



Briefing for the parliamentary debate at Stage Three of the Bankruptcy and Diligence etc. (Scotland) Bill

Shelter is concerned about the potential for increased homelessness as a result of the new diligence to create a land attachment in the bill. The proposals would give a creditor the right to apply for a decree giving rights over a person's home in order to secure a debt of as little as £3001. Prevention of homelessness is a central aim of the Scottish Parliament, yet this Bill would provide a new route to homelessness that can be exploited by creditors. Shelter urges MSPs to support all of the following amendments to ensure this harsh method of debt recovery is used proportionately and as a last resort

[THIS BRIEFING RELATES TO AMENDMENT No's 148, 149, 150, 151, 152, 154, 157, 158 &177](#)

Key Points

- Preventing and tackling homelessness is a priority for the Scottish Executive, and the Parliament has won an international human rights award for its homelessness legislation¹. This Bill undermines these aims, by creating the potential for an increase in homelessness.
- Many of the causes of homelessness are hard to address through public policy². Where we have the clear and straightforward opportunity in public policy to prevent the possibility of homelessness, we have the responsibility to ensure that we do so. Exempting a principle home from the land attachment diligence is just such an opportunity.
- A large number of Shelter supporters emailed MSPs on the Committee during the passage of this Bill to express their concerns and a number of protections have been introduced to the sale stage of the diligence. Nevertheless, we are disappointed that the main dwelling house has not been excluded. These amendments seek to add further protections from the misuse of the land attachment diligence.

Shelter supports the briefing provided at Stage 3 of this bill by Citizens Advice Scotland. The ability to force the sale of a principle home is unnecessary and excessively harsh. This bill introduces a wide range of other measures that can be taken by creditors to elicit payment from a 'won't pay' debtor. In addition, unscrupulous debtors with the means to pay have opportunities to avoid payment even with a land attachment diligence. It is vulnerable debtors who will be most penalised.

¹ Since devolution, the Scottish Parliament has broken new ground in tackling homelessness and set a standard for the rest of the world to follow. The Homelessness (Scotland) Act 2003 has been widely acclaimed as the most progressive piece of homelessness legislation in Western Europe and in 2003, Scotland was awarded an international human rights award for its approach to homelessness.

² Homelessness can be the result of a multitude of factors such as relationship breakdown, threat of violence or abuse, or chaotic lifestyles. It is particularly difficult to design services and support to address these problems and prevent them leading to homelessness.

Land attachments will provide creditors with a powerful means of manipulating debtors in order to elicit payment. We are concerned that creditors may use the threat of losing their home to force people to pay the debt by whatever means they can. This could lead to debtors agreeing to unsustainable repayment plans or getting into further debt with unscrupulous lenders.

The new diligence effectively turns an unsecured loan into a secured one. Secured loans normally require the explicit consent of a debtor and in addition, debtors usually get the benefit of preferential interest rates. This new diligence will effectively provide creditors with the ability to reap the benefits of charging high levels of interest, yet still get their risk secured through the back door by using a land attachment in the event of default. Without explicit guidance on all loans and credit, from store cards to car loans, many debtors will not be aware that they put themselves at risk of losing their home.

DETAILS OF AMENDMENTS

Amendment 150 in the name of Alex Neil

This amendment would exempt a main residence from the sale stage of a land attachment. Shelter strongly urges MSPs to support this amendment in order to provide maximum protection from misuse of this diligence by unscrupulous creditors and the threat of homelessness for vulnerable debtors.

Amendment 148 in the name of Christine May

Amendment 148 would introduce a hierarchy of diligence of which land attachment is the ultimate recourse. Creditors have a range of means to recover a debt and should follow a principle of least coercion in seeking to use them. This amendment would ensure that all other means had been attempted before a creditor could seek to sell a persons home. We urge MSPs to support this amendment.

Amendments 149, 151 and 152 in the name of Christine May

Amendments 149, 151 and 152 would increase the level of debt for which a land attachment could be granted from £3,000 to £5,000, and increase the minimum amount that could be recouped from the sale from £1,000 to £5,000. This group of amendments to create a higher threshold are reasonable but not sufficient unless accompanied by amendment 148. We urge MSPs to support these amendments *alongside* amendment 148.

Amendment 157, 158 and 177 in the name of Gordon Jackson

These amendments would require Ministers to report to Parliament on the impact of land attachment and give Ministers the power to require the sheriff to consider additional factors when granting a land attachment. Shelter urges MSPs to support these amendments to review the impact of land attachment on homelessness.

Amendment 154 in the name of Alex Neil

This amendment would make explicit that a sheriff should consider all the circumstances before granting or refusing a land attachment. The Bill currently only makes provision to 'have regard' to such circumstances and can only defer, not reject a sale. Shelter urges MSPs to support the adoption of this amendment.

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