

# HOME OWNER AND DEBTOR PROTECTION (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### THE ACT

#### **Part 1 – Residential Standard Securities Etc.: Creditor’s Rights on Default**

##### *Section 5 – application to court by entitled residents*

29. **Section 5** makes provision for certain individuals to intervene in an application by a creditor under the 1894 Act or the 1970 Act in relation to residential property. The 2001 Act currently provides that the debtor and certain other residents of the property being possessed or sold can apply to the court for a suspension of the creditor’s rights or a continuation of court proceedings. The Act’s requirement for all possessions or sales to be by court application means that the debtor no longer needs the right to make such an application. Section 5 preserves and extends the 2001 Act rights of the other residents (entitled residents) to make an application to the court.
30. **Section 5(1)** inserts sections 24B and 24C into the 1970 Act. Section 24B allows entitled residents to apply to the court to continue the proceedings or to make any other order the court thinks fit. It provides that in such an application the court is to have regard to the same matters as it is required to consider if a debtor appears or is represented. These are the matters in new section 24(7) of the 1970 Act, which mirror the matters in section 2(2) of the 2001 Act (to which a court would currently have regard in an application made under the 2001 Act).
31. Section 24C defines entitled residents. Other than the debtor, these individuals are the same as those who can make an application under section 2 of the 2001 Act.
32. **Section 5(2)** inserts sections 5C and 5D into the 1894 Act. These sections make provision in respect of applications under the 1894 Act corresponding to that in the new sections 24B and 24C of the 1970 Act.