

# **MORTGAGE RIGHTS (SCOTLAND) ACT 2001**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### ***Background***

4. Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970 created the standard security (commonly known as a mortgage) as the only means of securing a debt over land and buildings. The 1970 Act sets out twelve standard conditions that the parties to a standard security are required to adhere to (either as set out in the Act or as varied by agreement between the parties). The first seven of these conditions concern the maintenance of the value of the secured property and place certain obligations upon the debtor which the creditor can carry out if the debtor fails to do so. The remaining conditions deal with the creditor's rights to enforce the security (e.g. to pursue payment of arrears from the debtor) and allow the creditor to recover from the debtor any expenses incurred in exercising those rights.
5. Where the debtor defaults on mortgage repayments or otherwise fails to carry out obligations under the standard security, the bank or building society or other creditor can take action to (among other things) sell or enter into possession of the property. The 1970 Act provides for three distinct processes which can be used by creditors when they seek to enforce their rights - a calling-up notice, a notice of default and a warrant under section 24 of the 1970 Act. Where a debtor is in arrears, the creditor may also apply under section 5 of the Heritable Securities (Scotland) Act 1894 to eject the debtor from the property. These processes are outlined briefly in the glossary at the end of these Notes.