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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 314 (C. 16)**

**HOUSING**

**The Home Owner and Debtor Protection  
(Scotland) Act 2010 (Commencement) Order 2010**

*Made - - - - 3rd September 2010*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 17(3) and (4) of the Home Owner and Debtor Protection (Scotland) Act 2010<sup>(1)</sup>.

**Citation and interpretation**

1. This Order may be cited as the Home Owner and Debtor Protection (Scotland) Act 2010 (Commencement) Order 2010.

2. In this Order—

“the Act” means the Home Owner and Debtor Protection (Scotland) Act 2010; and

“the 1985 Act” means the Bankruptcy (Scotland) Act 1985<sup>(2)</sup>.

**Appointed Days**

3. The day appointed for the coming into force of sections 1 to 6 and 8 of the Act is 30th September 2010.

4. The day appointed for the coming into force of section 7 of the Act is 3rd October 2010.

5. The day appointed for the coming into force of section 9(2) of the Act (insofar as it inserts section 5B(5) into the 1985 Act), section 11 of the Act (insofar as it inserts sub-section (3B) into section 40 of the 1985 Act) and section 13 of the Act is 7th September 2010.

6. The day appointed for the coming into force of the whole of Part 2 of the Act, insofar as not then in force, is 15th November 2010.

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(1) 2010 asp 6.  
(2) 1985 c.66.

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St Andrew's House,  
Edinburgh  
3rd September 2010

*ALEX NEIL*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force the provisions of the Home Owner and Debtor Protection (Scotland) Act 2010 (“the Act”) and is subject to the transitional and saving provisions set out in the Home Owner and Debtor Protection (Scotland) Act 2010 (Transitional and Saving Provisions) Order 2010. Part 3 of the Act came into force on Royal Assent.

### Commencement of Part 1 of the Act

Articles 3 and 4 commence Part 1 of the Act. The later timing of article 4 is to allow arrangements to be fully in place for the operation of the lay representative provisions.

Part 1 of the Act amends provisions of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35) (“the 1970 Act”) in so far as they relate to creditors’ rights on default on a standard security over residential property, and provisions of the Heritable Securities (Scotland) Act 1894 (c.44) (“the 1894 Act”) in so far as they relate to applications by creditors to eject proprietors in personal occupation of residential property.

Sections 1 and 2 of the Act make provision to require creditors to make an application to the court for warrant to exercise their rights under the 1970 Act on default on a standard security, unless the property has been voluntarily surrendered. Provision is also made as to the court’s powers in relation to applications under the 1970 Act and certain matters to which the court must have regard in considering an application.

Section 3 of the Act makes provision in relation to the court’s powers in relation to applications under the 1894 Act, and in relation to matters to which the court must have regard in considering such applications.

Section 4 of the Act sets out the pre-action requirements with which creditors must comply before making an application to court under either the 1894 Act or the 1970 Act, and permits Scottish Ministers to make further provision about the pre-action requirements by order.

Section 5 of the Act makes provision as to the rights of certain entitled residents, and inserts definitions of who these residents are into the 1894 Act and the 1970 Act.

Section 6 of the Act confers a right on creditors, debtors and entitled residents who did not appear or were not represented in proceedings on an application under the 1894 Act or the 1970 Act to apply to court for recall of any decree granted on in relation to that application.

Section 7 introduces lay representatives, who may represent debtors and entitled residents in proceedings on applications under the 1894 Act and the 1970 Act for ejection of a proprietor in personal occupation or for exercise of creditors’ remedies on default, as well as applications for recall of decree under section 6.

Section 8 makes various minor and consequential amendments, including repeal of certain provisions of the [Mortgage Rights \(Scotland\) Act 2001 \(asp 11\)](#).

### Commencement of Part 2 of the Act

Articles 5 and 6 commence Part 2 of the Act. Article 5 commences provisions which amend the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”) so as to introduce or amend regulation making powers under that Act. Article 6 commences provisions which amend the 1985 Act in respect

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primarily of sequestration and trust deeds. The timing of the different commencement dates is to allow regulations to be made in anticipation of the substantive provisions, such that the regulations and the substantive provisions may come into force at the same time.