

17 December 2021



Our ref: L1/3/17

Dear Consultee

**DISCUSSION PAPER ON HERITABLE SECURITIES: DEFAULT AND POST DEFAULT
SLC DP No 173**

We invite comment on the above mentioned Discussion Paper which has been published today. The paper is available on our website at <https://www.scotlawcom.gov.uk/law-reform/consultations/> together with an Executive Summary and a news release.

The main work of the Discussion Paper is a systematic review of the process by which a standard security is exercised. The law in this area has been criticised at the highest level for various reasons including its complexity. The key piece of legislation, the Conveyancing and Feudal Reform (Scotland) Act 1970, has been subject to a patchwork of amendments over time, leaving it in an unsatisfactory state.

The Discussion Paper considers in detail, among other things:

- the circumstances which should constitute “default” and therefore trigger a security holder’s right to take action against a debtor;
- the steps a security holder must take prior to exercising the security, including enhanced protections available to debtors who are at risk of losing their homes;
- the remedies available under the security, including the power to collect rent from tenants where the mortgaged property is leased, the power to eject occupants and sell the property, and the power to foreclose (where the security holder takes ownership of the property itself);
- the expenses of enforcement action and how these should be met.

The paper seeks views from consultees on a wide variety of questions about how to achieve a streamlined process for exercising a security, fit for modern practice, which strikes the appropriate balance between the interests of debtors and creditors. These questions include:

- whether security holders should be subject to a duty to conform with reasonable standards of commercial practice when exercising remedies?
- which debtors and properties should qualify for enhanced protection under the scheme?



- how should a new “default notice” system operate to ensure a debtor has fair warning that a security holder may take action?
- should a security holder be allowed to exercise any remedies as a result of the security other than sale of the property, collection of rental income from the property, or foreclosure?

Consultation is critical in all of our law reform projects to ensure that the final recommendations contained in our report would, if implemented, result in law which is just, principled, responsive and easy to understand.

We would therefore be grateful to receive your views on any or all of the questions in this Discussion Paper. All views will be fully considered and analysed in the course of reaching our final conclusions. The consultation period ends on **1 April 2022**.

Where possible, we would prefer the electronic submission of comments. You can use the electronic response form for this Discussion Paper which is available on our website at <https://www.scotlawcom.gov.uk/publications/archive/discussion-papers-and-consultative-memoranda/>.

The form has a questionnaire format which allows you to comment (briefly or at length) on any of the paper’s question which interest you. The form can be downloaded and emailed to us at info@scotlawcom.gov.uk, as can comments in other electronic formats.

Alternatively, you may prefer to send your comments on the Discussion Paper by using the general comments form to be found on the website “Contact Us” page (<http://www.scotlawcom.gov.uk/contact-us/>). As noted above, the consultation process concludes on 1 April 2022, accordingly we would be grateful if comments could be submitted by then.

PLEASE NOTE THAT information about this Discussion Paper, including copies of responses, may be made available in terms of the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002. Any confidential response will be dealt with in accordance with these Acts. We may also (i) publish responses on our website (either in full or in some other way, such as, reformatted or summarised); and (ii) attribute comments and publish a list of respondents' names.

More information about the work of the Commission can be found on our website at <https://www.scotlawcom.gov.uk/>.

Finally, should you wish to offer any comments on the way in which we conduct our consultation exercises, we would be pleased to hear from you.

Yours faithfully

CHARLES GARLAND
Interim Chief Executive