

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

PART 1

AMENDMENT OF THE CONVEYANCING AND FEUDAL REFORM (SCOTLAND) ACT 1970

1. Schedule 6 to the Conveyancing and Feudal Reform (Scotland) Act 1970(1) is amended in accordance with paragraphs 2 and 3.
2. For Forms A to BB, substitute—

FORM A

NOTICE OF CALLING UP OF STANDARD SECURITY

IT IS IMPORTANT THAT YOU READ THIS LETTER - YOUR HOME MAY BE AT RISK OF REPOSSESSION

To A.B. (*address*)

TAKE NOTICE that C.D. (*designation*) requires payment of the principal sum of £..... with interest thereon at the rate of per centum per annum from the day of (*adding if necessary*, subject to such adjustment of the principal sum and the amount of interest as may subsequently be determined) secured by a standard security by you (or by E.F.) over (*insert address*) (“the property”) in favour of C.D. (or of G.H. to which C.D. has now right) recorded in the Register for (*or, as the case may be*, registered in the Land Register for Scotland) on And that failing full payment of the said sum and interest thereon (*adding if necessary*, subject to any adjustment as aforesaid), and expenses within two months after the date of service of this demand—

- IF THE PROPERTY IS A RESIDENTIAL PROPERTY, C.D. may apply to the sheriff court for warrant to exercise the remedies available to a creditor on default for example to repossess and sell the property.
- IF THE PROPERTY IS A NON-RESIDENTIAL PROPERTY, it may be sold without the need to go to court.

Dated this day of

(*To be signed by the creditor, or by his agent, who will add his designation and the words Agent of the said C.D.*)

(1) 1970 c.35. Schedule 6 was amended by Part 1 of the schedule to the Mortgage Rights (Scotland) Act 2001 (asp 11).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

IT IS STRONGLY RECOMMENDED THAT YOU SEEK ADVICE:

You can get advice about this Notice and what it means for you from a solicitor, Citizens Advice Bureau or other advice agency or, in the case of a residential property, an approved lay representative. A Citizens Advice Bureau or other advice agency may also be able to give you advice about how to manage debt. Take this Notice with you when seeking advice. You may be eligible for legal aid depending on your circumstances. You can get information about legal aid from a solicitor.

A solicitor or approved lay representative may represent you in any court proceedings in relation to an application by C.D for possession and sale of your home. You can find out more about approved lay representatives from the housing department of your local authority or from a Citizens Advice Bureau or other advice agency.

YOUR RIGHTS IN RELATION TO RESIDENTIAL PROPERTY ARE PROTECTED BY LAW:

In the case of a residential property, C.D. must comply with statutory pre-action requirements before being allowed to apply to the court. These requirements include providing you with specified information and contacting you to discuss alternatives to repossession. C.D. may also be prevented from applying to the court if you have made an application to an insurer under a payment protection policy or to a mortgage support scheme. It is important to discuss with your solicitor or advisor any doubts you have about whether C.D. has complied with these requirements.

YOU MAY WISH TO VOLUNTARILY SURRENDER YOUR HOME:

In the case of a residential property it is open to you, in certain circumstances, to voluntarily surrender the property to C.D. if all entitled residents in it consent. If you wish to consider voluntary surrender you should discuss with your solicitor or advisor whether this option is right for you. You should not proceed with voluntary surrender unless you understand the consequences of doing so, for example that you may still owe money to C.D.

(In the case of a standard security for a non-monetary obligation this Form shall be adapted accordingly.)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM B

NOTICE OF DEFAULT UNDER STANDARD SECURITY

IT IS IMPORTANT THAT YOU READ THIS LETTER - YOUR HOME MAY BE AT RISK OF REPOSSESSION

To A.B. (*address*)

TAKE NOTICE that C.D. (*designation*), the creditor in a standard security by you (or by E.F.) over (*insert address*) (“the property”) in favour of C.D. (*or of G.H. to which C.D. has now right*) recorded in the Register for (*or, as the case may be, registered in the Land Register for Scotland*) on requires fulfilment of the obligation(s) specified in the Schedule hereto in respect of which there is default; And that failing such fulfilment within one month after the date of service of this notice—

- IF THE PROPERTY IS A RESIDENTIAL PROPERTY, C.D. may apply to the sheriff court for warrant to exercise the remedies available to a creditor on default for example to repossess and sell the property.
- IF THE PROPERTY IS A NON-RESIDENTIAL PROPERTY, it may be sold without the need to go to court.

Dated this day of

(To be signed by the creditor, or by his agent, who will add his designation and the words Agent of the said C.D.)

Schedule of Obligation(s) in respect of which there is default.

To *(specify in detail the obligation(s) in respect of which there is default)*

IT IS STRONGLY RECOMMENDED THAT YOU SEEK ADVICE:

You can get advice about this Notice and what it means for you from a solicitor, Citizens Advice Bureau or other advice agency or, in the case of a residential property, an approved lay representative. A Citizens Advice Bureau or other advice agency may also be able to give you advice about how to manage debt. Take this Notice with you when seeking advice. You may be eligible for legal aid depending on your circumstances. You can get information about legal aid from a solicitor.

A solicitor or an approved lay representative may represent you in any court proceedings in relation to an application by C.D for possession and sale of your home. You can find out more about approved lay representatives from the housing department of your local authority or from a Citizens Advice Bureau or other advice agency.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

YOUR RIGHTS IN RELATION TO RESIDENTIAL PROPERTY ARE PROTECTED BY LAW:

In the case of residential property, C.D. must comply with statutory pre-action requirements before being allowed to apply to the court. These requirements include providing you with specified information and contacting you to discuss alternatives to repossession. C.D. may also be prevented from applying to the court if you have made an application to an insurer under a payment protection policy or to a mortgage support scheme. It is important to discuss with your solicitor or advisor any doubts you have about whether C.D. has complied with these requirements.

YOU MAY WISH TO VOLUNTARILY SURRENDER YOUR HOME:

In the case of a residential property it is open to you, in certain circumstances, to voluntarily surrender the property to C.D. if all entitled residents in it consent. If you wish to consider voluntary surrender you should discuss with your solicitor or advisor whether this option is right for you. You should not proceed with voluntary surrender unless you understand the consequences of doing so, for example, that you may still owe money to C.D.

FORM BB

NOTICE TO THE OCCUPIER

IT IS IMPORTANT THAT YOU READ THIS LETTER – YOUR HOME MAY BE AT RISK OF REPOSSESSION

To the Occupier (including any Tenant) (address)

A Notice of Calling-up of a standard security/ Default under a standard security (*delete as appropriate*) has been served by C.D. on A.B. in relation to (*address of subjects*) (“the property”). A copy of the Notice is attached. C.D. may apply to the sheriff court for warrant to exercise the remedies available to a creditor on default including the rights to enter into possession of and sell the property.

Dated

(*Signature of C.D., or signature and designation of C.D.’s agent followed by the words Agent of C.D.*)

IT IS STRONGLY RECOMMENDED THAT YOU SEEK ADVICE:

You can get advice about this Notice and what it means for you from a solicitor, Citizens Advice Bureau or other advice agency or, in certain cases, an approved lay representative. Take this Notice with you when seeking advice. You may be eligible for legal aid depending on your circumstances. You can get information about legal aid from a solicitor.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

YOUR RIGHTS IN RELATION TO RESIDENTIAL PROPERTY ARE PROTECTED BY LAW:

C.D. must comply with statutory pre-action requirements before being allowed to apply to the court. These requirements include providing A.B. with specified information and contacting A.B. to discuss alternatives to repossession. It is important to discuss with your solicitor or advisor any doubts you have about whether C.D. has complied with these requirements.

IF YOU ARE OR WERE THE SPOUSE, CIVIL PARTNER OR PARTNER OF A.B. OR ARE THE OWNER OF THE HOUSE:

You may be an ENTITLED RESIDENT and should discuss this with your solicitor or advisor. This means that A.B. cannot voluntarily surrender the property if you or anyone else is living there or without your written consent. You may be asked to give your consent – it is recommended that you do not do so until you have discussed this with a solicitor or other advisor.

You have a RIGHT TO BE HEARD IN COURT. If C.D. does make an application to the court, you are entitled to intervene to ask the court to continue the proceedings or to make any other order (for example an order suspending C.D.'s rights or refusing C.D.'s application). You may represent yourself, or be represented by a solicitor or approved lay representative. You can find out more about approved lay representatives from the housing department of your local authority or from a Citizens Advice Bureau or other advice agency.

IF YOU ARE A TENANT OF A.B.:

You should contact C.D. to let them know about your tenancy as soon as possible as they may not be aware that you live in the property.

If you have an assured or short assured tenancy you may have rights under the Housing (Scotland) Act 1988 - in certain circumstances C.D. cannot take possession of the property or evict you without making a separate application to the court under that Act. Whatever your type of tenancy, you should obtain legal advice about your rights as a tenant.

3. For Forms E and F, substitute—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM E

NOTICE OF PROCEEDINGS

IT IS IMPORTANT THAT YOU READ THIS LETTER – YOUR HOME MAY BE AT RISK OF REPOSSESSION

To A.B. (*address*)

C.D. (*designation*), the creditor in a standard security by you (*or* by E.F.) in favour of C.D. (*or* of G.H. to which C.D. now has right) recorded in the Register for (*or, as the case may be, registered in the Land Register for Scotland*) on (*date*) has applied to the court under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 for warrant to exercise in relation to (*address of security subjects*) remedies to which he is entitled on the following default—

(specify in detail the default in respect of which the application is made)

A copy of the application is attached.

Dated

(Signature of C.D., or signature and designation of C.D.'s agent followed by the words Agent of C.D.)

IT IS STRONGLY RECOMMENDED THAT YOU SEEK ADVICE:

You can get advice about this Notice and what it means for you from a solicitor, Citizens Advice Bureau or other advice agency or an approved lay representative. A Citizens Advice Bureau or other advice agency may also be able to give you advice about how to manage debt. Take this Notice with you when seeking advice. You may be eligible for legal aid depending on your circumstances. You can get information about legal aid from a solicitor.

A solicitor or approved lay representative may represent you in any court proceedings in relation to an application by C.D for possession and sale of your home. You can find out more about approved lay representatives from the housing department of your local authority or from a Citizens Advice Bureau or other advice agency.

YOUR RIGHTS IN RELATION TO RESIDENTIAL PROPERTY ARE PROTECTED BY LAW:

C.D.'s application is not valid and can be challenged by you (*or* by E.F) if C.D. has failed to comply with certain pre-action requirements. These requirements include providing specified information and to contacting you (*or* the debtor) to discuss alternatives to repossession. It is important to discuss with your solicitor or advisor if you have doubts about whether C.D. has complied with these requirements.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

YOU HAVE THE RIGHT TO BE HEARD IN COURT:

You are (*or the debtor is*) entitled to intervene in the court proceedings following from C.D.'s application. You (*or the debtor*) can appear personally or be represented by a solicitor or approved lay representative. For example, you (*or the debtor*) might want to argue that the pre-action requirements have not been complied with or that it would not be reasonable for the sheriff to grant the application. Even if they have, you have (*or the debtor has*) the right to ask the sheriff to continue the proceedings or make any other order. The sheriff will take into account matters such as the nature of and reasons for the default, your (*or the debtor's*) ability to fulfil your (*or the*) obligations under the security within a reasonable time, any action taken by C.D. to assist you (*or the debtor*) to fulfil your (*or the*) obligations, your (*or the debtor's*) participation in a relevant debt payment programme and your (*or the debtor's*) ability, or the ability of any other person residing in the property, to secure reasonable alternative accommodation.

YOU MAY WISH TO VOLUNTARILY SURRENDER YOUR HOME:

It is open to you (*or the debtor*), in certain circumstances, to voluntarily surrender the property to C.D. if all entitled residents in it consent. If you wish to consider voluntary surrender you should discuss with your solicitor or advisor whether this option is right for you. You should not proceed with voluntary surrender unless you understand the consequences of doing so, for example, that you may still owe money to C.D.

WHAT IF AN ORDER FOR REPOSSESSION HAS ALREADY BEEN GRANTED AND I HAVE JUST BECOME AWARE OF THE APPLICATION?

It may not be too late to intervene so you should urgently seek advice. You have the right to apply to the court to ask for the order to be recalled at any time before repossession has taken place. If the court recalls the order it will fix a hearing, giving you (*or the debtor*) the opportunity to appear or be represented.

FORM F

NOTICE OF PROCEEDINGS TO THE OCCUPIER

IT IS IMPORTANT THAT YOU READ THIS LETTER – YOUR HOME MAY BE AT RISK OF REPOSSESSION

To the Occupier (including any Tenant) (*address*)

C.D. (*designation*) has applied to the court under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 for warrant to exercise in relation to (*address of security subjects*) ("the property") remedies to which he is entitled on the default of A.B. (*designation*) in the performance of his obligations under a standard security over the property. A copy of the application is attached.

Dated

(*Signature of C.D., or signature and designation of C.D.'s agent followed by the words Agent of C.D.*)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

IT IS STRONGLY RECOMMENDED THAT YOU SEEK ADVICE:

You can get advice about this Notice and what it means for you from a solicitor, Citizens Advice Bureau or other advice agency or, in certain cases, an approved lay representative. Take this Notice with you when seeking advice. You may be eligible for legal aid depending on your circumstances. You can get information about legal aid from a solicitor.

YOUR RIGHTS IN RELATION TO RESIDENTIAL PROPERTY ARE PROTECTED BY LAW:

C.D. must comply with statutory pre-action requirements before being allowed to apply to the court. These requirements include providing A.B. with specified information and contacting A.B. to discuss alternatives to repossession. It is important to discuss with your solicitor or advisor any doubts you have about whether C.D. has complied with these requirements.

IF YOU ARE OR WERE THE SPOUSE, CIVIL PARTNER OR PARTNER OF A.B. OR ARE THE OWNER OF THE HOUSE:

You may be an ENTITLED RESIDENT and should discuss this with your solicitor or advisor. This means that A.B. cannot voluntarily surrender the property if you or anyone else is living there or without your written consent. You may be asked to give your consent – it is recommended that you do not do so until you have discussed this with a solicitor or other advisor.

You have the RIGHT TO BE HEARD IN COURT. You are entitled to intervene to ask the court to continue the proceedings or to make any other order (for example an order suspending C.D.'s rights or refusing C.D.'s application). For example, you might want to argue that the pre-action requirements have not been complied with or that it would not be reasonable for the sheriff to grant the application. Even if they have, you have the right to ask the sheriff to continue the proceedings or make any other order. The sheriff will take into account matters such as the nature of and reasons for the default, your or the debtor's ability to fulfil the obligations under the security within a reasonable time, any action taken by C.D. to assist the debtor to fulfil the obligations, the debtor's participation in a relevant debt payment programme and your ability, or the ability of any other person residing in the property (including you), to secure reasonable alternative accommodation.

You may represent yourself, or be represented by a solicitor or approved lay representative. You can find out more about approved lay representatives from the housing department of your local authority or from a Citizens Advice Bureau or other advice agency.

IF YOU ARE A TENANT OF A.B.:

You should contact C.D. to let them know about your tenancy as soon as possible as they may not be aware that you live in the property.

If you have an assured or short assured tenancy you may have rights under the Housing (Scotland) Act 1988 - in certain circumstances C.D. cannot take possession of the property or evict you without making a separate application to court under that Act. The sheriff may also permit you to intervene in the proceedings for possession as an interested party. Whatever your type of tenancy, you should obtain legal advice about your rights as a tenant.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

WHAT IF AN ORDER FOR REPOSSESSION HAS ALREADY BEEN GRANTED AND I HAVE JUST BECOME AWARE OF THE APPLICATION?

If you are an ENTITLED RESIDENT it may not be too late to intervene so you should urgently seek advice. You have the right to apply to court to ask for the order to be recalled at any time before repossession has taken place. If the court recalls the order it will fix a hearing, giving you the opportunity to appear or be represented.

If you are a TENANT, C.D. may need to obtain a separate order for eviction, depending on your tenancy type. You should urgently obtain legal advice about your rights as a tenant.