

# Security Terms 2011

## Scotland

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# Security Terms

These Security Terms apply to standard securities given to **us** (The Royal Bank of Scotland plc, as more fully described in the Standard Security). They form part of the **Standard Security** signed or authorised for execution by **you** (the Customer as described in the Standard Security) which refers to these Security Terms.

If there is more than one of you then “you” means each of you and the Customer’s Obligations apply to each of you individually (as well as jointly). This means that if one of you is unable to repay or comply with them, the other may be required to do so even if your relationship has changed or ended. Any expressions which have been defined in the Standard Security you grant to us will have the same meaning and effect in these Security Terms.

## 1. Customer's Obligations and Repayment

1.1 You undertake to fulfil all the **Customer's Obligations** as described below and make payment to us on demand with interest at the rate(s) agreed of all sums due to us as part of the Customer's Obligations.

The **Customer's Obligations** means all obligations due by you to us as set out or referred to in the Mortgage Documents and any other loans, facilities, advances or re-advances or other credit made available by us to you and all other liabilities owed to us by you of any kind, including future and joint obligations, obligations which are dependent on a particular event and all related interest, charges and expenses due to us (but excluding any sums due or which may become due under any agreement to which the Consumer Credit Act 1974 (the **CCA**) applies unless such agreement states that it is to be secured over the Property).

The **Mortgage Documents** means any offer of loan by us to you of any loans or facilities included in the Customer's Obligations, the related loan or facility terms, the Standard Security and these Security Terms. The **Loan** or **Facility** is the sum which we agree to lend to you as set out in any such offer of loan, and where used in the context of sums payable to us includes any charges and expenses and all interest payable by you under the Mortgage Documents.

1.2 If on a sale of the Property the net sale proceeds are insufficient to repay us in full, you must still pay the shortfall with interest. The **Property** means the property given as security under the mortgage, and includes any part of it and all interests in it.

1.3 Except where otherwise agreed in writing, we may apply each payment received in such order or in such proportion (of capital and interest, or as between liabilities) as we may decide, and acting reasonably so as not to prejudice your interests.

1.4 If we receive notice of any charge or enforcement procedure affecting the Property, we may suspend your account(s) and open a new account or accounts.

Regardless of whether we suspend the account(s), any payments received after the date of that notice will be applied first to repay any new amount which becomes due to us after that date.

## 2. Insurance

2.1 You will insure and keep insured the Property comprehensively at your expense for its full reinstatement cost, including demolition, for the risks and on the terms that we approve.

2.2 You will pay all premiums for the insurance and we may ask you to (i) arrange for our interest to be endorsed on the policy and (ii) provide us with evidence of the insurance cover and the payment of premiums.

2.3 You will assign in our favour all proceeds of any insurance of the Property and if any proceeds are paid directly to you, you will hold these funds on trust for us. At our option you will apply any such proceeds in making good the loss or damage to the Property or towards repayment of the Customer's Obligations.

2.4 You will notify the insurers in writing each time the Property is let.

## 3. The Property

3.1 The Property must be used as your only or main home unless we agree otherwise in writing.

3.2 You will put and keep the Property in good repair.

3.3 You will make any payments and comply with all other requirements concerning the Property promptly.

3.4 You will obtain our permission in writing before:

- selling or transferring the Property (or any part of it) to anyone else;
- agreeing to a change to the terms of any lease over the Property (or any part of it);
- giving up or sharing possession of the Property, or granting any lease, servitude, licence or right to occupy the whole or any part of the Property;
- leaving the Property unoccupied for a period exceeding three months;
- changing the use of the Property, altering, demolishing or extending it, or applying for permission to change its use or for structural alterations or additions, including the construction of additional buildings;
- applying for an improvement grant or a similar grant; or
- giving or allowing someone else to obtain a mortgage or other security over any part of the Property.

- 3.5 You will notify us immediately in writing of any notice or information concerning any proposal for the compulsory acquisition of the Property (or any part of it) or any other matter which might adversely affect its value, and (at your expense) take any action regarding this which we reasonably require.
- 3.6 You will allow us and our representatives to have access to the Property at all reasonable times to carry out any survey or inspection which we may reasonably require and to carry out (at your expense) any material maintenance or repairs which you have failed to do and which may jeopardise the value of the Property as security for the Customer's Obligations.
- 3.7 We may at your expense take any steps which we reasonably consider necessary to protect our interest in the Property.

#### 4. Our Powers

If we become entitled to write to you to demand immediate repayment of any sums due by you to us (and in the case of sums overdue for payment, we are unable, acting reasonably, to agree alternative arrangements with you) we may apply to a court for an order under which you will be required to give us possession of the Property. This would allow us to sell it using the powers set out in the Conveyancing and Feudal Reform (Scotland) Act 1970 as amended ("the Act"), the Standard Security over the Property and these Security Terms.

#### 5. Exercise of our Powers

If you default in repaying or fulfilling the Customer's Obligations and we have taken any legal steps necessary under the Act, then:

5.1 we may, as we reasonably decide:

- take possession of the Property
- sell the Property;
- sell any fixtures together with the land or buildings on the Property or separately;
- grant and accept surrenders of leases without restriction and grant options;
- enter into any agreement (including an option or pre-emption agreement) in relation to the Property, grant or reserve any right over the Property and repair, replace and develop the Property and apply for any appropriate permission, licence or approval and do any other thing in relation to the Property or any part of it which we consider reasonable; and/or

- insure the Property for its full reinstatement value at your expense against such risks (in addition to loss or damage by fire) and for such amounts as we consider prudent.
- 5.2 We will take reasonable care to avoid damage or loss to any possessions found at the Property but will be under no liability for any loss or damage by a third party. We may (at your expense and risk) remove, store, sell or dispose of those possessions as we reasonably decide. Any surplus proceeds of sale will be a debt due by us to you. You will repay us if we incur any liability because any possessions found at the Property belong to a third party.

#### 6. Charges and Expenses

6.1 You will pay on demand all our reasonable charges and expenses (including legal and other professional fees, administration costs, overhead expenses and value added tax) in connection with the Customer's Obligations including (but not limited to) those connected with:

- 6.1.1 completing, protecting or enforcing the Standard Security or exercising any power under it;
- 6.1.2 any variation or redemption of the Standard Security or the charge created by it;
- 6.1.3 any application for any form of consent whether or not the consent is granted;
- 6.1.4 any breach of any of the terms of the Mortgage Documents; and
- 6.1.5 the production of any deed or document or the provision of a copy.

6.2 Our expenses include not only sums which we pay to others but also the internal administration costs incurred by us in connection with the Customer's Obligations. Our administration costs may be recovered by charging an administration fee. The administration fee will be based on our reasonable assessment of the cost of doing the work or providing the service in question. This means that we can change the administration fees to reflect a change in the cost of doing the work or providing the service. Fees may be reviewed from time to time and details will be sent to you.

6.3 Our charges and expenses are payable with interest at the rate applicable to the relevant obligations from the dates they are paid, incurred or charged.

## 7. Transfer

- 7.1 We may, without your consent, transfer, charge or otherwise dispose of any or all of our rights under the Mortgage Documents and any of our related interests to any person or persons whatever. You may not transfer or otherwise dispose of any of your rights or obligations under the Mortgage Documents without obtaining our prior written consent.
- 7.2 You agree that, if we transfer or otherwise dispose of any of our rights to any person, you will be bound to that person in the same manner and to the same extent as you are bound to us under the Mortgage Documents.
- 7.3 By executing a Standard Security, you consent to us disclosing or passing information to any person in connection with any transfer or proposed transfer or any financial arrangement in relation to the Mortgage Documents or any other documents relating to you, the Property, the Mortgage Documents, or the history of the conduct of any account secured by the Mortgage Documents.

## 8. Continuing Security and Further Assurance

- 8.1 The charge created by the Standard Security will be in addition to any other security held now or in the future by us for your obligations and will not merge with or prejudice any other such security.
- 8.2 You will at your expense, on request, sign any further deed or document and take any action reasonably required to protect or complete our security over the Property.
- 8.3 We may refuse to allow any one Standard Security to be redeemed separately from any other Standard Security you have given us.
- 8.4 If any term of the Standard Security or these Security Terms is unenforceable, this will not affect our right to enforce the other terms.

## 9. Power of Attorney

Insofar as necessary to give effect to the terms of the Standard Security and secure the exercise of any of our powers under it, you irrevocably appoint us to be your attorney (with full power of substitution and delegation), in your name to sign, execute or otherwise authorise any documents, deeds and other instruments, or take, continue or defend any proceedings.

## 10. Notices

We will send statements, notices or other correspondence to you at the Property or any other address of which you have given us notice. Notices and correspondence from us will be effective two days after posting, or if sent by hand, when delivered.

## 11. Governing Law and Changes to these Security Terms

11.1 The Standard Security and these Security Terms are governed by Scots Law.

11.2 We may change these Security Terms:

- (a) to comply with any changes in applicable law, or with the requirements or recommendations of a regulator or similar body, or to give effect to a decision of a court or an ombudsman; or
- (b) where the change or changes would be to your advantage.

We will tell you about any changes by writing to you at the address for correspondence shown in our records and you will be given reasonable notice before the changes take effect. We will send you either a summary of the changes or a copy of the new Security Terms.

The standard conditions specified in the following schedule to the Conveyancing and Feudal Reform (Scotland) Act 1970 (as amended) are referred to in the Standard Security. These conditions apply to your mortgage unless varied by the foregoing Security Terms.

## 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 and 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.

#### Observations 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 therefore.

#### 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 to 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.

### Restrictions 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 powers 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 feu duties, ground annuals or, as the case may be, 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 acknowledgment 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 acknowledgment 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 day next 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 recorded, the 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.





 If you would like this information in Braille, large print or audio format please contact us on **03457 24 24 24** (Minicom 0800 404 6160).

The Royal Bank of Scotland is a member of the Financial Services Compensation Scheme (FSCS). The Scheme can pay compensation to customers if they are eligible and a regulated firm is unable to pay claims against it, usually if the firm stops trading or is insolvent. Compensation limits apply depending on the type of claim:

Mortgage advice and arranging (for business conducted on or after 31 October 2004): maximum £50,000, i.e. 100% of first £50,000 per person.

Compulsory insurance (e.g. third party motor): 100% of the claim, without any upper limit.

Non-compulsory insurance (e.g. home and general): maximum 90% of the claim, without any upper limit.

General insurance advice and arranging (for business conducted on or after 14 January 2005): maximum 90% of the claim, without any upper limit.

Most retail consumers (this includes private individuals and some small businesses) are eligible under the Scheme. For further information on the conditions governing compensation and details on how to apply please refer to the FSCS at [www.fscs.org.uk](http://www.fscs.org.uk)

The Royal Bank of Scotland plc.  
Registered Office: 36 St. Andrew Square, Edinburgh EH2 2YB.  
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