



## Scottish Government's consultation "Covid Recovery: A consultation on public services, justice system and other reforms": Shelter Scotland response.

This consultation is extensive, covering a wide range of topics across public services and justice systems. Shelter Scotland is only submitting responses to the questions with topics that relate to Shelter Scotland's work. These are question 22 for topic J18 and question 24 for topic J2.

We are also submitting answers to questions 36, 38 and 39, on the potential impact of the legislative proposals set out in this consultation on specific groups.

### Question 22

*It is proposed that the provisions for Topic P18 (Tenancies: protection against eviction (discretionary grounds of eviction); and pre-action requirements for eviction proceedings on ground of rent arrears) as described will be made permanent.*

**Shelter Scotland believes that the provisions for Topic P18 (Tenancies: protection against eviction (discretionary grounds of eviction); and pre-action requirements for eviction proceedings on ground of rent arrears) should be extended beyond March 2022 and made permanent.** We consider that both policies have been welcome steps forward in improving the rights-based framework for tenants in Scotland. To remove them would be a significant step backwards, reducing rather than strengthening tenants' rights and therefore putting at risk the progress made to ensure the prevention of evictions and homelessness wherever possible. It would also go against the fundamental human rights-based principle of progressive realisation of rights.

The pandemic exposed and deepened the housing inequalities that exist in Scotland's broken and biased housing system, and its impact on incomes and affordability is likely to be significant and long lasting. Making permanent the provisions for Topic P18 will ensure the current protections and support for renters and people at risk of homelessness are continued and that the Scotland we rebuild has social justice at its heart.



**The pre-action requirements (PARs) for eviction proceedings on the grounds of rent arrears introduce an important preventative measure for eviction and homelessness. This extra protection for renters against evictions should be made permanent.** The PARs encourage landlords to help their tenants access support and advice on rent arrears management before any eviction action is taken, thus helping them to manage their debt and remain in their home. The PARs are also a step towards greater parity of protection for private and social tenants in line with the Scottish Government's commitments under the Housing to 2040 strategy.

It is also important that we ensure that the PARs are effective and working properly. The First-tier Tribunal has a key role to play in ensuring that landlords are adhering to this legislation and are making all reasonable efforts to support tenants to remain in their homes. Alongside the PARs being made permanent we believe they should be evaluated to ensure that they are robust, cover all reasonable steps landlords should take, and that they are working in practice with the Tribunal ensuring that they are upheld. Reporting from the Tribunal on the use of PARs is required to ensure these measures can be monitored effectively.

**A scenario showing how the PARs can have a positive impact on the outcomes of eviction proceedings for tenants:**

A single parent lost her job due to the pandemic. Whilst searching for a new job, she fell behind on a couple of months' rent payments in her private let. Despite the fact she has now secured new employment the rent arrears are still outstanding, and her landlord is considering seeking an eviction.

If the PARs were to be removed, the landlord would be able to seek an eviction straight away for the rent arrears, without providing any support to the tenant to access advice or to set up a repayment plan. In this case and in thousands of others, this would increase the vulnerability of tenants to eviction, and lead to people becoming homeless which could have been prevented if these protections were to remain in place.

However, currently the landlord should take certain steps before they can pursue the eviction of the tenant and her child. For example, the landlord may be expected to give the tenant information on where she can get additional financial support, such as the tenant grant fund which may help pay off a proportion of the arrears. The landlord should also be expected to take reasonable steps to explore an affordable repayment plan for those rent arrears. In this example therefore, as a result of the PARs being in place and the landlord complying with them, a repayment plan might be set up with the tenant to address their rent arrears thereby supporting the tenant and her child to remain in their home, preventing their eviction and possible homelessness and the associated consequences on the family and costs to the public purse of providing homelessness support.

**Shelter Scotland also considers that all the grounds for eviction in the Private Residential Tenancy (PRT) should remain discretionary**, rather than some grounds reverting to mandatory. By keeping all grounds for eviction discretionary this keeps an important extra protection for tenants against eviction and the often-resulting homelessness.

The negative impact that eviction has on tenants, and particularly children, is well documented. It is a highly stressful process that can be damaging to both mental and physical health<sup>1</sup>. The upheaval of being evicted and potentially having to move away from friends and family and change schools adds an extra layer of emotional distress. Eviction also puts people's wellbeing at risk by potentially pushing them into homelessness and often overcrowded, poor quality temporary accommodation.<sup>2</sup> The possibility of numerous moves in a short period of time can cause further disruption and instability. These factors can lead to enormous strains on relationships within the household.

By keeping the current protections in place, the Tribunal can take all these factors into account in their decision making, balancing the needs of the tenant and the landlord in each individual case. For example, should the landlord be seeking eviction in order to move back into the property, then the Tribunal will be able to consider whether it is appropriate to evict a potentially vulnerable family from their home, and make them homeless in order for the landlord to do this.

The ability to exercise discretion is of particular importance for the rent arrears ground, which should be considered within the context of adherence to the pre-action requirements and whether it is reasonable and fair to evict following these steps. Given the anticipated ongoing impact of Covid on finances, it is important that tenants are given the opportunity to access all the advice and support available to them before eviction.

In fact, Shelter Scotland believes the changes to the private residential tenancy (PRT) should go further than what is proposed. The grounds for eviction should be reviewed through the lens of a human rights framework, with consideration as to how to ensure the right to adequate housing is realised in Scotland. For example, the grounds relating to the landlord intending to sell the property and the property being sold by the lender should be removed, and instead consideration should be given to ensuring that where a landlord chooses to sell a property, they must do so with the tenant in situ so that we can prevent house transactions creating homelessness with the public sector left to pick up the tab.

Making the provisions set out in Topic P18 permanent is crucial to strengthen the rights of private tenants in Scotland and Shelter Scotland strongly supports this important step. We would also like to emphasise that increased rights awareness activity and a robust regulatory framework are required to ensure tenants are empowered and able to realise their rights in

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<sup>1</sup> Shelter(2009) [Eviction of children and families: the impact and the alternatives](#)

<sup>2</sup> Joseph Rowntree Foundation (2017) [How evictions affect people in poverty](#)

practice. We look forward to these issues being explored further in the Rented Sector Strategy, due to be published at the end of this year.

## Question 24

*It is proposed that the provisions for Topic J2 (Courts and tribunals: virtual attendance) as described will be extended beyond March 2022.*

**Shelter Scotland do not think the provisions for Topic J2 should be extended or made permanent.** Whilst remote attendance made good sense on public health grounds, Shelter Scotland would be concerned with making remote attendance the default mode of attendance and a permanent feature of our courts and tribunal system for the reasons outlined below.

Shelter Scotland represents tenants in Sheriff Courts throughout Scotland. We are not suggesting that there is no space for continuing with electronic hearings. Electronic hearings should however be conducted by video conferencing as opposed to telephone-based hearings. Justice is impacted where parties and Sheriff cannot see each other, this is particularly the case where there is an unrepresented party present.

In certain cases, electronic hearings are appropriate and advantageous. For example, where both parties are represented, and the hearings concerns procedure as opposed to evidence, there is merit in remote attendance via videoconference. This saves on the time and cost of travelling to court. Electronic hearings are also advantageous to those who cannot physically attend court as a result of a disability and those who cannot afford to travel to court but do have access to the technology and skills to engage with an electronic hearing.

Shelter Scotland believes however that the rules should be drafted with the party-litigant in mind. Party-litigant refers to a person who is involved in the legal process but is conducting their own litigation without any legal representation.

Party litigants are a common feature in the eviction courts. Shelter Scotland, alongside other law centres and advice centres have historically offered in-court advice and representation to party litigants who attend court on the day. The move to remote hearings has resulted in the loss of an opportunity to offer in-court representation to party litigants. Furthermore, it has also resulted in the loss of an opportunity for solicitors and party litigants to negotiate last minute settlements, which was a common feature of heritable courts pre-pandemic.

There are a number of additional risks which jeopardise access to justice, in continuing with remote attendance of court and tribunal hearings as a matter of course.

- It requires unrepresented parties to have access to the technology to access those hearings;
- A premium rate can be charged where a party uses their telephone as opposed to a computer to access an electronic hearing;
- There is an assumption that the voluntary sector and some public services such as libraries, can facilitate access to justice through providing access to the necessary technology. The sector is not sufficiently set-up or funded to provide that level of support;
- There is often a requirement to engage with the court electronically, in advance of an electronic hearing whether that is to provide contact details or in some cases a note of your position in the case. For those who are digitally marginalised; illiterate or have difficulty communicating electronically, these prerequisites are disadvantageous.
- Even with the introduction of a safeguard whereby a party can apply to the court to change the mode of attendance, the onus will be on the party litigant to take the necessary steps to make that request. Under certain procedure, a court fee is charged to make such a request. This would be wholly unacceptable.

Any change to the court and tribunal rules governing how those hearings take place, ought to consider what is at stake in the hearing and consider the impact on those who are socio-economically disadvantaged as well as those who have protected characteristics under the Equality Act 2010. In the cases Shelter Scotland advises on, a person's home is often at stake. The risk of eviction is often such a stressful situation for the tenants concerned that they find the court process overwhelming. Access to representation is key to ensuring there is access to justice in those cases. Default electronic hearings in eviction cases makes that harder.

### **Question 36: Child rights and wellbeing impact assessment**

Children's rights to a safe, secure and affordable home must be protected. We know that housing upheaval can have a serious lasting impact on children's wellbeing in particular. Children who are homeless are three to four times more likely to have mental health problems than other children, even one year after being rehoused<sup>3</sup>. Children need housing security to live happy, healthy and fulfilled lives. The proposal to make the pre-action requirements permanent and to keep all grounds for eviction discretionary will serve to further protect children from eviction and homelessness. In turn, this protects the human rights of the child to an adequate standard of living, including housing, and positively impacts their wellbeing.

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<sup>3</sup>Shelter Scotland (2019) [Evictions by Social Landlords in Scotland 2016-2018](#)

### **Question 37: Equality impact assessment**

Minority ethnic households are over-represented in the PRS in Scotland, with 30% of minority ethnic households living in this tenure compared to 13% of white households<sup>4</sup>. We also know that minority ethnic households that are living in poverty are less likely to be in affordable housing – 51% of minority ethnic households in poverty in Scotland are spending more than 30% of their income on housing costs. This number is 44% for white households<sup>5</sup>.

The additional protections that this consultation proposes to make permanent will ensure that the disproportionately high numbers of minority ethnic households living in the PRS and in unaffordable housing, are better protected from eviction and homelessness.

### **Question 38: Socio-economic equality impact assessment (the Fairer Scotland Duty**

Lack of social housing means many low-income families in Scotland are forced into the private rented sector. We know that currently 250,000 people in the private rented sector (PRS) are living in relative poverty after housing costs are taken into account. This means that 34% of all PRS tenants and 40% of children in the PRS are living in relative poverty<sup>6</sup>. We also know that the coronavirus pandemic hit renters hard and made them particularly vulnerable to a loss of income and losing their home as a result<sup>7</sup>. Prior to the pandemic around 35% of private renters worked in the sectors hardest hit by coronavirus (such as leisure and hospitality). Alongside this, between April and June 2020, 32% of private-renting employees were furloughed by their employers<sup>8</sup>. Furlough often meant a 20% drop in income, a significant amount particularly for renters who were already on low income or could only just afford their housing costs prior to the pandemic.

Making the legislation set out in Topic P18 permanent will in particular provide continued protection from eviction to low-income families living in the PRS. However, it is important that steps taken to improve the PRS do not detract from the need to ensure greater availability of affordable social housing, which we believe is crucial to addressing socio-economic disadvantage in Scotland.

### **Question 39: Human Rights**

The Scottish Government has committed to incorporating the International Convention on Economic, Social and Cultural Rights in Scots Law, including the right to adequate housing. Emergency legislation on the pre-action requirements and the discretionary grounds for

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<sup>4</sup> Joseph Rowntree Foundation (2021) [Ethnicity, poverty, and the data in Scotland](#)

<sup>5</sup> Joseph Rowntree Foundation (2021) [Ethnicity, poverty, and the data in Scotland](#)

<sup>6</sup> Scottish Government (2021) [Poverty and Income Inequality in Scotland 2017-20](#)

<sup>7</sup> Shelter Scotland (2021) [Covid exit plan: supporting people in housing need out of the pandemic](#)

<sup>8</sup> Joseph Rowntree Foundation (2021) [UK Poverty 2020/21](#)

eviction served to strengthen the housing rights of tenants in Scotland during the pandemic in line with the human right to adequate housing. To make these protections permanent would support the fundamental human rights-based principle of progressive realisation of rights.