



Briefing on the Home Owner and Debtor Protection (Scotland) Bill, Stage 1 Debate

17 December 2009

Key points:

- Shelter Scotland strongly supports the intention behind the Bill: to provide additional protection for struggling home owners.
- There is a compelling case for the Bill. Despite a downward revision in forecasted repossessions at a UK level to 48,000, this figure is still three times as many as the 17,000 repossessions as recently as 2006, and more than six times higher than the 2003 figure of 7,630.
- The foundation of the Bill is section 4 (pre-action requirements), which should act to ensure that every possible alternative to repossession is considered by the lender before court action is taken.
- With or without the current recession there is still a strong case for the Bill. The Mortgage Rights Act 2001 has not proved as effective as it could be.

1. Why the Bill is needed

Some critics of the Bill have suggested that additional legislation to protect homeowners is not needed. Despite welcome news that the CML has recently revised its possessions forecast for 2009 down to 48,000, repossession is still a real issue and there are some significant notes of caution:

- It should be highlighted that the 48,000 figure is three times as many as the 17,000 repossessions as recently as 2006, and more than six times higher than the 2003 figure of 7,630.
- The number of home owners in arrears of 2.5% or more of the outstanding mortgage balance is 29% higher than at the same stage last year.
- We are currently in a climate of low interest rates and there is more forbearance being shown among some lenders, but neither are likely to continue forever.
- Rising unemployment in Scotland (up by 4000 over the three months to September and 67,000 more than last year) will contribute to more borrowers falling behind on their mortgages.

It should also be noted that with or without the current recession there is still a strong case for the Bill. The Mortgage Rights Act 2001 has not proved as effective as it could be; for example, the protection for the borrower only kicks in where the borrower has made an application to the court, and currently, at best, only 10% of cases call in court.

2. How the Bill will further protect homeowners

The critical part of the Bill is section 4 (pre-action requirements). Section 4, together with the secondary legislation, sets out in detail what evidence lenders must show to the court, whether or not the borrower appears or is represented, before a decree is granted. In effect, it is to ensure that lenders will take all steps and consider alternative solutions before going to court. The pre-action requirements are not about burdening courts with lots of additional cases and more time. It is about pushing lenders to deal with the situation before it gets to court and ensuring that alternatives to repossession are considered so that many cases are resolved without ever having to call in court.

While we support the intention of the pre-action requirements, we have suggested a number of improvements to the statutory instrument in previous evidence¹. We have suggested an amendment in which the creditor should not be eligible to claim legal costs from the debtor where a case is dismissed by the Sheriff as result of the creditor not following the pre-action requirements. This sanction would further encourage lenders to ensure that they have followed the pre-action requirements and considered all alternatives before taking court action against the borrower.

Currently the Bill seeks to allow the debtor or any entitled resident (if they did not participate in the original proceedings) to stop a repossession going ahead right up until the day of the repossession. This effectively allows them to restart court proceedings and present their case. The wording of the Bill however means that this might not happen in practice and we recommend an amendment to ensure that a repossession can be stopped right up until the day of repossession.

Concerns have been raised about sufficient funding and capacity of the legal and advice sector in being able to help the additional homeowners who would have new rights. Shelter shares these concerns and we would urge MSPs to press Ministers to ensure that there will be additional investment in the sector to help meet this demand.

3. Conclusion

Shelter Scotland strongly supports the Bill. There is a real need for the Bill to help protect struggling home owners and we consider the Bill to offer a significant improvement in protection for homeowners.

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¹ Shelter's evidence and supplementary evidence on the Bill can be accessed via <http://www.scottish.parliament.uk/s3/committees/lqc/inquiries/HomeOwnerDebtorProtection/HODPBillEvidence.htm>