

# Research paper

# Evictions by local authorities in Scotland: an interim joint paper from Shelter Scotland and Legal Services Agency

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# Shelter

## Introduction

Local authorities in Scotland continue to evict, or threaten to evict, large numbers of tenants, with over 3,000 tenants and their families evicted in 2001-2. These eviction actions contrast starkly with the national policy focus on preventing homelessness and are surprising in light of generally improved homelessness practice in the last few years.

This interim paper summarises the recent eviction records of local authorities based on information on evictions, collected and published by the Scottish Executive. It illustrates that their eviction practices conflict with some national homelessness policy objectives and highlights wide variation in practice between areas.

The results suggest that to smooth out local and national policy contradictions, best practice guidance might be useful. Local authorities receive mixed signals from national government, being key players in the wider social inclusion agenda, but also being under pressure to deal with anti-social behaviour and improve financial performance.

Best practice guidance should aim to square authorities' drive to collect rents with the need to prevent evictions and resulting homelessness. It could emphasise alternatives to eviction, such as payment actions, which local councils currently use very infrequently.

A second paper will be produced by Shelter Scotland and Legal Services Agency later in 2003 detailing issues of practice in handling evictions.

## Homelessness policy in Scotland

The prevention and alleviation of homelessness has been a central focus of Government policy in Scotland in recent years, most notably through the work of the Homelessness Task Force (HTF). HTF recommendations have led, amongst other things, to the passing of the Housing (Scotland) Act 2001 and to the introduction of the Homelessness Etc. (Scotland) Bill to the Scottish Parliament.

Whilst all of this work has been in progress however, local authorities have been evicting or threatening to evict, large numbers of their tenants. Between April 2001 and March 2002, 3,077 tenants were evicted from council housing<sup>1</sup> and 28,792 tenants, were taken to court. Behind these figures lies considerable variation in practice amongst local authorities.

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<sup>1</sup> This figure includes the number of cases resulting in abandonment and the number of evictions. The focus on Council housing is not based on any supposition that possessions are not an issue in other sectors such as the owner occupied sector, private rented sector, or Registered Social Landlord sector: rather that information in those sectors is so much poorer. Local Authorities are to be commended for producing accurate information in this area of potential controversy.

Future homelessness policy in Scotland will be driven by the final report of the Homelessness Task Force which sets out a ten year plan for dramatically reducing homelessness in Scotland. This report lays considerable emphasis on reducing the use of eviction because it is not a positive outcome for either the tenant or the landlord. From a tenant's perspective, it states that eviction action should be a last resort because it 'invariably deepens a household's problems' (para 67). In relation to landlords, it argues that eviction 'is often an indication of failure on the part of the landlord as well as the tenant', particularly as rent and council tax are much more difficult to collect once a tenant has been evicted.

In practice most local authorities seem currently to assume that anyone with significant rent arrears will be classed as 'intentionally homeless'. Refusal to re-house, unless rent arrears are cleared, is often used as a sanction. The reforms of the Homelessness etc. Scotland Bill retain the notion of intentional homelessness. The much greater responsibility that is attached to intentionally homeless people may be expected to reduce the number of intentionality decisions but intentionality after rent arrears will still remain an issue.

Shelter and LSA's experience suggests that some local authorities have taken to heart the message that eviction should be considered a last resort, and have developed a range of alternatives. The huge variation in rates of action and eviction however indicates that the interpretation of 'last resort' is highly variable. In some areas people are being evicted in situations in which they might not even be threatened with court action in other areas. This is important because, except in rare instances, there is no evidence that eviction changes behaviour, it simply shifts it. It can also severely exacerbate family or personal crisis (often rent arrears are occasioned by redundancy, illness, the birth of children, matrimonial break-up or bereavement).

The HTF has recommended that local authorities address their policies on eviction, and what happens to people once they are evicted, in their forthcoming homelessness strategies (recommendation 17). The present eviction records of Scottish local authorities, outlined below, suggest that some authorities have a considerable amount of work to do before April 2003 when these strategies are due.

## **The present eviction record of Scottish local authorities**

The following commentary on local authority evictions considers information on evictions during the period April 2001 to March 2002. This material is published by the Scottish Executive<sup>2</sup>, and provides a breakdown of three crucial stages of the eviction process. These are:

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<sup>2</sup> Scottish Executive's Statistical Bulletin HSG/2002/3. Housing Trends in Scotland: Quarters Ending 31 December 2001 and 31 March 2002. This bulletin does not contain detailed information on why eviction action has been taken.

1. Data on eviction actions raised by authorities. This is the actual numbers of tenants who receive summons to court as a result of local authority action against them. The summons is the document used to start the court action. In the summons, the landlord states why the tenant should be evicted.
2. Data on eviction decrees granted against tenants. This is the number of cases in which, in this case, a local authority landlord obtains the right to evict a household; and
3. Data on the number of decrees granted to a local authority landlord against its tenants that result in abandonments or evictions<sup>3</sup>.

In this commentary, we compare figures for the eviction actions of local authorities to the same figures for Scotland as a whole. In addition, at times we control for very different sizes of authority by comparing the evictions policies of authorities against the numbers of houses<sup>4</sup> that each has.

## 1. Eviction actions

To take an eviction action against a tenant a landlord must serve him/her with a summons informing him/her that a court action is being raised from a specified date, and stating the statutory grounds on which action is being taken. The date must be at least 21 days after the date of service of the summons (or longer).

Table One shows the number of eviction action figures for each local authority. When divided by the number of houses in each authority it is possible to develop an estimate of the percentage of tenants that each authority takes to court in a year.

**Table One:** The number of eviction actions by local authority, the number of houses in each authority and the percentage of tenants taken to court over 2001-2 by authority size.

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<sup>3</sup> Abandonment occurs when a tenant knows that the authority has a decree against him or her and so leaves prior to receiving an eviction notice. Eviction occurs where a tenant waits for the eviction notice to arrive prior to leaving and/or has to be removed from the property.

<sup>4</sup> Obtained from Table 3 of the Scottish Executive's Statistical Bulletin HSG/2002/3. Housing Trends in Scotland: Quarters Ending 31 December 2001 and 31 March 2002.

Area	No. of eviction actions	Estimated number of houses	Percentage (eviction actions/houses)
Scotland	28,792	533,203	5.4
Aberdeen City	1,309	26,644	4.9
Aberdeenshire	568	15,365	3.7
Angus	209	9,608	2.2
Argyll & Bute	1,080	6,699	16.1
Clackmannanshire	10	6,222	0.16
Dumfries & Galloway	1,563	12,595	12.4
Dundee City	1,617	19,587	8.3
East Ayrshire	549	17,247	3.2
East Dunbartonshire	150	5,952	2.5
East Lothian	412	9,648	4.3
East Renfrewshire	160	4,081	3.9
Edinburgh, City of	2,619	27,078	9.7
Eilean Siar	2	1,951	0.1
Falkirk	798	20,938	3.8
Fife	1,958	38,671	5.1
Glasgow City	2,779	84,067	3.3
Highland	761	17,149	4.4
Inverclyde	273	10,148	2.7
Midlothian	230	7,605	3.0
Moray	112	6,976	1.6
North Ayrshire	1,277	16,849	7.6
North Lanarkshire	4,780	46,476	10.3
Orkney	-	886	-
Perth & Kinross	315	9,600	3.3
Renfrewshire	1,116	19,959	5.6
Scottish Borders	751	7,102	10.6
Shetland	-	2,082	-
South Ayrshire	770	10,490	7.3
South Lanarkshire	735	34,008	2.2
Stirling	197	7,564	2.6
West Dunbartonshire	91	13,829	0.7
West Lothian	1,110	16,127	6.9

- indicates nil or less than half the final digit shown

Across Scotland as a whole 28,792 tenants were served with a notice and taken to court by councils between April 2001 and March 2002. This is equivalent to one in nineteen tenants (5.4%).

The council that took the greatest number of tenants to court was North Lanarkshire, with 4,780 (one in ten tenants). However, once the different size of authorities is taken into account, Argyll and Bute emerges as the authority most likely to go to court, with 16% of tenants taken to court in 2001-2002. Dumfries and Galloway was next highest with 12.4% and the Scottish Borders Council was third with 10.6%.

At the other end of the scale, those councils least likely to go to court include: West Dunbartonshire (0.7%), Moray (1.6%), Angus (2.2%), South Lanarkshire (2.2%) and Inverclyde (2.7%).

Geography does not explain the figures as neighbouring areas exhibit very different eviction practices. For example, West Dunbartonshire's 0.7% eviction action rate (91 tenants) contrasts sharply with Argyll and Bute's 16.1% rate (1080 tenants). Similarly whilst 10.4% of tenants in North Lanarkshire (4780) faced eviction actions, in South Lanarkshire the level stood at 2.2% (735). Indeed, the contrast between North and south Lanarkshire is notable also for the fact that according to the 2003 Report by the Audit Commission<sup>5</sup> the rent arrears levels are very similar: 5.5% in the case of North Lanarkshire and 4.8% in the case of South Lanarkshire.

## 2. Eviction decrees

Not all cases that make it to court result in a decree (eviction order). This section considers the numbers of cases in which local authorities obtain a decree and therefore the right to evict a household.

After an action is raised in court the council still has to successfully argue with the Sheriff to grant decree. The extent to which court actions are converted to decrees depend partly on the court or the Sheriff's attitude and also on the extent to which the council presents and pushes through its case. Sheriffs are required to consider whether it is reasonable to evict although previous research suggests that this is not always given due consideration. It will also depend on whether the action is defended and. That requires professional representation, which is not available in many areas.

If a decree for possession is awarded in court, eviction does not follow immediately. The Sheriff, when granting decree in favour of the landlord, must state a date when the decree may be executed. This is normally at least 14 days after the date of decree but may be longer. Once a notice of proceedings for possession has been served, and the date mentioned in it has passed, the landlord may raise proceedings for recovery of possession.

Across Scotland, 10,555 of the 28,792 eviction actions in court resulted in a decree. This figure represents almost 2% of all council tenancies in Scotland. Of all the Scottish local authorities, North Lanarkshire emerges as the council with most decrees granted against its tenants, with a total of 1,672. However, allowing for council size, Argyll and Bute tops the list, with approximately 11% of its tenants having decrees granted against them in the course of a year.

It seems that different local authorities use eviction actions in very different ways. Whilst some seem to raise actions as a matter of routine, others use them much more sparingly. This will evidently impact upon the seriousness with which tenants view a decree.

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<sup>5</sup> Audit Scotland 2003 Performance Indicators 2001/2002 Housing and Social Work: Comparing the performance of Scottish councils.

Another way to look at the differences in practice is the conversion rate from court action to decree. Across Scotland as a whole 36.7% of court actions result in a decree, but there is huge variation around this average. The highest is Argyll and Bute (68.9%), whilst the lowest is Fife (9.6%).

**Table Two:** The conversion rate from court action to decree by local authority

Area	No. of eviction actions	Cases resulting in eviction decree	% of eviction actions resulting in decree	% of all tenants receiving decrees
Scotland	28,792	10,555	36.6	2.0
Aberdeen City	1,309	634	48.4	2.4
Aberdeenshire	568	197	34.7	1.3
Angus	209	103	49.3	1.1
Argyll & Bute	1,080	744	68.9	11.1
Clackmannanshire	10	3	30	-
Dumfries & Galloway	1,563	209	13.4	1.7
Dundee City	1,617	991	61.3	5.1
East Ayrshire	549	283	51.5	1.6
East Dunbartonshire	150	57	38.0	1.0
East Lothian	412	279	67.7	2.9
East Renfrewshire	160	55	34.4	1.3
Edinburgh, City of	2,619	1,350	51.5	5.0
Eilean Siar	2	0	0	0
Falkirk	798	425	53.3	2.0
Fife	1,958	187	9.6	0.5
Glasgow City	2,779	820	29.5	1.0
Highland	761	412	54.1	2.4
Inverclyde	273	202	74.0	2.0
Midlothian	230	81	35.2	1.1
Moray	112	35	31.3	0.5
North Ayrshire	1,277	444	34.8	2.6
North Lanarkshire	4,790	1,672	35.0	3.6
Orkney	-	-	-	-
Perth & Kinross	315	77	24.4	0.8
Renfrewshire	1,116	295	26.4	1.5
Scottish Borders	751	104	13.8	1.5
Shetland	-	-	-	-
South Ayrshire	770	250	32.5	2.4
South Lanarkshire	735	351	47.8	1.0
Stirling	197	59	29.9	0.8
West Dunbartonshire	91	60	65.9	0.4
West Lothian	1,110	147	13.2	0.9

### 3. Evictions (and abandonments)

After a council obtains decree for eviction it is far from certain that it will immediately be acted upon. At this point:

1. The case may not be fought to a conclusion.

2. There may be an agreed settlement whereby the tenant agrees to do something in order to remain in his or her home the case is likely to be dismissed by consent (decree of dismissal),<sup>6</sup> or
3. At some point in the process either party may give up. If the tenant gives up, it normally results in an abandonment of the house.

Across Scotland just 11.8% of eviction decrees result in a formal eviction. Once again, North Lanarkshire is the authority with the highest number of evictions, with 194. But Renfrewshire emerges as the authority most likely to follow a decree through to eviction, with 43.1% of decrees resulting in eviction. Argyll and Bute, which has a very high conversion of court actions to decrees, has a very low level (5.1%) of decrees resulting in eviction. This record seems to indicate an adversarial attitude to tenants and suggests the need to review practices and consider intervening before a tenant is ever threatened with going to court.

However, there is also a larger number of abandonments during legal action than evictions. During the latest full year for which figures are available (April 2001 to March 2002) there were 1,241 evictions but 1,836 abandonments. It can be argued that abandonment during this late stage of legal action is an eviction in all but name. It has the same result: a family or person leaving their home.

If we add abandonments to evictions, the pattern changes a little and we find that, across Scotland, 29.2% of decrees result in an eviction or abandonment. In some areas though the proportion is much higher than this, e.g. it is 58% in South Ayrshire and 52% in Renfrewshire. In terms of numbers of tenants, North Lanarkshire (535) and Edinburgh (529) are the areas in which the largest number of people lose their homes as a result of either eviction or abandonment.

**Table Three:** Percentage of decrees that resulted in eviction and abandonment 2001-2002

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<sup>6</sup> However, after decree the case would not be dropped.



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Area	Evictions	% of decrees resulting in eviction	Aband- onments	% of decrees resulting in abandonment	Evictions and aband- onments	% of decrees resulting in eviction or abandonment
Scotland	1241	11.8	1836	17.4	3077	29.2
Aberdeen City	13	2.1	189	29.8	202	31.8
Aberdeenshire	45	22.8	3	1.5	48	24.3
Angus	8	7.7	0	0	8	7.7
Argyll & Bute	38	5.1	4	0.5	42	5.7
Clackmannan- shire	1	0.3	0	0	1	0.3
Dumfries & Galloway	23	11.0	23	11.0	46	22.0
Dundee City	82	8.3	154	15.5	236	23.8
East Ayrshire	65	23.0	8	2.8	73	25.8
East Dunbarton- shire	11	19.3	7	12.3	18	31.6
East Lothian	12	4.3	0	0	12	4.3
East Renfrewshire	11	20.0	5	9.1	16	29.1
Edinburgh, City of	30	2.2	499	37.0	529	39.2
Eilean Siar	-	-	1	50	1	50
Falkirk	105	24.7	40	9.4	145	34.1
Fife	40	21.4	15	8.0	55	29.4
Glasgow City	54	6.6	205	25.0	259	31.6
Highland	53	12.9	20	4.9	73	17.7
Inverclyde	35	17.3	24	11.9	59	29.2
Midlothian	4	4.9	8	9.9	12	14.8
Moray	7	20.0	0	0.0	7	20.0
North Ayrshire	68	15.3	15	3.4	83	18.7
North Lanarkshire	194	11.6	341	20.4	535	32.0
Orkney	-	-	-	-	-	-
Perth & Kinross	19	24.6	-	-	19	24.6
Renfrewshire	127	43.1	27	9.2	154	52.20
Scottish Borders	17	16.3	36	34.6	53	50.96
Shetland	-	-	-	-	-	-
South Ayrshire	48	19.2	98	39.2	146	58.4
South Lanarkshire	83	23.6	20	5.7	103	29.3
Stirling	19	32.2	69	117*	88	160*
West Dunbarton- shire	0	0	22	36.7	22	36.7
West Lothian	31	21.1	3	2.0	34	23.1

\***Note:** In Stirling people appear to abandon their houses even prior to a decree being obtained. Therefore these statistics show that more people abandon their houses than decrees obtained.

## Summary of evictions analysis

Some of the very wide variation between local authorities will be due to variation amongst Sheriffs and Sheriff Courts. The different levels of representation available to tenants in different areas may also be a factor. Most of the difference, however, is likely to be a result of local authority policy and practice.

For an authority like Argyll and Bute, taking a tenant to court is a routine matter but it actually evicts very few tenants. At the other end of the spectrum, for tenants in places like Inverclyde, court action may be taken less frequently but, when it is taken it is much more likely to result in a tenant losing his or her house.

## Conclusion

Evictions from council housing are high in Scotland. During the period 2001-2002, 3,077 tenants and their families lost their homes either through eviction or abandonment, and a much larger number, 28,792 tenants, were taken to court.

There is wide variation in levels of eviction between local authorities. This makes it appear that there is no consensus on good practice. Some good practice does exist however and most councils now say<sup>7</sup> that they refer to a recent Accounts Commission guide, which deals with rent arrears<sup>8</sup>. It may well be this guidance that is most responsible for the mixed signals which exist around evictions practice. For example, Edinburgh and North Lanarkshire, who evict more individuals and families than any other council, are commended by the guide as amongst the councils closest to best practice. Argyll and Bute, who take a great many tenants to court, but evict far fewer, are also on this list.

The reasons behind eviction do not fall within the scope of this report. It is however important to note that although anti-social behaviour is popularly assumed to be the main reason for evicting tenants and is often used to justify evictions, it is actually the cause of only a small minority of evictions. In 2001-2002 only 2.8% of evictions were for anti-social behaviour.

## Reducing evictions: the way ahead

New best practice guidance is needed to tackle the present inconsistency between, pressure to collect rents and homelessness policy. As a start, **the Account Commission's criteria should be amended** to give the 'highest' scores to those who manage the fewest evictions and the lowest rent arrears.

Tensions between the two are more apparent than real. For example, the HTF argues that local authorities' homelessness policies need to reflect the need to deal with the reasons why an individual or family is being evicted, rather than moving the

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<sup>7</sup> See for example, Scottish Federation of Housing Association's Housing News dated 23/10/2002.

<sup>8</sup> Accounts Commission (June 2000) *Managing Rent Arrears Getting the Balance Right*. A joint study by the Accounts Commission and Scottish Homes.

problem elsewhere. At the same time the Accounts Commission would argue that authorities must be pro-active in making contact and working with tenants who miss a rent payment.

**Alternatives to eviction should be made a central part of homelessness strategies.** At present eviction action is time-consuming and costly. As there is little evidence that it changes behaviour, developing alternatives may actually reduce the financial and social costs associated with eviction in the long term and improve local authority efficiency.

Such alternatives need to be considered in the context of the Homelessness Etc. (Scotland) Bill currently passing through Parliament. It will involve tackling rent levels, debt and housing benefit issues; and considering how Anti-Social Behaviour Orders (and their interim form) can be better used. All of these issues are also recognised in the Accounts Commission guide. There may also be a need for the Scottish Executive to review available legal powers in order to enable local authorities to better deal directly with the causes of eviction (principally debt). Shelter and LSA will be pursuing further work on evictions. Two additional areas to be considered in this work are the potential role of community legal services, and the likely impact of stock transfers on rent arrears problems.

The second HTF report points to a number of reasons why councils continue to evict and suggests ways of achieving a reduction in evictions. Shelter Scotland as a member of both the HTF and the HMG endorses these recommendations and calls for their implementation to be fast tracked:

1. Homelessness strategies should incorporate standards for dealing with housing benefit claims and targets for improvements (recommendation 16).
2. Homelessness strategies should provide for specific, concentrated support programmes for those threatened with eviction across all tenures, including the provision of access to independent advice and representation (Recommendation 20).
3. The Accounts Commission, Audit Scotland and Communities Scotland, in consultation with local authorities, should review the appropriateness of the 'current tenants' arrears as a percentage of net rent due' as an alternative approach could assist in reducing homelessness by reducing the numbers evicted for rent arrears' (Recommendation 22).
4. Local authorities should review a number of policies, for example, those on rent arrears and anti-social behaviour, which may lead to unnecessary or avoidable homelessness (recommendation 21).
5. Homelessness strategies should provide for specific, concentrated support programmes for those threatened with eviction. These programmes should

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include the provision of access to independent advice and representation (Recommendation 20).

**For further information about his study please contact Gavin Corbett, Head of Campaigns, Shelter Scotland on 0131 473 7170 or email [gavin.corbett@shelter.org.uk](mailto:gavin.corbett@shelter.org.uk) or Paul D. Brown, Legal Services Agency on 0141 353 3354 or [lsa@btconnect.com](mailto:lsa@btconnect.com).**