

Home Owner and Debtor Protection (Scotland) Bill

October 2009

Introduction

The Federation of Small Businesses is Scotland's largest direct-member business organisation, representing around 20,000 members. The FSB campaigns for an economic and social environment which allows small businesses to grow and prosper.

We welcome the opportunity to submit our comments on the *Home Owner and Debtor Protection (Scotland) Bill* to the Local Government and Communities Committee.

Background

The FSB's comments concentrate on Part 2 of the Bill, which we understand has two main aims. First, to provide greater safeguards for a debtor's family home in the insolvency process and secondly, to ensure that all debtors can access a debt relief mechanism. The FSB is generally supportive of both of these aims.

However, as many of our members can often find themselves as unsecured creditors, we also believe that any additional protection for debtors has to be balanced with those of the creditor. The Bill must also ensure that both debtors and creditors have a choice in how to tackle debts and that debt relief mechanisms are carried out by properly qualified and regulated experts.

Our understanding is that the Bill is being introduced as a response to a number of problems brought about by the recession. While it will seek to assist those who find themselves in short term difficulties, the overall message must be that those who can afford to pay their debts must do so.

The Debt Action Forum (DAF)

The FSB understands that the DAF was established to consider actions that could be taken to help debtors affected by the recession. Further, we believe that how to treat the family home in such a process was discussed by the forum.

Section 4.3 of the final DAF report, published in June 2009 stated, "*Members accepted that the whole subject of action against property was complicated*

and affected a lot of areas. They agreed that this paper raised a number of issues which should only be considered after a full public consultation.”

Following discussions with other relevant organisations, the FSB, as a body representing a significant number of unsecured creditors, was disappointed that the Forum did not have meaningful representation from the unsecured creditor community. We are also surprised that a proposal on how the family home should be dealt with in a protected trust deed now appears in the Bill, without any consultation having taken place.

While the Bill does deal with how the family home is treated as an asset in a protected trust deed, it does not consider how it should be dealt with as part of a sequestration. It is our understanding that this will now be dealt with in a separate consultation beginning later this year. We believe that this makes it difficult for creditor groups that have an interest in this particular legislation to understand fully the policy intention of how they will recover their debts.

Protected Trust Deeds and the Family Home

The FSB has concerns that exempting the family home could have the following outcomes:

1. Creditors are less likely to accept a form of debt relief that excludes the major asset from which a dividend could be paid. This major asset is often the family home. The Bill does not make clear what would then happen to the debtor and his creditors.
2. Unsecured creditors, including our members; HM Revenue & Customs; and others expect to be paid for services or credit. Legislation that may undermine this basic principle would have a damaging effect on our members and many thousands of small and micro businesses across Scotland, as they often lack the sophisticated credit control systems of larger businesses. Cash flow is particularly important at this time and we would not wish to see the introduction of any measure that would make this more difficult.
3. Bank lending to smaller businesses could also be influenced by a higher risk premium if the recovery of debts becomes tougher. This could mean micro and smaller businesses, among others, seeking credit in Scotland being treated less favourably by lenders. Secured lenders such as banks will also be conscious of Part 1 of the Bill that restricts the rights of creditors in repossessions. The overall effect may be to tighten lending criteria.

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