

# Important things to know about your mortgage

General Mortgage Conditions 2019



Building Society



# **We've been helping each other buy homes since 1884**

Although times have changed since 1884, when Alfred and Elizabeth Idle became our first mortgage members, the one thing that hasn't changed is our dedication to helping people buy homes of their own. Having a Nationwide mortgage (or savings account or current account) makes you a member. And, today, there are 15 million of us; helping one another save up, buy homes and prosper.

Part of our commitment to our members includes making sure any terms and conditions are as easy to understand as possible. After all, the last thing we want is for you to have to wade through lots of technical jargon. So the rest of this document has been designed to help you feel fully informed about the conditions of your mortgage. In the meantime, if you have any questions before your mortgage begins about the legal side of things, your conveyancer will be able to help. Once you have your mortgage, it'll then be over to us for anything else you need.

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## General Mortgage Conditions 2019

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# Your agreement with us

These conditions make up part of our agreement with you. Our agreement is also made up of your mortgage offer, mortgage deed and, as long as you're a borrowing member, Nationwide's rules.

The agreement sets out the rights and responsibilities that protect both you and us. We'll be able to use any of our rights until the mortgage ends, even if we choose not to use them right away. It's important that you read all the parts of the agreement and keep them together in a safe place in case you need to look at them in future.

We'll refer to our agreement with you as 'your mortgage' throughout the rest of these conditions.

## Mortgage offer

Your mortgage offer includes the parts of our agreement that are specific to you, such as the amount of money we've agreed to lend you and the mortgage product you've chosen. If your mortgage offer says something different from another part of the agreement, the offer has priority. We may give you other offers in future if we're willing to lend you more money or to make any changes to your mortgage.

## Mortgage deed

Your mortgage deed creates a legal charge over your property (known as a standard security in Scotland). The legal charge is our security for the money you owe us under the mortgage. This means that if you're in default (see section 09), we can sell your property to repay all the money you owe us. We'll hold the charge until all the money you owe us under this mortgage, or any other mortgage you have with us, has been paid in full.

If someone else takes another charge over your property, we won't lend you more unless it's removed, or they agree we'll be repaid first if the property is sold.

## Our rules

You can find our membership rules on our website, or you can request a printed copy from any branch.

## Properties in Scotland

If your property is in Scotland, there are standard conditions which are part of our agreement with you. You can find these at the end of this document.

## Key terms you need to know

When we say 'Nationwide', 'the Society', 'we', 'us', or 'our' in this document, we're referring to Nationwide Building Society, or anyone who takes over, or merges with, the Society. If we've transferred any of our rights under the mortgage to someone else, 'we' may also refer to the person we've transferred them to.

When we say 'you', 'your' or 'the borrower', we're talking about the person(s) named as the borrower(s) on the mortgage. If there is more than one of you, 'you' or 'your' means all or any of you. You're each responsible for the entire mortgage as individuals, and you're also responsible as a pair or group.

When we say 'month' or 'year', we mean a calendar month or a calendar year.

When we say 'your property', we mean the property shown in your mortgage deed.

When we say 'Property Acts' we mean the important legislation which applies to mortgages. This differs in England and Wales, Scotland and Northern Ireland:

England and Wales	The Law of Property Act 1925
Scotland	The Conveyancing and Feudal Reform (Scotland) Act 1970 (as amended)
Northern Ireland	The Conveyancing and Law Property Act 1881 and The Conveyancing Act 1911

Where we refer to the Property Acts in this document, we also mean any changes to them or any new legislation that replaces them.

## What you have to pay

Your mortgage will end when you pay back all the money you owe us and we no longer have a legal charge over the property. The money you owe us is made up of the money we lend you, plus interest, fees, charges, or costs which you owe at any time.

A monthly payment is due on the first day of each month until the money you owe us is repaid. You can choose to make your monthly payments on any day up to the 28th of each month, but this won't change the due date under this agreement. Any part of your monthly payment that you don't pay on the first of the month is known as arrears. However, we won't take any action if you've chosen to pay on a later day in the month and you make your monthly payment by then.

You must pay back all arrears immediately, unless we come to an arrangement with you or there's a court order giving you more time to pay. This will be in addition to your monthly payment.

You must pay us back all the money you owe us by the end of your mortgage term. You can repay all or part of the money you owe us at any time, as long as you also pay any related fees and early repayment charges.

### Repayment types

Your repayment type is shown in your mortgage offer.

- **If my mortgage offer says “repayment”**

We work out your monthly payment so that the amount you owe us (not including arrears) is repaid with interest in equal instalments over your mortgage term. The monthly payment won't repay any arrears but it will include interest on the arrears.

- **If my mortgage offer says “interest only”**

We work out your monthly payment to pay only the interest we charge (including interest on any arrears). To keep things simple, we divide the interest that we

expect to charge each year into twelve equal payments. You'll have to pay the rest of the money you owe us at or by the end of your mortgage term.

It is possible that the money you owe us may increase to more than your loan plus any product fees you asked us to add to it. For example, this can happen if we add costs or charges to the amount you owe us. In this situation, we'll work out your payments so that the extra amount (not including any arrears) is repaid with interest in equal instalments over your mortgage term.

- **If my mortgage offer says “part interest only and part repayment”**

We work out your monthly payment on each part separately in the ways described above. We'll then add these together to make your total monthly payment.

### Your payments

We may vary your monthly payments to reflect any changes to:

- your interest rate
- the amount of money you owe us
- your repayment type
- your mortgage term

We'll give you reasonable notice before any change in your monthly payments.

- **Paying off the money you owe us**

Any payment will be put towards any fees, charges, or costs which were added to your account during the year, and which you still owe.

After that, it will be used to pay off any unpaid interest that we've charged you during the year. Anything that's left will be put towards the rest of the money you owe us.

- **Paying off arrears**

If you have arrears, any payment we receive will reduce those arrears. However, if your monthly payment is used to reduce your arrears, there'll be nothing left to pay the amount due in the current month. This means that you'll need to make a payment in addition to your monthly payment to reduce your total arrears.

# Fees, charges and costs you may have to pay

## £ Fees

Your mortgage offer will say if there are any fees (for example, a product fee) and, if so, whether they are to be added to the loan or paid separately. We won't change these fees.

## £ Charges

We may ask you to pay our standard charges for services we provide or work we do for your mortgage. Our most common charges are published in our tariff of mortgage charges, which you can find on our website. We won't ask you to pay a charge that isn't shown in our tariff unless we tell you first and you agree to pay it.

You should pay any charges as soon as we ask you to. Otherwise, you may have to pay interest on them as explained in section 04.

We can reduce or remove any of our standard charges at any time.

We can also increase our standard charges or introduce new charges at any time. Where the charges are shown (or will be shown) in our tariff, we'll only do this for the following reasons.

- **Changes in the law**

We can increase or introduce charges to reflect any changes in the law or any code of practice – or to respond to the decisions of any court or ombudsman.

- **Meeting regulatory requirements**

We can increase or introduce charges to reflect any changes in regulatory requirements or guidance. We can also do this to make sure we can continue

to meet existing requirements or guidance. This includes requirements about the reserves we have to hold.

- **Changes in what we do**

We can increase or introduce charges to cover the cost of providing a new service or taking on new work. We'll only do this where we have a good reason for providing the service or taking on the work (for example, to respond to a change in technology or banking practice).

- **Changes in the cost of what we do**

We can increase charges to reflect increases beyond our reasonable control in the cost of providing the service or doing the work charged for.

We can also introduce charges for providing a service or doing work that we haven't previously charged for. We'll only do this where it's unsustainable to provide the service or do the work without charge.

We'll make sure that any new or increased charges shown in our tariff are proportionate to the reason for introducing or changing them. We'll notify you of any changes to these charges before they take effect.

## £ Costs

We may also ask you to pay the actual costs we incur in doing work for your mortgage. These may either be costs we incur within the Society or costs we have to pay to others (for example, solicitors' fees).

We'll only pass on our costs where they aren't covered by one of the standard charges shown in our tariff. We can pass on our costs in full so long as we've acted reasonably in incurring them and the amount is reasonable. You should pay any costs as soon as we ask you to, otherwise you may be charged interest on them, as explained in section 04.

Here are some examples of costs which we may pass on to you.

- **Taking legal action**

We will pass on the reasonable costs of taking legal action in connection with your mortgage such as any costs of taking possession of your property, looking after it and selling it. This also includes any court proceedings, even if you aren't involved in them.

- **Putting things right**

If your property is not insured, or you don't pay any maintenance, service charges or rent that you must pay, we may pay them for you. If we do this, we'll pass on the cost to you.

We may also pass on the reasonable costs of putting right any breach of the mortgage by you, and any breach of the restrictions and obligations affecting your property.

If you don't take good care of your property, we can charge you for the reasonable costs to us of looking after it.

- **Costs of a receiver**

We may ask you to pay the costs incurred by any receiver in managing the property or repossession and selling it.

## 04

# When we'll charge interest

We'll charge interest at the rate or rates in your mortgage offer until you've repaid all the money you owe us.

We'll work out the interest we charge each day at the start of the day. Any payment you make will reduce your interest from the start of the following day (unless we use it to pay off money that we haven't started charging interest on yet).

When we send money to you or your conveyancer, we'll start charging interest on it as follows:

When we send money by...	We start charging interest...
BACS	Two working days after the day we send the money
CHAPS or Faster Payment	The same day we send the money
Cheque	Two working days after the date of the cheque

If any interest which is due for payment remains unpaid on 31 December, we'll start to charge interest on it from 1 January.

If you don't pay fees, costs or charges when we ask you to, we can start charging interest on them from the next day. Where a fee is added to your account when we make you a loan, we can start charging interest on it at the same time as we start charging interest on the loan money we send.

We may choose to delay charging interest on any fees, costs or charges we've added to your account until the following 1 January.

We'll continue to charge you interest at your interest rate even if a court makes an order for you to pay the money you owe us.

## Changes in your interest rate

When we refer to your interest rate in this section, we mean your current interest rate and any rate you're due to pay in the future. Your mortgage offer will tell you which rates you're due to pay and from when, and whether we're free to vary them.

### Reducing your interest rate

We may reduce your interest rate at any time.

### Increasing a rate that we can vary

We may increase your interest rate for the following reasons:

- **Cost of raising the money we lend**  
We may increase rates to reflect changes in the costs of raising the money we lend to mortgage members whose rate we're free to vary. These costs may change for a number of reasons, for example, because of increases in the Bank of England Base Rate or other market rates. They may also change due to increases in the rates we need to pay to attract and retain savers or increases in the costs of raising money from other sources.
- **Changes in the law**  
We may increase rates to reflect any changes in the law or any code of practice – or to respond to the decisions of any court or ombudsman.
- **To meet regulatory requirements**  
We may increase rates to reflect any change in regulatory requirements or guidance, or to make sure we can continue to meet existing requirements or guidance. This includes requirements affecting the reserves we have to hold.

- **Changes in running costs**

We may need to increase rates to reflect changes beyond our reasonable control in the costs of running the Society.

- **Changes in risk**

We may increase rates to reflect an increase in the risk of our lending to you due to a change in the way your property is used or occupied. For example, this can happen if you let the property.

We'll make sure any increase in your interest rate is proportionate to the reason for increasing it.

### Increasing a rate that we're not normally free to vary

We can increase an interest rate that we're not normally free to vary, such as a fixed rate. We'll only do this if there's a change in the way the property is used or occupied which increases the risk of our lending to you. For example, this can happen if you let the property. Any increase will be proportionate to the increase in the risk of our lending to you.

### Telling you about changes

We'll let you know before we make any change to your interest rate.

## 06

# Looking after your property

You're responsible for taking good care of your property. You must also comply with any restrictions or obligations affecting your property. If your property is leasehold, this includes keeping to the terms of your lease, and not doing anything which might allow the landlord to end the lease.

If you are told that you are in breach of any of these restrictions or obligations, you must let us know immediately.



## Changes to your property

You must not change the structure of your property or extend it in a way that reduces its value.

Any building work must be properly carried out and comply with all necessary consents and regulations. You need to let us know immediately if you receive any notices claiming that you have not complied with any relevant consents or regulations.

You must not change the use or occupation of the property without our written consent. This includes leasing, letting, licensing or parting with possession of it, or any part of it.



## Giving us access to your property

You must allow us to inspect your property if we ask. We'll visit at a reasonable time and will let you know in advance.

You must also allow us access to your property to carry out or complete any building work needed to ensure your property is in good condition. We may do this if you've failed to keep your property in good condition.

If we enter your property, it doesn't mean that we have taken possession or accepted legal responsibility for it.

## In Northern Ireland

If your property is affected by criminal damage, you may be able to claim compensation from the government. If this is the case, you need to let us know within seven days of the incident.

If you make a claim for compensation, you must be clear that the property is mortgaged to us.

## 07

# Insuring your property

You must make sure that your property is covered by buildings insurance for its full rebuilding cost. The rebuilding cost includes site clearance, professional fees and any legal and regulatory requirements. You mustn't do anything which means the insurer could refuse to pay claims under the buildings insurance.

If your property is leasehold and the landlord is responsible for insuring it, you must make sure that they're doing so. If the landlord does not insure your property, or is insuring it for less than its full rebuilding cost, you must let us know.

If your property is not insured, we may arrange insurance. If we do this, we'll pass on the cost to you.

If a claim is made on the buildings insurance, any money received from the insurer must be used to reinstate your property or reduce or pay off the money you owe us.

You must hold any money paid to you by the insurer in trust for us. This means that you'll hold the money on our behalf, and if we ask for it you must pay it to us immediately. We'll use the money to reinstate the property or (if it's not practical to reinstate it) to reduce or pay off the money you owe us.

## Your property rights

When we refer to 'property rights' in this section, we mean rights you have as the owner of your property. For example, you may have the right to extend your lease, or claim on a guarantee or title insurance. This doesn't include rights under an ordinary buildings insurance policy. You may also have rights as a shareholder or member of a management company, residents' association or something similar.

If your property is damaged or loses value, you may receive statutory compensation, or money from insurances or guarantees. You must use this to fix any related problems, or to reduce or pay off the money you owe us. You'll hold any money you receive in trust for us. This means that you'll hold the money on our behalf, and if we ask for it you must pay it to us immediately. We'll use the money to fix the problems or (if it's not practical to fix them) to reduce or pay off the money you owe us.

While the mortgage continues, all property rights are transferred to us as part of our security. They will pass back to you when the mortgage ends.

If you default, as explained in section 09, we can transfer any of the property rights to someone else.

### New rights you must tell us about

If you gain any new property rights, they'll become part of our security. You must let us know about the new rights within a month.

New property rights may include:

- A new or extended lease on your property.
- An interest in the commonhold or freehold of your property.
- An interest in the freehold of any building which includes your property.
- An interest or right which benefits your property in or over other land or buildings.

If requested, you must give us evidence to show that you own the new interest. If we ask for it, you must also send us any relevant documentation and give us a charge over the new interest. You'll need our agreement to the terms of the charge.

## Defaulting on your mortgage

Being in default means you've failed to keep to our agreement, or something else has happened, and it's so significant that we can take steps to end the mortgage.

If this happens we can write to you to demand that you pay us all the money you owe us immediately. You'll be in default if any of the following things happen.

### You're late paying money under the mortgage

Any part of your monthly payment that you miss is known as arrears. You're in default if your arrears are equal to two monthly payments or more.

You'll also be in default if you owe us any other amount equal to two monthly payments or more and are more than one month late in paying this. For example, you may owe us service charges that we've had to pay on your behalf.

### You don't repay the money you owe us at the end of the term

You're in default if you don't repay all the money you owe us as soon as your mortgage term ends.

### You're in breach of your mortgage terms

You're in default if you've breached any term of your mortgage which doesn't require you to pay money. However, you won't be in default if the breach is minor or you put it right quickly.

### You're made bankrupt

You're in default if a bankruptcy order is made against you (this is known as a sequestration order in Scotland). You'll also be in default if you put formal arrangements in place with the people or organisations you owe money to.

## The information you gave us was incorrect

You're in default if we find out that information you gave us when you applied for your mortgage was incorrect or incomplete. However, you're only in default in this case if we wouldn't have lent you the money if you'd given us the correct or complete information.

## A public body takes possession of your property

You're in default if there's a compulsory purchase order on your property or the government or another public body takes possession of your property (or any part of it).

## In England, Wales or Northern Ireland

You're in default if your property is leasehold and you've breached the terms of your lease, for example, you haven't paid your ground rent or service charges.

## In Scotland

You're in default if you share ownership of your property with a housing association (or similar organisation) and your occupancy agreement with them is breached or ends. You won't be in default if the agreement ends because you have bought the whole of the property.

## 10

# What happens if you default?

If you default and we have written to you asking for payment of the money you owe us, we may immediately take steps to:

- repossess the property
- sell the property
- appoint a receiver (not in Scotland)

Our right to sell your property is free from the restrictions in the Property Acts.

We can also use the other enforcement rights we have under the Property Acts. These rights are free of any restrictions in the Acts and in addition we are able to do any of the following.

- **Look after your property**

If you haven't been looking after your property, we can do any repairs or building work needed to put it into good condition. This includes applying for all necessary consents, for example, planning permission.

- **Manage lettings**

We can grant a new lease, tenancy or licence of the property. We can collect the rent being paid under an existing lease, tenancy or licence. We can also agree to the lease, tenancy or licence being extended or given up, or to its terms being changed. We'll use any money we receive to reduce or pay off the money you owe us.

- **Deal with a shared ownership property**

If you hold the property on a shared ownership basis, we can buy further shares in the property or in a shared ownership lease of the property. We can also buy the freehold or accept a further lease. We can require any of these further shares or interests to be transferred to a buyer of the property.

- **Grant rights over other land you own**

If you own other land, we may give others the right to access or use it. We'll only do this if it's reasonable and necessary to protect or increase the value of your property.

## **Where we've appointed a receiver**

A receiver is someone who will manage the property. If we appoint a receiver, they'll act on your behalf and you'll be responsible for their costs. They may use and pay other people to carry out any work that is needed. The receiver can repossess or sell the property. They will also have the other enforcement rights that we have (with the benefit of the extensions in this section). However, they will not have the right to appoint a receiver.

Any money received by the receiver will be used in the same order as money received by us (as set out in section 02).

## **Things left on the property**

If we take possession of your property, we can also remove, store or sell any goods or animals on the property on your behalf. We won't be responsible for any loss or damage caused by us doing this unless we don't take reasonable care.

## **Using other money you have with us**

If you don't pay any of the money you owe us when it's due, we can repay it by using any money you have in an account with us. We can also repay it by using any other money we owe you.

We can do this unless the law or other restrictions prevent it. For example, we won't use any money that we think you need for essential living expenses or important debts. We also won't use any money that you're holding for someone else.

We can use any money from any account held by any borrower named on the mortgage. This includes accounts held jointly with other people who are not named on the mortgage.

We'll give you at least 14 days' notice before we use any money under this right.

## 11

# Transferring your mortgage

We may transfer some or all of our rights under the mortgage to another person at any time. For example, we could sell your mortgage to someone else.

If this happens, it won't reduce your rights under the mortgage. As part of this agreement, we can share information we hold about you with the person we're transferring our rights to.

If we transfer all our rights under the mortgage, you'll no longer be a borrowing member of Nationwide.

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# Acting on your behalf

When you take out this mortgage, you appoint us to be your attorney.

This allows us to do anything needed to use, protect and enforce our rights under this mortgage - in your name and on your behalf.

This includes signing documents, entering into agreements and registering any documents at a land registry on your behalf. We can also exchange any information with any other person who has an interest in the property.

We may also obtain information from your legal adviser (including information protected by legal privilege) which is relevant to the mortgage. We can also recover any documents containing this information from a regulatory body, or another legal adviser if your original adviser is no longer practising.

If we appoint a receiver, you'll also appoint them as your attorney. This will be a separate appointment and the receiver will be allowed to do all the things that we can do under our power of attorney (except appoint another receiver).

Our power of attorney and a receiver's power of attorney are both part of our security. This means that you can't revoke either power and they won't be revoked by your death, bankruptcy or mental incapacity. These powers will only end when you have paid back all the money you owe us and we no longer have a legal charge over the property.

## 13

# Communicating with you

If we need to communicate with you, we'll write to you by post or email.

If we send it by...	We'll send it to...	We'll assume you've received it...
Post	The address you've given us	Within two working days after posting it
Email	The email address you've given us	On the day we sent the email

You should avoid giving us a postal address outside the United Kingdom as a notice posted to that address may take longer than two working days to arrive.

## 14

# Changes to these conditions

In addition to our right to make changes to interest rates and charges, we may also change, remove or add to any of these conditions. We may do this to:

- take account of any decision by a court or ombudsman
- reflect legal or regulatory requirements

We'll make sure any change is proportionate to the reason for making it and we'll give you at least three months' notice.

## 15

# Standard securities in Scotland

Where the money you owe us is to be secured by a standard security over heritable property in Scotland, the standard conditions in Schedule 3 to the Conveyancing and Feudal Reform (Scotland) Act 1970, as amended, shall apply, subject to the variations set out in these conditions.

# Standard Conditions (Scotland only)

These are the standard conditions contained in Schedule 3 of the Conveyancing and Feudal Reform (Scotland) Act 1970, as amended, referred to in the Nationwide Building Society General Mortgage Conditions 2019:

## **Conveyancing and Feudal Reform (Scotland) Act 1970 (as amended by the Redemption of Standard Securities (Scotland) Act 1971)**

### **Schedule 3**

The Standard Conditions

#### **Maintenance and repair**

1. It shall be an obligation on the debtor -
  - (a) to maintain the security subjects in good and sufficient repair to the reasonable satisfaction of the creditor;
  - (b) to permit, after seven clear days notice in writing, the creditor or his agent to enter upon the security subjects at all reasonable times to examine the condition thereof;
  - (c) to make all necessary repairs and make good all defects in pursuance of his obligation under head (a) of this condition within such reasonable period as the creditor may require by notice in writing.

#### **Completion of buildings etc. and prohibition of alterations etc.**

2. It shall be an obligation on the debtor -
  - (a) to complete, as soon as may be practicable, any unfinished buildings or works forming part of the security subjects to the reasonable satisfaction of the creditor;
  - (b) not to demolish, alter or add to any buildings or works forming part of the security subjects, except in accordance with the terms of a prior written consent of the creditor and in compliance with any consent, licence or approval required by law;
  - (c) to exhibit to the creditor at his request evidence of that consent, licence or approval.

#### **Observance of conditions in title, payment of duties, charges, etc., and general compliance with requirements of law relating to security subjects**

3. It shall be an obligation on the debtor -
  - (a) to observe any condition or perform any obligation in respect of the security subjects lawfully binding on him in relation to the security subjects;
  - (b) to make due and punctual payment of any ground burden, teind, stipend, or standard charge, and any rates, taxes and other public burdens, and any other payments exigible in respect of the security subjects;
  - (c) to comply with any requirement imposed upon him in relation to the security subjects by virtue of any enactment.

#### **Planning notices, etc.**

4. It shall be an obligation on the debtor -
  - (a) where he has received any notice or order, issued or made by virtue of the Town and Country Planning (Scotland) Acts 1947 to 1969 or any amendment thereof, or any proposal so made for the making or issuing of any such notice or order, or any other notice or document affecting or likely to affect the security subjects, to give to the creditor, within fourteen days of the receipt of that notice, order or proposal, full particulars thereof;
  - (b) to take, as soon as practicable, all reasonable or necessary steps to comply with such a notice or order or, as the case may be, duly to object thereto;
  - (c) in the event of the creditor so requiring, to object or to join with the creditor in objecting to any such notice or order or in making representations against any proposal therefor.

## **Insurance**

5. It shall be an obligation on the debtor -
- (a) to insure the security subjects or, at the option of the creditor, to permit the creditor to insure the security subjects in the names of the creditor and the debtor to the extent of the market value thereof against the risk of fire and such other risks as the creditor may reasonably require;
  - (b) to deposit any policy of insurance effected by the debtor for the aforesaid purpose with the creditor;
  - (c) to pay any premium due in respect of any such policy, and, where the creditor so requests, to exhibit a receipt therefor not later than the fourteenth day after the renewal date of the policy;
  - (d) to intimate to the creditor, within fourteen days of the occurrence, any occurrence which may give rise to a claim under the policy, and to authorise the creditor to negotiate the settlement of the claim;
  - (e) without prejudice to any obligation on the contrary enforceable against him, to comply with any reasonable requirement of the creditor as to the application of any sum received in respect of such a claim;
  - (f) to refrain from any act or omission which would invalidate the policy.

## **Restriction on letting**

6. It shall be an obligation on the debtor not to let, or agree to let, the security subjects, or any part thereof, without the prior consent in writing of the creditor, and “to let” in this condition includes to sub-let.

## **General power of creditor to perform obligations etc. on failure of debtor and power to charge debtor**

7. (1) The creditor shall be entitled to perform any obligation imposed by the standard conditions on the debtor, which the debtor has failed to perform.
- (2) Where it is necessary for the performance of any obligation as aforesaid, the creditor may, after giving seven clear days notice in writing to the debtor, enter upon the security subjects at all reasonable times.
- (3) All expenses and charges (including any interest thereon), reasonably incurred by the creditor in the exercise of a right conferred by this condition, shall be recoverable from the debtor and shall be deemed to be secured by the security subjects under the standard security, and the rate of any such interest shall be the rate in force at the relevant time in respect of advances secured by the security, or, where no such rate is prescribed, shall be the bank rate in force at the relevant time.

## **Calling-up**

8. The creditor shall be entitled, subject to the terms of the security and to any requirement of law, to call-up a standard security in the manner prescribed by section 19 of this Act.

## Default

9. (1) The debtor shall be held to be in default in any of the following circumstances, that is to say -
- (a) where a calling-up notice in respect of the security has been served and has not been complied with;
  - (b) where there has been a failure to comply with any other requirement arising out of the security;
  - (c) where the proprietor of the security subjects has become insolvent.
- (2) For the purposes of this condition, the proprietor shall be taken to be insolvent if -
- (a) he has become notour bankrupt, or he has executed a trust deed for behoof of, or has made a composition contract or arrangement with, his creditors;
  - (b) he has died and a judicial factor has been appointed under section 11A of the Judicial Factors (Scotland) Act 1889 to divide his insolvent estate among his creditors, or his estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986;
  - (c) where the proprietor is a company, a winding-up order has been made with respect to it, or a resolution for voluntary winding-up (other than a members' voluntary winding-up) has been passed with respect to it, or a receiver or manager of its undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge.

## Rights of creditor on default

10. (1) Where the debtor is in default, the creditor may, without prejudice to his exercising any other remedy arising from the contract to which the standard security relates, exercise, in accordance with the provisions of Part II of this Act and of any other enactment applying to standard securities, such of the remedies specified in the following sub-paragraphs of this standard condition as he may consider appropriate.
- (2) He may proceed to sell the security subjects or any part thereof.
  - (3) He may enter into possession of the security subjects and may receive or recover the rents of those subjects or any part thereof.
  - (4) Where he has entered into possession as aforesaid, he may let the security subjects or any part thereof.
  - (5) Where he has entered into possession as aforesaid there shall be transferred to him all the rights of the debtor in relation to the granting of leases or rights of occupancy over the security subjects and to the management and maintenance of those subjects.
  - (6) He may effect all such repairs and may make good such defects as are necessary to maintain the security subjects in good and sufficient repair, and may effect such reconstruction, alteration and improvement on the subjects as would be expected of a prudent proprietor to maintain the market value of the subjects, and for the aforesaid purposes may enter on the subjects at all reasonable times.
  - (7) He may apply to the court for a decree of foreclosure.

### **Exercise of right of redemption**

11. (1) The debtor shall be entitled to exercise his right (if any) to redeem the security on giving notice of his intention so to do, being a notice in writing (hereinafter referred to as a “notice of redemption”).
- (2) Nothing in the provisions of this Act shall preclude a creditor from waiving the necessity for a notice of redemption, or from agreeing to a period of notice of less than that to which he is entitled.
- (3) (a) A notice of redemption may be delivered to the creditor or sent by registered post or recorded delivery to him at his last known address, and an acknowledgement signed by the creditor or his agent or a certificate of postage by the person giving the notice accompanied by the postal receipt shall be sufficient evidence of such notice having been given.
- (b) If the address of the creditor is not known, or if the packet containing the notice of redemption is returned to the sender with intimation that it could not be delivered, a notice of redemption may be sent to the Extractor of the Court of Session and an acknowledgement of receipt by him shall be sufficient evidence of such notice having been given.
- (c) A notice of redemption sent by post shall be held to have been given on the next day after the day of posting.

(4) When a notice of redemption states that a specified amount will be repaid and it is subsequently ascertained that the whole amount due to be repaid is more or less than the amount specified in the notice, the notice shall nevertheless be effective as a notice of repayment of the amount due as subsequently ascertained.

(5) Where the debtor has exercised a right to redeem, and has made payment of the whole amount due, or has performed the whole obligations of the debtor under the contract to which the security relates, the creditor shall grant a discharge in the terms prescribed in section 17 of this Act.

12. The debtor shall be personally liable to the creditor for the whole expenses of the preparation and execution of the standard security and any variation, restriction and discharge thereof and, where any of those deeds are registered or recorded, the registration or recording thereof, and all expenses reasonably incurred by the creditor in calling-up the security and realising or attempting to realise the security subjects, or any part thereof, and exercising any other powers conferred upon him by the security.

### **Interpretation**

In this Schedule, where the debtor is not the proprietor of the security subjects, “debtor” means “proprietor”, except

- (a) in standard conditions 9(1), 10(1) and 12, and  
(b) in standard condition 11, where “debtor” includes the proprietor.





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