



Scottish Law Commission
promoting law reform

Heritable Securities: SLC project update

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Introduction

- SLC project on [Heritable Securities](#)
- Scope of project
- Structure and timeline
- Phase one: pre-default
- Phase two: default and enforcement
 - Property “used to any extent for residential purposes”
 - Default and following procedure
 - Remedies



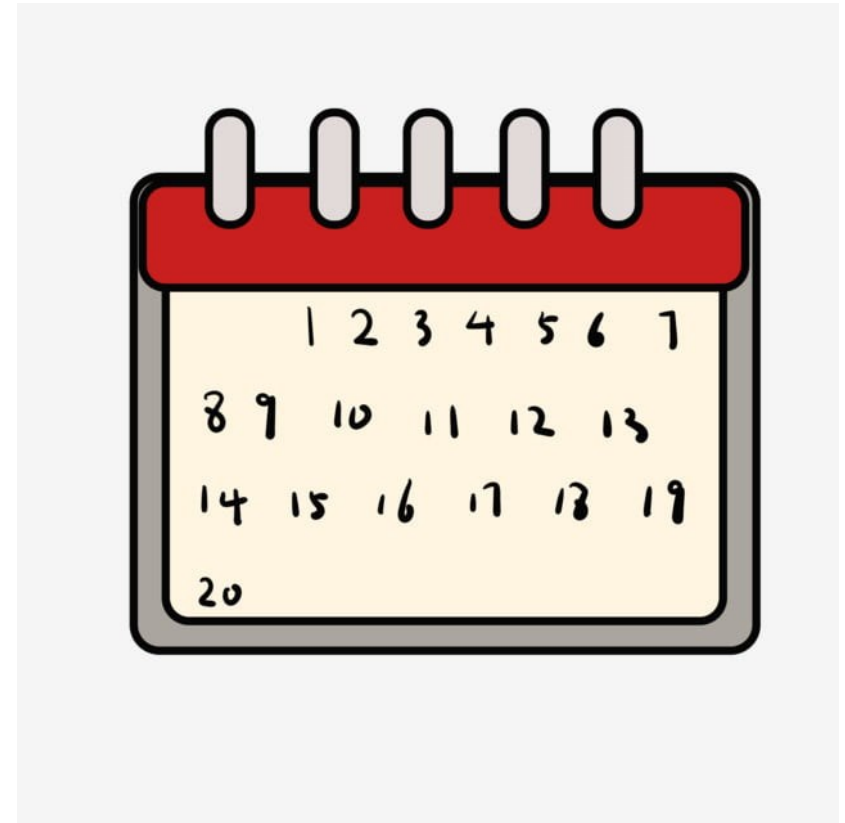
Scope



- Security over heritable property
- Conveyancing and Feudal Reform (Scotland) Act 1970
- Issues with underlying law
- Interpreting the 1970 Act
- Effects of amendment
- Ambition: law fit for modern practice

Timetable

- Seven year project
- 2018-19: [Discussion Paper 1](#) on pre-default issues
- 2020-21: Discussion Paper 2 on post-default issues
- 2022: Discussion Paper 3 on complex transactions
- 2025: Report and draft Bill





Pre-default: areas of consensus

- Framework of law
 - One (fixed) security
 - “Standard security”
 - Accessory to underlying debt
- Flexibility
 - No more template forms
 - No standard conditions
 - Non-obligatory styles/templates
- New statute

Pre-default: areas of disagreement

- Creditor's remedy re other real rights granted by the debtor
 - What and when?
- Assignment of all-sums securities
 - When can unsecured debts become secured?

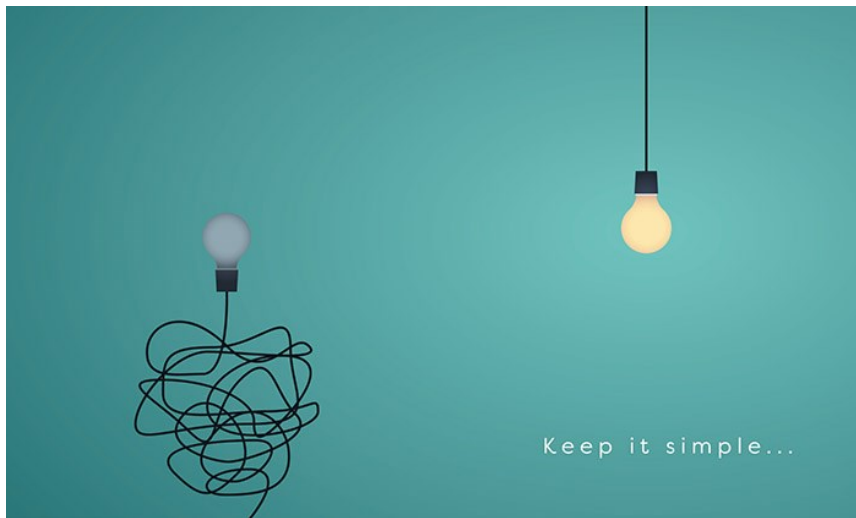


Post-default: enhanced debtor protection

- Enhanced debtor protection measures
 - Pre-action requirements
 - Mandatory court order
 - Court discretion to refuse order
- When do these apply?
 - Property used “to any extent for residential purposes”
- Refocus on the *debtor*, not the *property*?
 - Natural persons
 - Sole or main residence
 - Entitled occupants



Post-default: simplified process



- What is “default”?
 - Difficulties with SC9 definitions
 - Simplify: Non-performance of the secured obligation?
- Enforcement notice
 - Calling-up notice/notice of default
 - Simplify: one form
 - Questions on content, timing and service
- Court order
 - Mandatory for enhanced debtor protection cases
 - Otherwise not required?



Post-default: remedies

- Ejection; Possession/rents; Sale; foreclosure
 - Receivership?
- Possession
 - Creditor's liabilities on taking possession
 - Granting leases – 7 years?
- Sale
 - Creditor's duties
 - More judicial oversight
- Foreclosure process

Conclusion

- Discussion Paper 2 due this summer
- Info sessions and seminars
- Please respond!





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