

HOME OWNER AND DEBTOR PROTECTION (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

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

Section 6 – recall of decree

33. **Section 6** makes provision for the recall of a decree following the creditor’s application under section 24(1B) of the 1970 Act or section 5 of the 1894 Act (where section 5A applies). These are actions in respect of residential properties. Recall of a decree has the effect of reviving the original proceedings, thereby again giving the creditor, debtor and entitled residents the opportunity to make representations to the court.
34. **Section 6(1)** inserts section 24D into the 1970 Act. The debtor or an entitled resident may make an application for the recall of a decree only where they did not appear in the earlier proceedings. The creditor may also apply for recall. The application can be made at any time before the decree has been fully implemented. An application for recall of decree can only be made by an entitled resident if they have not already been involved in the proceedings. Further provision will be made by court rules as regards notification of a recall application, which must be given to the creditor and debtor (unless they are the applicant) and to each entitled resident.
35. **Section 6(2)** inserts section 5E into the 1894 Act. This makes provision in respect of applications under the 1894 Act corresponding to that in new section 24D of the 1970 Act.