



Home Owner and Debtor Protection (Scotland) Bill

Briefing for Stage 3 debate, 11 February 2010

1. Introduction

Shelter Scotland supports the Bill. It strongly reflects the conclusions of the Repossessions Sub Group on which Shelter sat. Scrutiny of the Bill at stage 1 and stage 2 has resulted in it being strengthened in general – no mean feat for such a complex Bill working to a challenging timescale.

Mortgage repossessions have not yet reached the peaks predicted a year ago. This is testament to the work carried out by both Scottish and UK Governments and the forbearance of responsible lenders. However, this is no time for complacency. Mortgage repossessions are still very much higher than they were five years ago. Interest rates are very low and lenders' forbearance may not continue forever. In that context, there was a case for reforming the law on mortgage possessions **before** the current recession and the new legal framework will benefit Scotland long **after** the current recession has passed.

Some concerns have been raised about additional burdens that might be placed on the courts. While it is true that the Bill aims to ensure that those cases that **need** to go to court actually **do** go to court and are thoroughly scrutinised, its central rationale is to ensure that fewer cases need to go to court **at all**. Far more emphasis is placed on getting early intervention right. This is better for people with debt; better for lenders seeking repayment; and better for efficient use of court time.

2. The Bill and Mortgage Repossessions

Our comments relate mainly to part 1 of the Bill as this covers mortgage repossessions. Part 2 of the Bill deals with sequestration and more general debt matters. Part 1 of the Bill seeks to:

- Ensure that all mortgage cases which need to go to court actually do so (with the exception of voluntary surrenders – see section 3 below).
- Introduce a set of Pre-Action Requirements¹ – ie alternative actions that the lender must demonstrate to the court that it has taken before applying for decree. Importantly, these Pre Action Requirements must be fulfilled whether the case is defended or not.
- Ensure that a case can be recalled back to Court even on the day of Sheriff Officers coming to the door, if the case has not previously been represented in court.

¹ Pre Action Requirements includes steps taken to provide the debtor with clear information; to agree repayment plans; to re-configure debt; to secure advice; and to look at private and public sources of financial assistance.

- Opened up the possibility of “lay” representation in Sheriff Court – from a list of approved lay representatives.

3. Observations for stage 3

As above, we believe that the Bill has been the subject of robust debate and scrutiny.

Notwithstanding that, we have a few observations at stage 3:

a) Voluntary surrender

We support the sentiment that, where a borrower concludes that simply clinging onto a mortgage is not sustainable for them, then they should be able to exit as swiftly as possible from the debt without needing to go to Court and face additional costs. In the Bill as presented this voluntary surrender was formalised by requiring an affidavit to be signed in front of a notary public. This was arguably too onerous and at stage 2 this was amended simply to require it to be in writing. In Shelter’s view this has shifted the balance too much the other way. We would ask MSPs to press the minister to ensure that voluntary surrender is accompanied by a prescribed form.

b) Expenses for mortgage action

At the moment it is possible for a lender to take a debtor to court, have the case refused by the Sheriff yet still add the legal fees to the debtor’s account because it is a standard condition of mortgage contracts. This is wrong. Shelter raised this at stage 1 and amendments were submitted at stage 2 such that if a Sheriff declined to grant decree because a lender had failed to follow the Pre-Action Requirements then the lender would not be entitled to charge expenses to the borrower’s account. While the minister expressed sympathy with the policy aim he took the view that it strayed into reserved areas and instead offered to take it up with the UK Government. Having that commitment repeated would be helpful.

c) Advice sector capacity

The Bill’s emphasis on early intervention means an enhanced role for both legal and non-legal advice services. While it is fair to acknowledge that additional funding has been made available by Scottish Legal Aid Board and others, we urge the minister to keep a close eye on the capacity of the advice sector to absorb the new challenges introduced by the Bill. An advice sector which is under-funded may undermine some of the Bill’s good intentions.

4. Wider action on debt and repossession

Reform of the law is only part of the package of measures needed to protect home-owners and others from the chill-winds of changed economic times. A critical question is whether current and future policy is still encouraging an expansion of home ownership at the margin for households for whom that may not be sustainable. That means redoubling efforts to provide choice and balance in the housing market. Equally pertinent is whether the Bill now means that Scottish home-owners have greater protection than tenants. Shelter is pressing the Scottish Government to introduce Pre Action Requirements for social housing tenants in the Housing Bill that has just been introduced to Parliament.

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