) above is a default within the meaning of paragraph (a) or (b) of standard condition 9(1); and
  - (b) before a decree is granted on the application, the obligations under the standard security in respect of which the debtor is in default are fulfilled,
- the standard security has effect as if the default had not occurred.”.