



Conveyancing and Feudal Reform (Scotland) Act 1970

1970 CHAPTER 35

PART II

THE STANDARD SECURITY

9 The standard security

- (1) The provisions of this Part of this Act shall have effect for the purpose of enabling a new form of heritable security to be created to be known as a standard security.
- (2) It shall be competent to grant and record in the Register of Sasines a standard security over any interest in land to be expressed in conformity with one of the forms prescribed in Schedule 2 to this Act.
- (3) A grant of any right over an interest in land for the purpose of securing any debt by way of a heritable security shall only be capable of being effected at law if it is embodied in a standard security.
- (4) Where for the purpose last-mentioned any deed which is not in the form of a standard security contains a disposition or assignation of an interest in land, it shall to that extent be void and unenforceable, and where that deed has been duly recorded the creditor in the purported security may be required, by any person having an interest, to grant any deed which may be appropriate to clear the Register of Sasines of that security.
- (5) A standard security may be used for any other purpose for which a heritable security may be used if any of the said forms is appropriate to that purpose, and for the purpose of any enactment affecting heritable securities a standard security, if so used, or if used as is required by this Act instead of a heritable security as defined therein, shall be a heritable security for the purposes of that enactment.

Act of the Parliament of Scotland, cap. 5.

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- (6) The Bankruptcy Act 1696, in so far as it renders a heritable security of no effect in relation to a debt contracted after the recording of that security, and any rule of law which requires that a real burden for money may only be created in respect of a sum specified in the deed of creation, shall not apply in relation to a standard security.
- (7) The provisions of this section shall not affect the operation of the Small Dwellings Acquisition (Scotland) Acts 1899 to 1923, except that in section 11(8) of the Small Dwellings Acquisition Act 1899, in the substitution for section 2(e) of that Act, after the words " other security " there shall be inserted the words " not being a security constituted by an *ex facie* absolute disposition or assignation, whether qualified by a back letter or not. ".
- (8) For the purposes of this Part of this Act—
- (a) " heritable security " (except in subsection (5) of this section if the context otherwise requires) means any security capable of being constituted over any interest in land by disposition or assignation of that interest in security of any debt and of being recorded in the Register of Sasines;
 - (b) " interest in land " means any estate or interest in land, other than an entailed estate or any interest therein, which is capable of being owned or held as a separate interest and to which a title may be recorded in the Register of Sasines;
 - (c) " debt " means any obligation due, or which will or may become due, to repay or pay money, including any such obligation arising from a transaction or part of a transaction in the course of any trade, business or profession, and any obligation to pay an annuity or *ad factum praestandum*, but does not include an obligation to pay any feuduty, ground annual, rent or other periodical sum payable in respect of land, and " creditor " and " debtor ", in relation to a standard security, shall be construed accordingly.

10 Import of forms of, and certain clauses in, standard security

- (1) The import of the clause relating to the personal obligation contained in Form A of Schedule 2 to this Act expressed in any standard security shall, unless specially qualified, be as follows—
- (a) where the security is for a fixed amount advanced or payable at, or prior to, the delivery of the deed, the clause undertaking to make payment to the creditor shall import an acknowledgment of receipt by the debtor of the principal sum advanced or an acknowledgment by the debtor of liability to pay that sum and a personal obligation undertaken by the debtor to repay or pay to the creditor on demand in writing at any time after the date of delivery of the standard security the said sum, with interest at the rate stated payable on the dates specified, together with all expenses for which the debtor is liable by virtue of the deed or of this Part of this Act;
 - (b) where the security is for a fluctuating amount, whether subject to a maximum amount or not and whether advanced or due partly before and partly after delivery of the deed or whether to be advanced or to become due wholly after such delivery, the clause undertaking to make payment to the creditor shall import a personal obligation by the debtor to repay or pay to the creditor on demand in writing the amount, not being greater than the maximum amount, if any, specified in the deed, advanced or due and outstanding at the time of demand, with interest on each advance from the date when it was made until repayment thereof, or on each sum payable from the date on which it became

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due until payment thereof, and at the rate stated payable on the dates specified, together with all expenses for which the debtor is liable by virtue of the deed or of this Part of this Act.

- (2) The clause of warrandice in the forms of standard security contained in Schedule 2 to this Act expressed in any standard security shall, unless specially qualified, import absolute warrandice as regards the interest in land over which the security is granted and the title deeds thereof, and warrandice from fact and deed as regards the rents thereof.
- (3) The clause relating to consent to registration for execution contained in Form A of Schedule 2 to this Act expressed in any standard security shall, unless specially qualified, import a consent to registration in the Books of Council and Session, or, as the case may be, in the books of the appropriate sheriff court, for execution.
- (4) The forms of standard security contained in Schedule 2 to this Act shall, unless specially qualified, import an assignation to the creditor of the title deeds, including searches, and all conveyances not duly recorded, affecting the security subjects or any part thereof, with power to the creditor in the event of a sale under the powers conferred by the security, but subject to the rights of any person holding prior rights to possession of those title deeds, to deliver them, so far as in the creditor's possession, to the purchaser, and to assign to the purchaser any right he may possess to have the title deeds made forthcoming.

11 Effect of recorded standard security, and incorporation of standard conditions

- (1) Where a standard security is duly recorded, it shall operate to vest the interest over which it is granted in the grantee as a security for the performance of the contract to which the security relates.
- (2) Subject to the provisions of this Part of this Act, the conditions set out in Schedule 3 to this Act, either as so set out or with such variations as have been agreed by the parties in the exercise of the powers conferred by the said Part (which conditions are hereinafter in this Act referred to as "the standard conditions"), shall regulate every standard security.
- (3) Subject to the provisions of this Part of this Act, the creditor and debtor in a standard security may vary any of the standard conditions, other than the provisions of Schedule 3 to this Act relating to the powers of sale, redemption and foreclosure and to the exercise of those powers, but no condition capable of being varied shall be varied in a manner inconsistent with any condition which may not be varied by virtue of this subsection.
- (4) In this Part of this Act—
 - (a) any reference to a variation of the standard conditions shall include a reference to the inclusion of an additional condition and to the exclusion of a standard condition;
 - (b) any purported variation of a standard condition which contravenes the provisions of subsection (3) of this section shall be void and unenforceable.

12 Standard security may be granted by person uninfert

- (1) Notwithstanding any rule of law, a standard security may be granted over an interest in land by a person having right to that interest, but whose title thereto has not been

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completed by being duly recorded, if in the deed expressing that security the grantor deduces his title to that interest from the person who appears in the Register of Sasines as having the last recorded title thereto.

- (2) A deduction of title in a deed for the purposes of the foregoing subsection shall be expressed in the form prescribed by Note 2 or 3 of Schedule 2 to this Act, and on such a deed being recorded as aforesaid the title of the grantee shall, for the purposes of the rights and obligations between the grantor and the grantee thereof and those deriving right from them, but for no other purpose, in all respects be of the same effect as if the title of the grantor of the deed to the interest to which he has deduced title therein had been duly completed; and any references to a proprietor or to a person last infeft shall in this Part of this Act be construed accordingly.
- (3) There may be specified for the purposes of any deduction of title in pursuance of any provision of this Part of this Act any writing which it is competent to specify as a title, midcouple, or link in title for the purposes of section 5 of the Conveyancing (Scotland) Act 1924 (deduction of title).

13 Ranking of standard securities

- (1) Where the creditor in a standard security duly recorded has received notice of the creation of a subsequent security over the same interest in land or any part thereof, or of the subsequent assignation or conveyance of that interest in whole or in part, being a security, assignation or conveyance so recorded, the preference in ranking of the security of that creditor shall be restricted to security for his present advances and future advances which he may be required to make under the contract to which the security relates and interest present or future due thereon (including any such interest which has accrued or may accrue) and for any expenses or outlays (including interest thereon) which may be, or may have been, reasonably incurred in the exercise of any power conferred on any creditor by the deed expressing the existing security.
- (2) For the purposes of the foregoing subsection—
 - (a) a creditor in an existing standard security duly recorded shall not be held to have had any notice referred to in that subsection, by reason only of the subsequent recording of the relevant deed in the Register of Sasines;
 - (b) any assignation, conveyance or vesting in favour of or in any other person of the interest of the debtor in the security subjects or in any part thereof resulting from any judicial decree, or otherwise by operation of law, shall constitute sufficient notice thereof to the creditor.
- (3) Nothing in the foregoing provisions of this section shall affect—
 - (a) any preference in ranking enjoyed by the Crown; and
 - (b) any powers of the creditor and debtor in any heritable security to regulate the preference to be enjoyed by creditors in such manner as they may think fit.

14 Assignation of standard security

- (1) Any standard security duly recorded may be transferred, in whole or in part, by the creditor by an assignation in conformity with Form A or B of Schedule 4 to this Act, and upon such an assignation being duly recorded, the security, or, as the case may be, part thereof, shall be vested in the assignee as effectually as if the security or the part had been granted in his favour.

- (2) An assignation of a standard security shall, except so far as otherwise therein stated, be deemed to convey to the grantee all rights competent to the grantor to the writs, and shall have the effect inter alia of vesting in the assignee—
- (a) the full benefit of all corroborative or substitutional obligations for the debt, or any part thereof, whether those obligations are contained in any deed or arise by operation of law or otherwise,
 - (b) the right to recover payment from the debtor of all expenses properly incurred by the creditor in connection with the security, and
 - (c) the entitlement to the benefit of any notices served and of all procedure instituted by the creditor in respect of the security to the effect that the grantee may proceed as if he had originally served or instituted such notices or procedure.

15 Restriction of standard security

- (1) The security constituted by any standard security duly recorded may be restricted, as regards any part of the interest in land burdened by the security, by a deed of restriction in conformity with Form C of Schedule 4 to this Act, and, upon that deed being duly recorded, the security shall be restricted to the interest in land contained in the standard security other than the part of that interest disburdened by the deed; and the interest in land thereby disburdened shall be released from the security wholly or to the extent specified in the deed.
- (2) A partial discharge and deed of restriction of a standard security, which has been duly recorded, may be combined in one deed, which shall be in conformity with Form D of the said Schedule 4.

16 Variation of standard security

- (1) Any alteration in the provisions (including any standard condition) of a standard security duly recorded, other than an alteration which may appropriately be effected by an assignation, discharge or restriction of that standard security, or an alteration which involves an addition to, or an extension of, the interest in land mentioned therein, may be effected by a variation endorsed on the standard security in conformity with Form E of Schedule 4 to this Act, or by a variation contained in a separate deed in a form appropriate for that purpose, duly recorded in either case.
- (2) Where a standard security has been duly recorded, but the personal obligation or any other provision (including any standard condition) relating to the security has been created or specified in a deed which has not been so recorded, nothing contained in this section shall prevent any alteration in that personal obligation or provision, other than an alteration which may be appropriately effected by an assignation, discharge or restriction of the standard security, or an alteration which involves an addition to, or an extension of, the interest in land mentioned therein, by a variation contained in any form of deed appropriate for that purpose, and such a variation shall not require to be recorded in the Register of Sasines.
- (3) Where the amount secured by a standard security duly recorded is increased by virtue of a variation effected in accordance with this section, then, for the purposes of stamp duty, any such increase shall be treated as an addition, made on the date of the execution of that variation, to the amount repayable by virtue of the debtor's personal obligation.

- (4) Any variation effected in accordance with this section shall not prejudice any other security or right over the same interest in land, or any part thereof, effectively constituted before the variation is recorded, or, where the variation is effected by an unrecorded deed, before that deed is executed, as the case may be.

17 Discharge of standard security

A standard security duly recorded may be discharged, and the interest in land burdened by that security may be discharged thereof, in whole or in part, by a discharge in conformity with Form F of Schedule 4 to this Act, duly recorded.

18 Redemption of standard security

- (1) The debtor in a standard security or, where the debtor is not the proprietor, the proprietor of the security subjects shall be entitled to redeem the security in conformity with the terms of standard condition 11 and the appropriate Forms of Schedule 5 to this Act.
- (2) Where owing to the death or absence of the creditor, or to any other cause, the debtor in a standard security or, as the case may be, the proprietor of the security subjects is unable to obtain a discharge under the last foregoing subsection, he may—
- (a) where the security was granted in respect of any obligation to repay or pay money, consign in any bank in Scotland, incorporated by or under Act of Parliament or by Royal Charter, the whole amount due to the creditor on redemption, other than any unascertained expenses of the creditor, for the person appearing to have the best right thereto, and
 - (b) in any other case, apply to the court for declarator that the whole obligations under the contract to which the security relates have been performed.
- (3) On consignment, or on the court granting declarator as aforesaid, a certificate to that effect may be expedite by a solicitor in the appropriate form prescribed by Form D of Schedule 5 to this Act, which on being duly recorded shall discharge the interest in land, to which the standard security relates, of that security.
- (4) For the purposes of this section, " whole amount due " means the debt to which the security relates, so far as out-, standing, and any other sums due thereunder by way of interest or otherwise.

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 last infert in the security subjects and appearing on the record 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

recorded title thereto, notwithstanding any alteration of the succession not appearing in the Register of Sasines.

- (3) Where the person last infeft in 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 last infeft have been sequestrated under the Bankruptcy (Scotland) Act 1913, 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 infeft in the security subjects.
- (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.
- (11) 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.

20 Exercise of rights of creditor on default of debtor in complying with a calling-up notice

- (1) Where the debtor in a standard security is in default within the meaning of standard condition 9(1)(a), the creditor may exercise such of his rights under the security as he may consider appropriate, and any such right shall be in addition to and not in derogation from any other remedy arising from the contract to which the security relates or from any right conferred by any enactment or by any rule of law on the creditor in a heritable security.
- (2) Where the debtor is in default as aforesaid, the creditor shall have the right to sell the security subjects, or any part thereof, in accordance with the provisions of this Part of this Act.
- (3) A creditor in a standard security who is in lawful possession of the security subjects may let the security subjects, or any part thereof, for any period not exceeding seven years, or may make application to the court for warrant to let those subjects, or any part thereof, for a period exceeding seven years, and the application shall state the proposed tenant, and the duration and conditions of the proposed lease, and shall be served on the proprietor of the subjects and on any other heritable creditor having interest as such a creditor in the subjects.
- (4) The court, on such an application as aforesaid and after such inquiry and such further intimation of the application as it may think fit, may grant the application as submitted, or subject to such variation as it may consider reasonable in all the circumstances of the case, or may refuse the application.
- (5) There shall be deemed to be assigned to a creditor who is in lawful possession of the security subjects all rights and obligations of the proprietor relating to—
 - (a) leases, or any permission or right of occupancy, granted in respect of those subjects or any part thereof, and
 - (b) the management and maintenance of the subjects and the effecting of any reconstruction, alteration or improvement reasonably required for the purpose of maintaining the market value of the subjects.

21 Notice of default

- (1) Where the debtor in a standard security is in default within the meaning of standard condition 9(1)(b), and the default is remediable, the creditor may, without prejudice to any other powers he may have by virtue of this Act or otherwise, proceed in accordance with the provisions of this section to call on the debtor and on the proprietor, where he is not the debtor, to purge the default.
- (2) For the aforesaid purpose the creditor may serve on the debtor and, as the case may be, on the proprietor a notice in conformity with Form B of Schedule 6 to this Act (hereinafter in this Act referred to as a "notice of default") which shall be served in the like manner and with the like requirements as to proof of service as a calling-up notice.

- (3) For the purpose of dispensing with, or shortening, the period of notice mentioned in a notice of default, section 19(10) of this Act shall apply as it applies in relation to a calling-up notice.
- (4) Notwithstanding the failure to comply with any requirement contained in the notice, a notice of default shall cease to be authority for the exercise of the rights mentioned in section 23(2) of this Act on the expiration of a period of five years from the date of the notice.

22 Objections to notice of default

- (1) Where a person on whom a notice of default has been served considers himself aggrieved by any requirement of that notice he may, within a period of fourteen days of the service of the notice, object to the notice by way of application to the court; and the applicant shall, not later than the lodging of that application, serve a copy of his application on the creditor, and on any other party on whom the notice has been served by the creditor.
- (2) On any such application the court, after hearing the parties and making such inquiry as it may think fit, may order the notice appealed against to be set aside, in whole or in part, or otherwise to be varied, or to be upheld.
- (3) The respondent in any such application may make a counter-application craving for any of the remedies conferred on him by this Act or by any other enactment relating to heritable securities, and the court may grant any such remedy as aforesaid as it may think proper.
- (4) For the purposes of such a counter-application as aforesaid, a certificate which conforms with the requirements of Schedule 7 to this Act may be lodged in court by the creditor, and that certificate shall be prima facie evidence of the facts directed by the said Schedule to be contained therein.

23 Rights and duties of parties after service of notice of default to which objection is not taken, or where the notice is not set aside

- (1) Where a person does not object to a notice of default in accordance with the provisions of the last foregoing section, or where he has so objected and the notice has been upheld or varied under that section, it shall be his duty to comply with any requirement, due to be performed or fulfilled by him, contained in the notice or, as the case may be, in the notice as so varied.
- (2) Subject to the provisions of section 21(4) of this Act, where a person fails to comply as aforesaid, the creditor, subject to the next following subsection, may proceed to exercise such of his rights on default under standard condition 10(2), (6) and (7) as he may consider appropriate.
- (3) At any time after the expiry of the period stated in a notice of default, or in a notice varied as aforesaid, but before the conclusion of any enforceable contract to sell the security subjects, or any part thereof, by virtue of the last foregoing subsection, the debtor or proprietor may, subject to any agreement to the contrary, redeem the security without the necessity of observance of any requirement as to notice.

24 Application by creditor to court for remedies on default

- (1) Without prejudice to his proceeding by way of notice of default in respect of a default within the meaning of standard condition 9(1)(b), a creditor in a standard security, where the debtor is in default within the meaning of that standard condition or standard condition 9(1)(c), may apply to the court for warrant to exercise any of the remedies which he is entitled to exercise on a default within the meaning of standard condition 9(1)(a).
- (2) For the purposes of such an application as aforesaid in respect of a default within the meaning of standard condition 9(1)(M), a certificate which conforms with the requirements of Schedule 7 to this Act may be lodged in court by the creditor, and that certificate shall be prima facie evidence of the facts directed by the said Schedule to be contained therein.

25 Exercise of power of sale

A creditor in a standard security having right to sell the security subjects may exercise that right either by private bargain or by exposure to sale, and in either event it shall be the duty of the creditor to advertise the sale and to take all reasonable steps to ensure that the price at which all or any of the subjects are sold is the best that can be reasonably obtained.

26 Disposition by creditor on sale

- (1) Where a creditor in a standard security has effected a sale of the security subjects, or any part thereof, and grants to the purchaser or his nominee a disposition of the subjects sold thereby, which bears to be in implement of the sale, then, on that disposition being duly recorded, those subjects shall be disburdened of the standard security and of all other heritable securities and diligences ranking *pari passu* with, or postponed to, that security.
- (2) Where on a sale as aforesaid the security subjects remain subject to a prior security, the recording of a disposition under the foregoing subsection shall not affect the rights of the creditor in that security, but the creditor who has effected the sale shall have the like right as the debtor to redeem the security.

27 Application of proceeds of sale

- (1) The money which is received by the creditor in a standard security, arising from any sale by him of the security subjects, shall be held by him in trust to be applied by him in accordance with the following order of priority—
 - (a) first, in payment of all expenses properly incurred by him in connection with the sale, or any attempted sale ;
 - (b) secondly, in payment of the whole amount due under any prior security to which the sale is not made subject;
 - (c) thirdly, in payment of the whole amount due under the standard security, and in payment, in due proportion, of the whole amount due under a security, if any, ranking *pari passu* with his own security, which has been duly recorded;
 - (d) fourthly, in payment of any amounts due under any securities with a ranking postponed to that of his own security, according to their ranking,

and any residue of the money so received shall be paid to the person entitled to the security subjects at the time of sale, or to any person authorised to give receipts for the proceeds of the sale thereof.

- (2) Where owing to the death or absence of any other creditor, or to any other cause, a creditor is unable to obtain a receipt or discharge for any payment he is required to make under the provisions of the foregoing subsection, he may, without prejudice to his liability to account therefor, consign the amount due (so far as ascertainable) in the sheriff court for the person appearing to have the best right thereto; and where consignment is so made, the creditor shall lodge in court a statement of the amount consigned.
- (3) A consignment made in pursuance of the last foregoing subsection shall operate as a discharge of the payment of the amount due, and a certificate under the hand of the sheriff clerk shall be sufficient evidence thereof.

28 Foreclosure

- (1) Where the creditor in a standard security has exposed the security subjects to sale at a price not exceeding the amount due under the security and under any security ranking prior to, or *pari passu* with, the security, and has failed to find a purchaser, or where, having so failed, he has succeeded in selling only a part of the subjects at a price which is less than the amount due as aforesaid, he may, on the expiration of a period of two months from the date of the first exposure to sale, apply to the court for a decree of foreclosure.
- (2) In any application under the last foregoing subsection the creditor shall lodge a statement setting out the whole amount due under the security but, without prejudice to the right of the debtor or of the proprietor to challenge that statement, it shall be sufficient for the purposes of the application for the creditor to establish to the satisfaction of the court that the amount so stated is not less than the price at which the security subjects have been exposed to sale or sold, where part of the subjects has been sold as aforesaid.
- (3) Any application under subsection (1) of this section shall be served on the debtor in the standard security, the proprietor of the security subjects (if he is a person other than the debtor) and the creditor in any other heritable security affecting the security subjects as disclosed by a search of the Register of Sasines for a period of twenty years immediately preceding the last date to which the appropriate Minute Book of the said Register has been completed at the time when the application is made.
- (4) The court may order such intimation and inquiry as it thinks fit and may in its discretion allow the debtor or the proprietor of the security subjects a period not exceeding three months in which to pay the whole amount due under the security and, subject to any such allowance, may—
 - (a) appoint the security subjects or the unsold part thereof to be re-exposed to sale at a price to be fixed by the court, in which event the creditor in the security may bid and purchase at the sale, or
 - (b) grant a decree of foreclosure in conformity with the provisions of the next following subsection.
- (5) A decree of foreclosure shall contain a declaration that, on the extract of the decree being duly recorded, the debtor's right of redemption under the standard security has been extinguished and that the creditor has right to the security subjects or the

unsold part thereof, described by means of a particular description or by reference to a description thereof as in Schedule D to the Conveyancing (Scotland) Act 1924 or in Schedule G to the Titles to Land Consolidation (Scotland) Act 1868, including a reference to any conditions or clauses affecting the subjects or the unsold part thereof, at the price at which the said subjects were last exposed to sale under deduction of the price received for any part thereof sold, and shall also contain a warrant for recording the extract of the decree in the Register of Sasines.

- (6) Upon an extract of the decree of foreclosure being duly recorded, the following provisions of this subsection shall have effect in relation to the security subjects to which the decree relates—
- (a) the debtor's right of redemption shall be extinguished, and the creditor shall have right to, and be vested in, the subjects as if he had received an irredeemable disposition thereof duly recorded from the proprietor of the subjects at the date of the recording of the extract of the decree;
 - (b) the subjects shall be disburdened of the standard security and all securities and diligences postponed thereto ;
 - (c) the creditor who has obtained the decree shall have the like right as the debtor to redeem any security prior to, or *pari passu* with, his own security.
- (7) Notwithstanding the due recording of an extract of a decree of foreclosure, any personal obligation of the debtor under the standard security shall remain in full force and effect so far as not extinguished by the price at which the security subjects have been acquired and the price for which any part thereof has been sold.
- (8) Where the security subjects or any part thereof have been acquired by a creditor in the security by virtue of a decree of foreclosure under the provisions of this section, the title thereto of the creditor shall not be challengeable on the ground of any irregularity in the proceedings for foreclosure or on calling-up or default which preceded it; but nothing in the provisions of this subsection shall affect the competency of any claim for damages in respect of such proceedings against the creditor.

29 Procedure

- (1) The court for the purposes of this Part of this Act, and for the operation of section 11 of the Heritable Securities (Scotland) Act 1894 (application by *pari passu* creditor to sell), in relation to a standard security, shall be the sheriff having jurisdiction over any part of the security subjects, and the sheriff shall be deemed to have such jurisdiction whatever the value of the subjects.
- (2) Any application, or counter-application to the court under this Part of this Act shall be by way of summary application.
- (3) An interlocutor of the sheriff disposing of any cause under this Part of this Act shall be final, except as to a question of title.

30 Interpretation of Part II

- (1) In this Part of this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—
- " creditor " and " debtor " shall include any successor in title, assignee or representative of a creditor or debtor ;

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

" debt " and " creditor " and " debtor ", in relation to a standard security, have the meanings assigned to them by section 9(8) of this Act;

" duly recorded " means recorded in the appropriate division of the General Register of Sasines; " exposure to sale " means exposure to sale by public roup, and exposed or re-exposed to sale shall be construed accordingly;

" heritable security " has the meaning assigned to it by the said section 9(8);

" interest in land " has the meaning assigned to it by the said section 9(8);

" Register of Sasines " means the appropriate division of the General Register of Sasines;

" the standard conditions " are the conditions (whether varied or not) referred to in section 11 (2) of this Act;

" whole amount due " has the meaning assigned to it by section 18(4) of this Act.

- (2) For the purpose of construing this Part of this Act in relation to the creation of a security over a registered lease and to any subsequent transactions connected with that security, the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

" conveyance " or " disposition " means assignation ;

" convey " or " dispone " means assign ;

" infeft " means having a recorded title ;

" proprietor " means lessee ;

" security subjects " means a registered lease subject to a security.

31 Saving

Nothing in the provisions of this Part of this Act shall affect the validity of any heritable security within the meaning of this Part which has been duly recorded before the commencement of this Act, and any such security may be dealt with, and shall be as capable of being enforced, as if this Part had not been passed.

32 Application of enactments

The provisions of any enactment relating to a bond and disposition or assignation in security shall apply to a standard security, except in so far as such provisions are inconsistent with the provisions of this Part of this Act, but, without prejudice to the generality of that exception, the enactments specified in Schedule 8 to this Act shall not so apply.