



Housing (Scotland) Bill 2014

Stage 1 - Shelter Scotland briefing

Shelter Scotland welcomes the opportunity to brief the Infrastructure and Capital Investment Committee on the Housing (Scotland) Bill at Stage 1, in advance of us submitting full written evidence¹. Shelter Scotland supports the broad aims of this Bill: to “enhance housing conditions, retain much needed social housing for the people of Scotland and safeguard social and private tenants”².

Shelter Scotland has been involved in the consultations and advisory groups which have fed into this Bill and supports many of the intentions of the proposed legislation. However, we feel strongly that **all** legislative changes must help to ensure that the housing sector functions as effectively as possible so that everyone has access to a safe, secure and affordable home and the right to a fair, transparent service. We have suggested a number of ways in which this Bill could be strengthened:

Summary of main points:

- **Unsuitable Accommodation Order:** Strengthen current legislation to make sure that households with children or expectant mothers have a right to challenge being placed in homeless temporary accommodation that is of a very poor standard of physical repair.
- **Section 5 referrals:** All referrals for settled accommodation for statutory homeless households from councils to registered social landlord (RSL) partners should be made through mandatory use of a 'Section 5' referral. This would make all housing allocations and partnerships transparent and measurable.
- **Electrical safety:** Shelter Scotland would like to see carbon monoxide alarms become mandatory in all privately rented property in Scotland. This could be achieved by an amendment to the Repairing Standard in the Housing (Scotland) Act 2006.

¹ This overview is a precursor to Shelter Scotland's full written evidence which we will submit to the Scottish Parliament in February 2014.

² Scottish Government press release (Nov 2013) <http://news.scotland.gov.uk/News/Improving-housing-quality-67e.aspx>

- **Right to buy:** Shelter Scotland supports the abolition of Right to Buy (RTB) in order to protect existing social rented housing stock and has long been campaigning for its end. We would, however, like to see a commencement date sooner than the proposed three years.
- **Social housing:** There are many proposals in this section, some of which will make detailed but important changes and improvements to the management and allocation of social housing. Some of the proposals however, could have serious unintended consequences, particularly:
 - **increased use of a SSST for antisocial behaviour**
 - **a simplified eviction process after a criminal conviction**
 - **taking age into account when allocating social housing**

Shelter Scotland's proposals for the Housing Bill

In addition to what is proposed in the draft Bill, Shelter Scotland believes that an opportunity has been missed to strengthen existing legislation, specifically around homeless accommodation to improve outcomes for those experiencing the crisis of homelessness, and safety in privately rented homes.

Proposal 1: Strengthening the Unsuitable Accommodation Order

Strengthen current legislation to make sure that households with children or expectant mothers have a right to challenge being placed in homeless temporary accommodation that is of a very poor physical repair.

The Unsuitable Accommodation (Scotland) Order 2004 was introduced to restrict the use of bed and breakfast (B&B) as temporary accommodation (TA) for households with children and pregnant women. This Order has been very successful in eliminating the use of unsuitable **types** of accommodation for these households, with a reduction of 92% in the use of B&B over the past 10 years. But the TA that is provided to these groups can still fall below an adequate physical standard of repair. Shelter Scotland regularly helps clients who come to us after being placed in TA which is in poor repair, damp and or with inadequate heating.

Shelter Scotland wants to see an additional clause added to the Unsuitable Accommodation Order that explicitly covers poor physical repair.

- **A legislative amendment to the existing Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 to add a clause(s) relating specifically to minimum physical standards for families with children or pregnant women in temporary accommodation.**

This change to existing legislation would seek to replicate the right to repair for those with a Scottish secure tenancy (SST) and those in private rented sector (PRS) have, but would be explicitly help households with children and pregnant women placed in temporary accommodation. It would help to ensure that families with children have the right to challenge being placed in TA which is of an unacceptable standard.

Proposal 2: Mandatory Section 5 referrals

All referrals for settled accommodation for statutory homeless households from councils to registered social landlord (RSL) partners should be made through mandatory use of a 'Section 5' referral. This would make all housing allocations transparent and measurable.

Section 5 of the Housing (Scotland) Act 2001³ introduced a system of referrals of homeless households by councils to RSLs. More than ten years after the commencement of that part of the legislation there is still mixed practice⁴. Although the overall percentage of homeless households are housed through a Section 5, the data shows that some RSLs/councils use Section 5 referrals in 100% of their allocations and some don't use section 5 referrals at all meaning there is very little consistency.

Shelter Scotland believes that the Housing (Scotland) Act 2001 should be amended to require a section 5 referral to be used in all instances where a RSL let is sought to meet a statutory homelessness duty. This would ensure greater transparency and make referrals easier to track and monitor which in turn, would improve partnership working.⁵

Proposal 3: Mandatory carbon monoxide alarms for all private rented homes

Shelter Scotland would like to see carbon monoxide alarms become mandatory in all privately rented property in Scotland. This could be achieved by an amendment to the repairing standard in the Housing (Scotland) Act 2006.

Carbon monoxide (CO) gas is known as the 'silent killer' because it is invisible and has no smell. CO can be emitted by any faulty appliance which burns a carbon based fuel such as gas, petrol, oil, coal and wood, and as little as 2% in the air can kill within one to three minutes. Children, elderly people,

³ <http://www.legislation.gov.uk/asp/2001/10/section/5>

⁴ Data from 2012/13 shows that, of homeless referrals housed by RSLs, 65% are described as section 5 referrals with 29% described as 'LA nominations' and 8% described as 'other', which are generally informal nomination arrangements⁴ RSL statistics from Scottish Housing Regulator:

<http://www.scottishhousingregulator.gov.uk/publications/benchmarking-tables>.

⁵ A briefing on this proposal to improve Section 5 referrals is available on the Shelter Scotland website http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/housing_scotland_bill_2013_policy_proposal_on_section_5_referrals

pregnant women and people with respiratory problems are particularly at risk from carbon monoxide poisoning.

According to Department of Health figures for England and Wales, 50 people a year die from CO poisoning, and around 4,000 are taken to A&E⁶.

All private landlords in Scotland must provide a valid gas safety record and annual checks for the appliances in the property they rent out⁷, but there is currently no legal requirement for them to provide a carbon monoxide detector and alarm. From October 2013, building regulations in Scotland were changed to require CO alarms to be fitted whenever a *new or replacement* boiler, heater, fire or stove is fitted to residential property. Shelter Scotland would like to see carbon monoxide alarms become mandatory in *all* privately rented property in Scotland. This could be achieved by an amendment to the Repairing Standard in the Housing (Scotland) Act 2006⁸.

Shelter Scotland's position on the Draft Bill

Part 1: Right to Buy

Shelter Scotland supports the abolition of the Right to Buy (RTB) in order to protect existing social rented housing stock and has long been campaigning for its end. The Scottish Government estimate that removing the Right to Buy would retain 10,000 houses that might otherwise be sold in the period 2015 to 2020.

Given the current pressures on social housing, it is regrettable that the Scottish Government has set a 3 year delay before implementation. The process of legislating to end RTB will bring with it publicity and therefore plenty of opportunity for tenants who wish to purchase to exercise their right. We argue that abolition should take effect immediately from the date of commencement which might be, for example, 6 months or a year after the Bill receives Royal Assent. There is a need to balance the allowing of people to take time to properly consider the option of buying, with the potential for less-than-scrupulous commercial companies having the opportunity to persuade people to “buy before it is too late”.

⁶ Reliable data for deaths from CO poisoning in Scotland is not available since inquests for unexplained deaths are not routinely held, unlike in England where the coroners system investigates all unexplained and sudden deaths.

⁷ Under the The Gas Safety (Installation and Use) Regulations 1998

⁸ Currently, a privately rented property will only meet the Repairing Standard if: it is wind and water tight; the structure and exterior are in a reasonable state of repair; water, gas and electricity and sanitation installations are in a reasonable state of repair; fixtures, fittings and appliances that the landlord provides are in a reasonable state of repair; any furnishings are capable of being used safely for the purpose for which they are designed; and the property has a satisfactory way of detecting fires and for giving warning in the event of a fire or suspected fire.

Part 2: Changes to social housing - allocation and management

This section of the Bill proposes a series of detailed changes to the allocation and management of social housing. These have been consulted on and discussed at the Scottish Government's Affordable Rented Housing Advisory Group (ARHAG) of which Shelter Scotland is a member⁹. The full depth and breadth of this section and all the proposals will be responded to in detail through Shelter Scotland's full written evidence in February 2014.

Shelter Scotland agrees that more needs to be done to ensure that social landlords make best use of the limited supply of existing stock. While some of these proposals are welcome – enhancing tenants' rights and technical amendments to clarify existing legislation, other proposals, especially around eviction processes, have potentially negative consequences as currently drafted. It is important that responses to anti-social behaviour are strong, consistent and *effective*. But we do not want to see detrimental changes to housing law and tenancy rights which are a knee-jerk reaction to either the chronic lack of housing supply or a problematic minority of anti-social tenants.

The proposed changes fall into two categories for Shelter Scotland:

- Proposals which amend current provisions or resolve anomalies in current legislation which Shelter Scotland fully supports. These proposals would help social landlords make best use of their stock and/or given the profile of people accessing social housing and existing legislation, will make a very insubstantial change to current practices, and are therefore positive improvements. Examples include: changes to 'reasonable preference' in allocations, property ownership in allocations, reasons for recovering a SSST and changes to assignation, subletting and joint tenancies.
- Other proposals we would like to see clarified during the parliamentary process to ensure they do not impact unfairly on certain groups. Some, we believe, could have extremely negative unintended consequences and penalise vulnerable tenants. It is absolutely critical that any changes which could mean someone loses their home, because of the action of anyone in or around their home, build in the correct evidence and proof mechanisms and the right to appeal.

⁹ <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/16342/management/ARHAG>

Key concerns:

Increased use of the SSST for antisocial behaviour	
<p>Bill proposal: This proposal would extend the circumstances when a social landlord can allocate or demote a secure tenancy to a short Scottish secure tenancy (SSST) where applicants or tenants have acted anti-socially in or near their home within the past 3 years.</p>	<p>Shelter Scotland position: Shelter Scotland believes that antisocial behaviour which blights communities and causes misery and distress should be tackled quickly and effectively. We are however, concerned about what constitutes ‘anti-social behaviour’ and what evidence would be required to result in someone losing their security of tenure. We need to ensure that there are sufficient checks and balances to make sure this legislation is used appropriately and does not unfairly penalise vulnerable tenants.</p>
Simplified eviction process after criminal conviction	
<p>Bill proposal: This proposal effectively simplifies the eviction process once a tenant has a conviction for an offence punishable by imprisonment, or for using the property for illegal purposes within the previous 12 months. This proposal would mean the court does not have to consider whether it is reasonable to evict: effectively an ‘auto-eviction’ in certain cases.</p>	<p>Shelter Scotland position: Shelter Scotland understands the frustrations that landlords have when they have to go through a lengthy court process for an eviction order, when the tenant has already been convicted of a serious offence. We have concerns about how this could be used to penalise tenants who have sought to change their behaviour since an initial conviction, or who were convicted of a low level offence which did not impact or harm other tenants. We believe this could have unintended consequences which should be examined at stage 1.</p>
Taking age into account when allocating social housing:	
<p>Bill proposal: This proposal seeks to remove the prohibition on taking someone’s age into account when allocating housing.</p>	<p>Shelter Scotland position: This proposal was not in the original consultation and we feel the current allocations framework allows sufficient flexibility for landlords to allocate their homes appropriately and successfully. Therefore we do not see the need for this legislative change. We believe social housing allocations should</p>

	be made based on a framework of need and circumstance, not the characteristics of a household. While not the policy intention behind this, Shelter Scotland is concerned that this changes to allocation rules could be used in a discriminatory way.
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Part 3: Private Rented Housing

Shelter Scotland believes that greater security is the key to ensuring that private tenancies provide stable and secure homes for Scotland’s private renters¹⁰. This is increasingly important as 12% of all households in Scotland now rent privately¹¹, double the number ten years ago, and 26% of of households renting privately in Scotland have children¹². Greater security of tenure would also empower tenants to be active consumers and use their rights effectively. A review group established by the Scottish Government is currently considering possible changes to the tenancy regime in the private rented sector¹³. The group is expected to report in February 2014.

Establishing a Private Rented Sector Tribunal

This provision proposes taking civil housing disputes in the private rented sector – both eviction and non-eviction – out of the sheriff court, and into a dedicated private rented sector tribunal.

Shelter Scotland supports the creation of a private rented sector tribunal.¹⁴ We believe this will improve dispute resolution for private tenants and landlords, making dispute resolution more accessible, cheaper, less time-consuming and less intimidating for all parties. Decision-makers in a tribunal would also have a higher degree of specialisation, potentially giving a higher quality of decision.

Importantly, the tribunal should be free-to-access for vulnerable tenants and those on low incomes. It is also important that free legal advice and representation be made available for these groups through the Scottish Legal Aid Board, exploring the possibility of rolling out lay representation across the tribunal.

¹⁰ See our report, ‘The case for greater security of tenure for private tenants in Scotland’, September 2013, http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/the_case_for_greater_security_for_private_tenants_in_scotland

¹¹ Housing Statistics for Scotland, published 26th August 2013

¹² Scottish Government, ‘Scotland’s People, Annual Report: 2011, Scottish Household Survey’

¹³ As set out in the Scottish Government’s strategy for the private rented sector: ‘A place to stay, a place to call home’ published in May 2013

¹⁴ Shelter Scotland, Consultation response: Better dispute resolution in housing, April 2013 http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/consultation_response_better_dispute_resolution_in_housing

This would ensure that everyone is able to navigate the dispute resolution process effectively. The panel should also be designed to encourage participation by tenants. We believe that a less adversarial approach to housing related disputes would encourage tenants to assert their legal rights.

➤ **Third party reporting to the Private Rented Housing Panel**

The Bill contains a provision for local authorities to make applications to the Private Rented Housing Panel (PRHP) where a landlord has failed to meet the repairing standard.¹⁵

Shelter Scotland supports this proposal; currently the PRHP is not working as an effective mechanism for tenants to force improvements in private properties. However, it must be implemented in such a way as to not create conflict between tenant and landlord which put the tenancy at risk.

The proposal allows local authorities to address poor conditions in private rented housing, without the need for private tenants to take forward applications. Shelter Scotland regularly advises private tenants experiencing problems with poor repair in their homes. Many who are unwilling to apply to the PRHP because they fear it will have a detrimental effect on their relationship with their landlord, putting them at risk of losing their tenancy.

It is important that third party reporting to the PRHP does not in any way lead to a tenant fearing that their tenancy will be ended by their landlord. Tenants should be made fully aware of the implications of a third party application to the PRHP. To guarantee that private tenants' security of tenure is not affected, and to encourage more tenants to pursue their right to repair through the PRHP, the Scottish Government should act to increase security of tenure for private tenants.¹⁶

Part 4: The regulation of letting agents in Scotland

The Bill creates a requirement for letting agents to register as an agent, adhere to a statutory code of practice and sets up a dispute resolution process for landlords, agents and tenants.

Shelter Scotland supports this approach to regulating letting agents. We have long argued for regulation of this industry – alongside landlord and agent representative bodies.¹⁷ Regulation would benefit tenants, landlords and good letting agents. It is

¹⁵ The full repairing standard is contained in s.13 Housing (Scotland) Act 2006

¹⁶ Shelter Scotland, 'The case for greater security of tenure for private tenants in Scotland', September 2013, http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/the_case_for_greater_security_for_private_tenants_in_scotland

¹⁷ Shelter Scotland, 'Regulating Letting Agents in Scotland', 2013, http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/regulating_letting_agents_in_scotland

critical that any regulatory system has sufficient power to force positive changes in practice.

Regulation is important to drive elements of poor practice out of Scotland's lettings industry, including: the charging of unlawful upfront fees to tenants¹⁸, the failure to register tenants' deposits and the failure to carry out important safety checks.

The code of practice must set a high standard for the conduct of lettings professionals, driving poor practice out of the market. It should be clear about what constitutes a failure under the code of practice and, where tenants and landlords believe they have been treated unfairly, it should be clear what action they can take under the code of practice.

The dispute resolution process must be easy to understand and access by both landlords and tenants. The cost should not be prohibitively expensive. Applications from vulnerable tenants or those on low incomes, should be free. This is particularly important where tenants or landlords have experienced a financial loss as a result of the actions of an agent – for example where unlawful pre-tenancy fees have been required.

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¹⁸ Shelter Scotland, 'The charging of Premiums in the private rented sector', 2011, http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/premiums_in_the_private_rented_sector