

RESPONSE FORM

DISCUSSION PAPER ON HERITABLE SECURITIES: NON-MONETARY SECURITIES AND SUB-SECURITIES

We hope that by using this form it will be easier for you to respond to the proposals or questions set out in the Discussion Paper. Respondents who wish to address only some of the questions and proposals may do so. The form reproduces the proposals/questions as summarised at the end of the paper and allows you to enter comments in a box after each one. At the end of the form, there is also space for any general comments you may have.

Please note that information about this Discussion Paper, including copies of responses, may be made available in terms of the Freedom of Information (Scotland) Act 2002. Any confidential response will be dealt with in accordance with the 2002 Act.

We may also (i) publish responses on our website (either in full or in some other way such as re-formatted or summarised); and (ii) attribute comments and publish a list of respondents' names.

In order to access any box for comments, press the shortcut key F11 and it will take you to the next box you wish to enter text into. If you are commenting on only a few of the proposals, continue using F11 until you arrive at the box you wish to access. To return to a previous box press Ctrl+Page Up or press Ctrl+Home to return to the beginning of the form.

Please save the completed response form to your own system as a Word document and send it as an email attachment to [info@scotlawcom.gov.uk](mailto:info@scotlawcom.gov.uk). Comments not on the response form may be submitted via said email address or by using the [general comments form](http://www.scotlawcom.gov.uk/contact-us#sendcomments) on our website. If you prefer you can send comments by post to the Scottish Law Commission, Parliament House, 11 Parliament Square, Edinburgh EH1 1RQ

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**Summary of Questions**

1. What information or data do consultees have on:

(a) the economic impact of the current legislation on heritable securities in relation to transactions involving non-monetarysecuritiesor secondary standard securities?

(b) the potential economic impact of any option for reform proposed in this Discussion Paper?

(Paragraph 1.21)

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| **Comments on Question 1**  «InsertTextHere» |

2. Which of the following approaches do consultees prefer and why?

(a) A standard security may not secure a non-monetary obligation, but it may secure an obligation to pay damages for non-performance of that obligation.

(b) A standard security may secure a non-monetary obligation, but the security will entitle the holder only to damages for non-performance of that obligation.

(Paragraph 3.12)

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| **Comments on Question 2**  «InsertTextHere» |

3. If a standard security under any new legislation entitles its holder only to monetary remedies:

(a) Is specific provision required to deal with the ranking of such a security?

(b) If so, what provision is required?

(Paragraph 3.17)

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| **Comments on Question 3**  «InsertTextHere» |

4. Should the law provide a means by which contractual obligations to transfer or grant subordinate real rights in land can be protected beyond the usual contractual remedies?

(Paragraph 4.14)

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| **Comments on Question 4**  «InsertTextHere» |

5. Which of the following approaches do consultees prefer?

(a) A party wishing to protect the priority of an obligation to transfer or grant a subordinate real right in land should continue to take a standard security in respect of that obligation and rely on the rule against offside goals to protect that obligation.

(b) The law should be reformed to provide a bespoke mechanism for protecting the priority of an obligation to transfer or grant a subordinate real right in land.

(Paragraph 4.20)

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| **Comments on Question 5**  «InsertTextHere» |

6. If a new form of notice is introduced to protect the priority of obligations to transfer land or grant a subordinate real right, should this be known as a conditional advance notice? If not, what name should be used?

(Paragraph 4.34)

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| **Comments on Question 6**  «InsertTextHere» |

7. If a conditional advance notice scheme is introduced:

(a) Should the conditional advance notice include the same content as the advance notice?

(b) Should the conditional advance notice also include identification of the contract or undertaking in which the obligation to grant the intended deed is set out?

(c) Should any further information be included in the conditional advance notice?

(Paragraph 4.39)

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| **Comments on Question 7**  «InsertTextHere» |

8. If a conditional advance notice scheme is introduced:

(a) Should it be possible for an application for a conditional advance notice to be made by the person with the power to validly grant the intended deed?

(b) Should it be possible for an application for a conditional advance notice to be made by any other person? If so, which person and why?

(Paragraph 4.46)

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| **Comments on Question 8**  «InsertTextHere» |

9. If a conditional advance notice scheme is introduced:

(a) Where the intended deed relates to a property in the Land Register, should a conditional advance notice be entered on the title sheet of that property?

(b) If so, in which section of the title sheet should it be noted?

(c) If not, where in the Land Register should the conditional advance notice be located?

(d) Where the intended deed relates to a property in the Register of Sasines, should a conditional advance notice be recorded in that Register?

(Paragraph 4.54)

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| **Comments on Question 9**  «InsertTextHere» |

10. If a conditional advance notice scheme is introduced:

(a) What should be the duration of the protected period and why?

(b) At the end of the protected period, should it be possible to extend the period by the same fixed duration? If not, why not?

(c) Should it be possible for the person intending to grant the deed to extend the period of the notice? Should it also be possible for the intended grantee of the deed to extend the period of the notice? If not, why not?

(Paragraph 4.61)

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| **Comments on Question 10**  «InsertTextHere» |

11. If a conditional advance notice scheme is introduced:

(a) Should the priority of the deed specified in the notice be protected against any voluntary competing deed registered during the protected period? If not, why not?

(b) Should performance of the obligation to deliver the deed specified in the notice be protected against any voluntary competing deed registered during the protected period? If not, why not?

(Paragraph 4.74)

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| **Comments on Question 11**  «InsertTextHere» |

12. If a conditional advance notice scheme is introduced, should the priority of the deed specified in the notice be protected against:

(a) Any involuntary competing deed registered during the protected period?

(b) An inhibition, or another entry in the Register of Inhibitions which takes effect as if an inhibition, during the protected period?

Please provide reasons in support of your answers if you wish.

(Paragraph 4.80)

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| **Comments on Question 12**  «InsertTextHere» |

13. If a conditional advance notice scheme is introduced, should it be provided that:

(a) Where the claim protected by the notice is assigned, the assignee acquires the right to the notice;

(b) The intended grantee of the protected deed has the power to apply for transfer of the notice, and must do so where necessary to transfer the notice following assignation of the protected claim?

(Paragraph 4.84)

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| **Comments on Question 13**  «InsertTextHere» |

14. If a conditional advance notice scheme is introduced:

(a) Should provision be made for discharge of the notice as under the advance notice scheme, subject to the reform of the requirement of consent from the intended recipient?

(b) Should the intended recipient be required to consent to the discharge application in writing?

(c) Should a court process be available for discharge where the intended recipient cannot be found, fails to respond or refuses to consent?

(Paragraph 4.92)

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| **Comments on Question 14**  «InsertTextHere» |

15. Do you have any comments on the use of conditional advance notices in relation to purchase options held by tenants in respect of the property they lease?

(Paragraph 4.98)

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| **Comments on Question 15**  «InsertTextHere» |

16. Is further exploration required of the potential to protect obligations to transfer land by way of a standard security, a personal real burden or an inhibition? If so, why?

(Paragraph 5.24)

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| **Comments on Question 16**  «InsertTextHere» |

17. In what circumstances is a standard security taken over a standard security in practice?

(Paragraph 6.27)

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| **Comments on Quesion 17**  «InsertTextHere» |

18. Should the grant of a standard security over a standard security cease to be competent? If not, why not?

(Paragraph 7.14)

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| **Comments on Question 18**  «InsertTextHere» |

19. (a) Should it be possible to assign in security a standard security?

(b) If so, what consequences should follow from such an assignation in security?

(Paragraph 7.35)

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| **Comments on Question 19**  «InsertTextHere» |

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| **General Comments**  «InsertTextHere» |

Thank you for taking the time to respond to this Discussion Paper. Your comments are appreciated and will be taken into consideration when preparing a report containing our final recommendations.