



Conveyancing and Feudal Reform (Scotland) Act 1970

1970 CHAPTER 35

PART II

THE STANDARD SECURITY

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).
- [^{F1}(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).]
- (2) For the purposes of [^{F2}an application under subsection (1) or (1B)] in respect of a default within the meaning of standard condition 9(1)(b), 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.

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- [^{F3}(3) Where the creditor applies to the court under [^{F4}subsection (1B)] above, he shall,
^{F5} . . . —
- (a) serve on the debtor and (where the proprietor is not the debtor) on the proprietor a notice in conformity with Form E of Schedule 6 to this Act, ^{F6} . . .
 - (b) serve on the occupier of the security subjects a notice in conformity with Form F of that Schedule^{F7}, and
 - (c) give notice of the application to the local authority in whose area the security subjects are situated, unless the creditor is that local authority.]
- (4) Notices under subsection [^{F8}(3)(a) or (b)] above shall be sent by recorded delivery letter addressed—
- (a) in the case of a notice under subsection (3)(a), to the debtor or, as the case may be, the proprietor at his last known address,
 - (b) in the case of a notice under subsection (3)(b), to “The Occupier” at the security subjects.]
- [^{F9}(4A) Notice under subsection (3)(c) above shall be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003 (asp 10).]
- [^{F10}(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,

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the standard security has effect as if the default had not occurred.]

[^{F11}(10) For the avoidance of doubt, a decree granted on an application under subsection (1B) above is not an order for possession of a house let on an assured tenancy (within the meaning of Part II of the Housing (Scotland) Act 1988 (c.43)).]

Textual Amendments

- F1** S. 24(1A)-(1D) inserted (30.9.2010) by Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), **ss. 2(2), 17(3)** (with s. 14); S.S.I. 2010/314, **art. 3** (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)
- F2** Words in s. 24(2) substituted (30.9.2010) by Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), **ss. 2(3), 17(3)** (with s. 14); S.S.I. 2010/314, **art. 3** (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)
- F3** S. 24(3)(4) inserted (3.12.2001) by 2001 asp 11, **s. 4(3)** (with s. 5); S.S.I. 2001/418, **art. 2** (with transitional provision in art. 3)
- F4** Words in s. 24(3) substituted (30.9.2010) by Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), **ss. 2(4), 17(3)** (with s. 14); S.S.I. 2010/314, **art. 3** (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)
- F5** Words in s. 24(3) repealed (30.9.2010) by Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), **ss. 2(4), 17(3)** (with s. 14); S.S.I. 2010/314, **art. 3** (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)
- F6** Word in s. 24(3)(a) repealed (2.10.2008 for specified purposes and 1.4.2009 otherwise) by Homelessness etc. (Scotland) Act 2003 (asp 10), **ss. 11(2), 14(1), sch. para. 1(4)(a)(i)**; S.S.I. 2008/313, art. 2
- F7** S. 24(3)(c) and preceding word inserted (2.10.2008 for specified purposes and 1.4.2009 otherwise) by Homelessness etc. (Scotland) Act 2003 (asp 10), **ss. 11(2), 14(1), sch. para. 1(4)(a)(ii)**; S.S.I. 2008/313, art. 2
- F8** Words in s. 24(4) substituted (2.10.2008 for specified purposes and 1.4.2009 otherwise) by Homelessness etc. (Scotland) Act 2003 (asp 10), **ss. 11(2), 14(1), sch. para. 1(4)(b)**; S.S.I. 2008/313, art. 2
- F9** S. 24(4A) inserted (2.10.2008 for specified purposes and 1.4.2009 otherwise) by Homelessness etc. (Scotland) Act 2003 (asp 10), **ss. 11(2), 14(1), sch. para. 1(4)(c)**; S.S.I. 2008/313, art. 2
- F10** S. 24(5)-(9) inserted (30.9.2010) by Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), **ss. 2(5), 17(3)** (with s. 14); S.S.I. 2010/314, **art. 3** (subject to transitional and saving provisions in S.S.I. 2010/316, arts. 4-7)
- F11** S. 24(10) inserted (1.3.2011) by Housing (Scotland) Act 2010 (asp 17), **ss. 152(2), 166**; S.S.I. 2011/96, **art. 2, sch.** (with arts. 3-5)

Modifications etc. (not altering text)

- C1** S. 24 modified (3.12.2001) by 2001 asp 11, **s. 2(1)(b)** (with s. 5); S.S.I. 2001/418, **art. 2** (with transitional provision in art. 3)
- C2** Ss. 14-30 applied (with modifications) (28.11.2004) by 2000 asp 5, **ss. 69, 77(2)(a)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 1(2)(b)(c) inserted by [2000 asp 5 Sch. 12 para. 30\(2\)\(a\)\(iv\)](#) (This amendment has not been applied to legislation.gov.uk. Sch. 12 para. 30(2) repealed (4.4.2003) by 2003 asp 9, ss. 128, 129(5), Sch. 15 (with ss. 119, 121))
- s. 1(7) added by [2000 asp 5 Sch. 12 para. 30\(2\)\(c\)](#) (This amendment has not been applied to legislation.gov.uk. Sch. 12 para. 30(2) repealed (4.4.2003) by 2003 asp 9, ss. 128, 129(5), Sch. 15 (with ss. 119, 121))
- s. 9(2A) inserted by [2000 asp 5 s. 32](#) (This amendment has not been applied to legislation.gov.uk. S. 32 repealed (4.4.2003) by 2003 asp 9, ss. 128, 129(5), Sch. 15 (with ss. 119, 121) and word "32" in s. 77(2)(a) omitted (22.10.2003) by virtue of S.S.I. 2003/503, art. 5)
- s. 13A amendment to earlier affecting provision 2007 asp 3 s. 85 by [2012 asp 5 sch. 5 para. 52\(2\)](#)
- s. 24(1E) inserted by [2014 asp 18 sch. 5 para. 22](#)