

Secured Lending Reform Bill

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TO

Make provision regarding the rights of secured debtors; to reform the rights of certain creditors to enforce their security; to make other provision regarding secured lending; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Powers and duties of a receiver

- (1) The Law of Property Act 1925 is amended as follows.
- (2) After section 109 insert—

“109A Limit on the powers of a receiver

- (1) A receiver appointed under this Act is not entitled—
 - (a) to bring proceedings for possession of any property, 5
 - (b) to exercise a right of peaceable re-entry, or
 - (c) to conduct the sale of a property or receive the proceeds of sale, except where an order for possession of the property has been granted by the court. 10
- (2) Any provision in an agreement or instrument is void to the extent that it purports to give a power to a receiver that is inconsistent with subsection (1).
- (3) This section applies to an agreement or instrument created on or after a date appointed by the Secretary of State by order. 15

109B Duties of a receiver

- (1) The statutory and common law duties of a receiver appointed under this Act shall be owed to each of the following—
 - (a) the mortgagor,
 - (b) the mortgagee, and 20
 - (c) any other person for the time being interested in the equity of redemption.

- (2) The Secretary of State may by regulations made by statutory instrument make provision—
- (a) to define the scope and nature of the duties owed by a receiver appointed under this Act,
 - (b) to specify any additional categories of person to whom those duties are owed. 5
- (3) Regulations under subsection (2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”
- (3) At the beginning of section 101(3) insert “Subject to section 109A,”. 10
- 2 Abolition of peaceable re-entry by mortgagee**
- (1) The Secretary of State must by regulations make provision to abolish the right of a mortgagee to obtain peaceable re-entry of a property.
 - (2) Regulations under subsection (1) must prescribe the maximum penalties that may be imposed on a mortgagee who peaceably re-enters a property. 15
- 3 Determination of possession proceedings: counterclaims, set-off etc**
- (1) The Secretary of State must by regulations ensure that a possession order is not made by the court on the application of a mortgagee unless—
 - (a) the court is satisfied that the mortgagor has received an adequate opportunity to raise any counter-claim, set-off or other defence that may be available against the mortgagee, and 20
 - (b) the court has determined the merits of any such counter-claim, set-off or other defence.
 - (2) Nothing in subsection (1) shall prevent the court from making a possession order in any case where the mortgagor has unreasonably delayed pursuing any such counter-claim, set-off or other defence. 25
- 4 Extending the court’s powers: stays, suspension, postponement**
- (1) The Administration of Justice Act 1970 is amended as follows.
 - (2) In section 36 (action by mortgagee for possession etc) omit the words “of dwelling house” and “which consists of or includes a dwelling-house”. 30
- 5 Extending the court’s powers: varying payment schedules, interest rates, etc**
- (1) The Secretary of State must by regulations make provision to ensure that the court has power on the application of a mortgagor or mortgagee to vary any of the following terms of the mortgage deed or instrument where it appears just to the court to so do— 35
 - (a) the rate of interest,
 - (b) the schedule of payments, or
 - (c) the value of payments.
 - (2) Regulations under this section must ensure that an application can be made by the mortgagor or mortgagee to discharge or vary an order made pursuant to subsection (1) where there has been a change in circumstances. 40

6 Repeal

Section 31 of the Agricultural Tenancies Act 1995 is omitted.

7 Orders and regulations

- (1) A power to make an order or regulations under this Act is exercisable by statutory instrument. 5
- (2) A statutory instrument containing an order or regulations under sections 2, 3 or 5 of this Act may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

8 Short title, commencement and extent

- (1) This Act may be cited as the Secured Lending Reform Act 2011. 10
- (2) This Act comes into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (3) This Act extends to England and Wales.

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Presented by George Eustice.

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