



# Tackling Mortgage Repossessions: The Scottish approach – from problems to solutions

Yvonne MacDermid,  
Chief Executive,  
Money Advice Scotland

# Home Owner and Debtor Protection (S) Bill

- Current situation for debtors
- Impact on debtors
- Impact on creditors
- Impact on money advisers
- Impact on all consumers
- Strengths and weaknesses
- What is missing and what might be improved?
- Conclusions

# Bill

## ■ In 3 parts

- Introduces new measures for repossession actions
- Introduces changes to the grounds on which a debtor can apply for sequestration and Voluntary trust deeds
- Introduces changes to the disposal of the debtor's family home
- Removes the requirement to publish in the Edinburgh Gazette

# Current situation for debtors – “the problem”

- Is it currently a debtors “Hell”?
  - Some people have no way of being assisted with their debts as no one has taken them to court, or they can’t meet the Low income Low assets criteria or satisfy “apparent insolvency”
  - Being pursued although they can’t pay
  - Some repossessions may have taken place and could have been avoided if debtors had sought advice and had representation

# Impact on debtors

## ■ Will it be “Heaven for debtors”?

- Sheriff can delay the sale of a debtors home up to 3 years – currently one year
- Pre action requirements before repossession can take place
  - The creditor must give clear information about
    - The terms of the standard security
    - The amount due, including arrears, and charges in terms of late payments or redemption
    - Any other obligation under the standard security in respect of which the debtor is in default

# Impact on debtors

## ■ Will it be “Heaven for Debtors”?

- Pre action requirements before repossession can take place
  - The creditor must make reasonable efforts to agree with the debtor proposals in respect of future payments and default
  - The creditor must not make an application if the debtor is taking steps to:
    - Make payment within a reasonable amount of time
    - Fulfil and obligation in which the debtor is in default

# Impact on debtors

## ■ Will it be “Heaven for Debtors”?

### □ Voluntary surrender

- Following a calling up notice or notice of default an affidavit has to be signed by the creditor to certify that
  - the person does not occupy the security subjects and is not aware of any one else occupying the premises

# Impact on debtors

## ■ Will it be “Heaven for Debtors”?

- Lay representation available through an “approved” adviser – debtors have their day in court
- Hearings can be recalled
- Access to advice and information
- If debtors cannot meet their debts through the apparent insolvency criteria, then they can approach an authorised person who can grant a certificate for sequestration if the debtor can show that they are unable to pay debts as they fall due



# Impact on debtors

- **Will it be “Heaven for Debtors”?**
  - Moral dilemma between wanting to pay and having to pay?
  - Where house could be taken outside of the Trust Deed, it will protect the client but could result in some building up equity for the future. Would unsecured creditors be satisfied with not being paid whilst someone builds up equity?

# Impact on creditors

- Less or more money back from debtors?
- Changing policies regarding lending and debt collection?
- Confusion when dealing with Scottish debtors in terms of the bankruptcy law?

# Impact on money advisers

- **Will it be “heaven or hell” for money advisers?**
  - New responsibilities in terms of authorised persons who will grant certificates for sequestration
  - Training and competence for authorised persons
  - Greater emphasis on lay representation within the legislation – more training and resources required?
  - One gateway for Debt Arrangement scheme and new certificate of sequestration?

# Impact on all Consumers

- Increased costs of borrowing?
- Less or restricted access to affordable credit?
- Higher deposits required
- Different lending decisions by creditors when dealing with Scottish consumers?

# Other considerations

- Funding and availability of money advice
- Other players in the market including the changing role and responsibility of the Accountant in Bankruptcy in relation to DAS and other insolvency solutions

## Summary of strengths

- Gives debtors the right to their day in court, including “entitled residents”
- Affidavit has to be signed in voluntary repossessions
- Lay representatives
- Pre action requirements by lenders, including whether in a Debt Payment Programme
- Emphasis on advice and information

## Summary of (possible) weaknesses

- Too many people seeing the “certificate of sequestration as a “quick fix”?
- New restricted trust deed procedures *may* impact on DAS and as a result creditors get less back
- Will there be enough advice and lay representation?

## What is missing?

- At the pre action requirements stage there should be a requirement on creditors to tell the local authority that a debtor is likely to be homeless



## How might it be improved?

- Direct reference should be made to the Debt Advice and Information pack to ensure consistency with other legislation

# Conclusions

- There are problems to fix
- Good opportunity for change BUT
- A different balance needs to be struck between debtor and creditor
- Advice sector needs better resourced
- The future role of Accountant in Bankruptcy needs to be clarified
- Don't throw the baby out with the bathwater!!