



Home Owner and Debtor Protection (Scotland) Act 2010

2010 asp 6

PART 1

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

5 Application to court by entitled residents

(1) After section 24A of the 1970 Act (inserted by section 4 of this Act) insert—

“24B Section 24(1B) applications: application to court by entitled residents

- (1) An entitled resident may, in proceedings on an application under section 24(1B) of this Act, apply to the court to continue the proceedings or make any other order that the court thinks fit, despite not being called as a defender in the application.
- (2) In determining an application under subsection (1) above the court is to have regard in particular to the matters set out in subsection (7) of section 24, reading the first reference to the debtor in paragraph (b) as including a reference to the entitled resident.
- (3) Subsection (2) above does not affect—
 - (a) any power that the court may have; or
 - (b) any rights that an entitled resident may have, under any other enactment or rule of law.

24C Entitled residents: definition

- (1) For the purposes of sections 24B, 24D and 24E, an entitled resident is a person whose sole or main residence is the security subjects (in whole or in part) and who is—
 - (a) the proprietor of the security subjects (where the proprietor is not the debtor in the standard security);

Changes to legislation: There are currently no known outstanding effects for the Home Owner and Debtor Protection (Scotland) Act 2010, Section 5. (See end of Document for details)

- (b) the non-entitled spouse of the debtor or the proprietor of security subjects which are (in whole or in part) a matrimonial home;
- (c) the non-entitled civil partner of the debtor or the proprietor of security subjects which are (in whole or in part) a family home;
- (d) a person living together with the debtor or the proprietor as husband and wife;
- (e) a person living together with the debtor or the proprietor in a relationship which has the characteristics of the relationship between civil partners;
- (f) a person who lived together with the debtor or the proprietor in a relationship described in paragraph (d) or (e) if—
 - (i) the security subjects (in whole or in part) are not the sole or main residence of the debtor or the proprietor;
 - (ii) the person lived together with the debtor or the proprietor throughout the period of 6 months ending with the date on which the security subjects ceased to be the sole or main residence of the debtor or the proprietor; and
 - (iii) the security subjects (in whole or in part) are the sole or main residence of a child aged under 16 who is a child of both parties in that relationship.

(2) In this section—

“child” includes a stepchild and any person brought up, or treated, by both parties to the relationship as their child;

“family home” has the meaning given by section 135(1) of the Civil Partnership Act 2004;

“matrimonial home” has the meaning given by section 22 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981;

“non-entitled civil partner” has the same meaning as “non-entitled partner” in section 101(1) of the Civil Partnership Act 2004;

“non-entitled spouse” has the meaning given by section 1 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981.”.

(2) After section 5B of the 1894 Act (inserted by section 4 of this Act) insert—

“5C Application to court by entitled residents

- (1) An entitled resident may, in proceedings on an application to which section 5A applies, apply to the court to continue the proceedings or make any other order that the court thinks fit, despite not being called as a defender in the application.
- (2) In determining an application under subsection (1) of this section the court is to have regard in particular to the matters set out in subsection (7) of section 5A, reading the first reference to the debtor in paragraph (b) as including a reference to the entitled resident.
- (3) Subsection (2) does not affect—
 - (a) any power that the court may have, or
 - (b) any rights that an entitled resident may have,
 under any other enactment or rule of law.

Changes to legislation: There are currently no known outstanding effects for the Home Owner and Debtor Protection (Scotland) Act 2010, Section 5. (See end of Document for details)

5D Entitled residents: definition

- (1) For the purposes of sections 5C, 5E and 5F, an entitled resident is a person whose sole or main residence is the security subjects (in whole or in part) and who is—
- (a) the proprietor of the security subjects (where the proprietor is not the debtor in the security),
 - (b) the non-entitled spouse of the debtor or the proprietor of security subjects which are (in whole or in part) a matrimonial home,
 - (c) the non-entitled civil partner of the debtor or the proprietor of security subjects which are (in whole or in part) a family home,
 - (d) a person living together with the debtor or the proprietor as husband and wife,
 - (e) a person living together with the debtor or the proprietor in a relationship which has the characteristics of the relationship between civil partners,
 - (f) a person who lived together with the debtor or the proprietor in a relationship described in paragraph (d) or (e) if—
 - (i) the security subjects (in whole or in part) are not the sole or main residence of the debtor or the proprietor,
 - (ii) the person lived together with the debtor or the proprietor throughout the period of 6 months ending with the date on which the security subjects ceased to be the sole or main residence of the debtor or the proprietor, and
 - (iii) the security subjects (in whole or in part) are the sole or main residence of a child aged under 16 who is a child of both parties in that relationship.
- (2) In this section—
- “child” includes a stepchild and any person brought up, or treated, by both parties to the relationship as their child,
 - “family home” has the meaning given by section 135(1) of the Civil Partnership Act 2004,
 - “matrimonial home” has the meaning given by section 22 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981,
 - “non-entitled civil partner” has the same meaning as “non-entitled partner” in section 101(1) of the Civil Partnership Act 2004,
 - “non-entitled spouse” has the meaning given by section 1 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981.”

Commencement Information

- II** S. 5 in force at 30.9.2010 by S.S.I. 2010/314, art. 3 (with transitional provisions and savings in S.S.I. 2010/316, art. 4)

Changes to legislation:

There are currently no known outstanding effects for the Home Owner and Debtor Protection (Scotland) Act 2010, Section 5.