
EXPLANATORY NOTE

(This Note does not form part of the Order)

This Order makes provision in relation to the pre-action requirements set out in section 5B of the Heritable Securities (Scotland) Act 1894 (“the 1894 Act”) and section 24A of the Conveyancing and Feudal Reform (Scotland) Act 1970 (“the 1970 Act”), both Acts as amended by the Home Owner and Debtor Protection (Scotland) Act 2010.

Creditors in securities over residential property are required, by virtue of section 5(3) of the 1894 Act and section 24(1C) of the 1970 Act, to comply with these pre-action requirements before making an application to the court to eject the proprietor from the property (under section 5(1) of the 1894 Act) or to exercise their remedies on default of the debtor (under section 24(1B) of the 1970 Act).

Article 2 makes further provision about the requirement to provide the debtor with certain information about the default. Article 2(1) removes the requirement to provide information about charges in respect of redemption.

Article 3, paragraphs (1) and (2), specifies steps which must be taken by the creditor in complying with the requirement to make efforts to agree proposals as alternatives to a court application. Paragraph (3) makes provision as to steps to be taken by the creditor in dealing with any failure by the debtor to comply with a condition of an agreement made in compliance with that requirement.

Article 4, paragraphs (1) and (2), makes further provision about steps taken by the debtor which are likely to result in payment or fulfilment of other obligations within a reasonable time, thereby requiring the creditor not to make an application to court for as long as those steps are being taken. Paragraphs (3) and (4) set out exceptions which would allow the creditor to make an application despite such steps being taken.

Article 5 makes further provision as to the information which must be provided by the creditor in compliance with the duty to provide the debtor with information about sources of advice and assistance in relation to management of debt.