

# New debt legislation – a fair deal for everyone?

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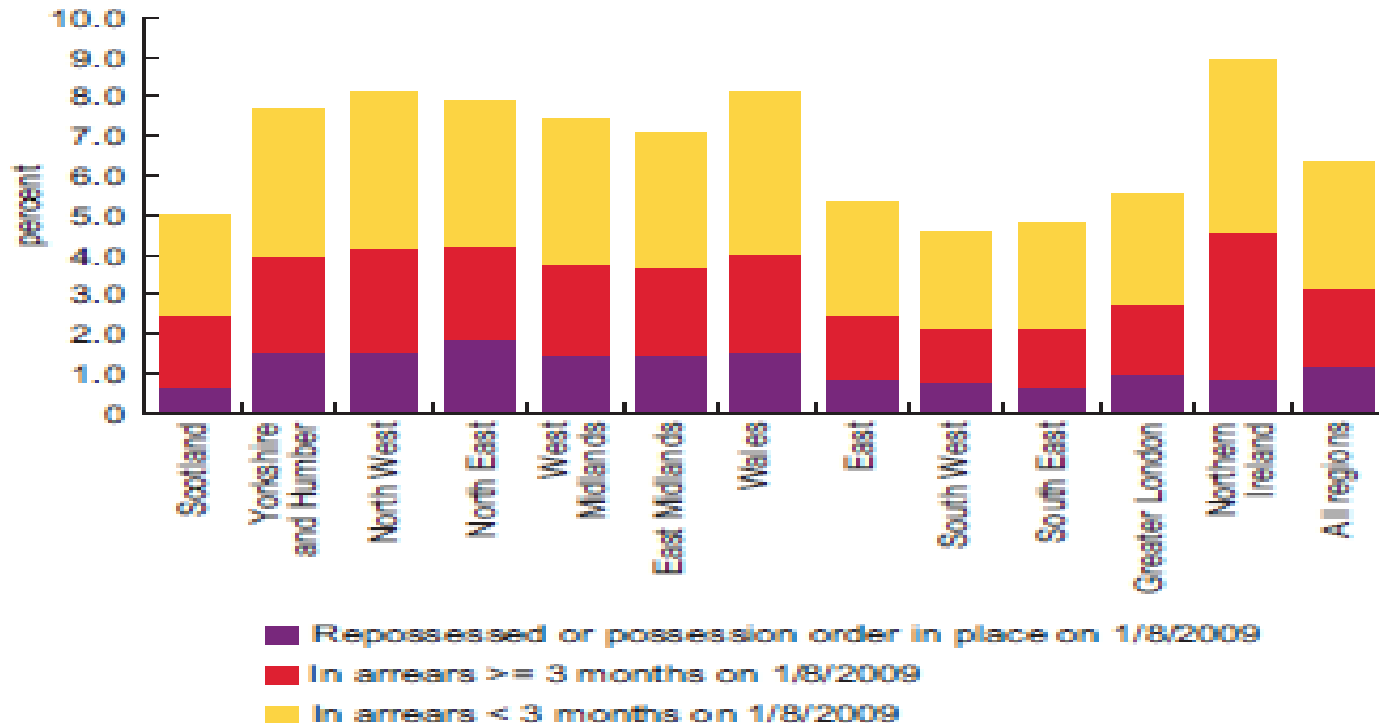
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# Presentation outline

- Viewing legislation against current landscape
- The legislative changes
- What they mean for:
  - Borrowers
  - Tenants
  - Lenders
  - Courts and advice agencies
- Monitoring and evaluation
- Consultation on RBS v Wilson case
- Other issues followed up
- Conclusions

# How Scotland compares with rest of UK on repossessions / arrears

Figure 23: Performance of mortgages sold between April 2005 and March 2009, by region (measured on 1 August 2009)



Source: FSA Mortgages PSD and Arrears dataset

# Current landscape - risks

- UK repossessions fell by 21% in 2010 to 36,300
- Relatively low rate of repossessions / arrears in Scotland (2005-09)
- Court actions for repossession in Scotland reduced by 18% in 2009
- Reduction in court actions in 2010 misleading (RBS v Wilson Supreme Court judgement)
- All welcome statistics, but **significant risks remain** from:
  - Public expenditure and public sector job cuts
  - Cut in Support for Mortgage Interest from 6.08% to 3.63%
  - Freeze in pay, inflation going up, possible rise in interest rates?
  - Long term arrears, dependent on lender forbearance & property prices
- CML forecast UK repossessions rising to 40,000 in 2011 and arrears to 180,000 in 2011

# Current landscape - regulation

- Some action by FSA to tighten regulations on lenders in respect of treatment of customers in arrears and assessment of borrowers' ability to pay when taking out a mortgage
- But also pressure to encourage banks to lend more....
- Will lessons be forgotten?

# Part One Home Owner and Debtor Protection (Scotland) Act 2010

- Implements key recommendations from Repossessions Group report of June 2009
- Three key measures:
  - All repossession cases, except voluntary surrender, to be heard in court
  - Lenders must demonstrate to court have considered reasonable alternatives to repossession
  - Allows lay representation
- Stronger than Pre-Action Protocol in England

# Follow up legislation

- Regulations consulted, introduced and commenced in September / October 2010
  - Specifying the pre-action requirements
  - Approval of lay representatives
  - Revised forms of notice
- Sheriff Court rules changed
- Protection for tenants strengthened, enshrining existing case law through Housing (Scotland) Act 2010

# What does it mean?

- Borrowers – probably the best legislative protection in UK, but still liable for court costs
- Lenders – need to demonstrate met pre-action requirements (but largely mirrors existing FSA requirements)
- Tenants – greater assurance of protection
- Courts – more to scrutinise / impact on other business
- Advice agencies – more comprehensive service, but must ensure lay representatives are competent, and manage additional workload

# Evaluation of act and RBS v Wilson

- Evaluation still planned
- Can't assess properly until false dip and spikes in court actions from RBS v Wilson have worked through
- Consultation on impact of RBS v Wilson judgement for lenders, borrowers and others ends 31 March 2011
- Will analyse responses, but for incoming Ministers to decide what action to take

# Other issues followed up

- Clear and easy information by lenders and courts
- Improved advice
- Capacity in advice sector
- Lender restraint
- Revision to SMI
- Improving legal aid system & clawback
- Scottish data on repossessions
- Legal costs
- But results often dependent on others.....

# Conclusions

- New legislation provides strongest legislative protection in UK for borrowers and tenants, without adding unreasonable burdens on lenders
- Evaluation will have to come after RBS v Wilson dip / spike
- External factors make evaluation tricky
- Repossessions may still rise.... and some will be unavoidable

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