

Shelter Scotland Coronavirus Emergency Legislation briefing

Shelter Scotland welcomes the Scottish Government's commitment to supporting people to keep their homes during this health emergency. Cabinet Secretary Aileen Campbell has said "We have been clear that nobody should lose their house as a result of measures to cope with this pandemic. There should be no evictions as a result of Covid 19. Our emergency legislation will have provisions to ensure that there can be no evictions from the private rented sector or the social rented sector for six months."

The Coronavirus (Scotland) Bill published (31st March 2020) sets out how the government will seek to achieve this and prevent evictions in the social and rented sector. While the measures in the Bill are welcome, the Bill, as it stands, does not prevent all evictions from happening. Shelter Scotland believes that the Bill could and should be strengthened to achieve that end, as no-one should be without a home at this time.

We are therefore working closely with the Scottish Government and MSPs to make sure that everyone is protected from eviction. We believe the legislation must be strengthened to better safeguard individuals.

Changes we are seeking to protect everyone during this pandemic:

- extend protection from eviction to people whose case is currently in the court system or has already been heard by court, so no one ends up on the streets between now and September
- ban on future evictions for coronavirus debts where tenants are continuing to try and pay their rent either through LHA, furloughed wages or employment once restrictions lifted
- calling for amendment to unsuitable temporary accommodation legislation to ensure no-one stays in unsuitable/unsafe temporary accommodation, with shared bathrooms or kitchens, for more than one night
- powers for local authorities to sequester holiday homes, if councils are unable to reach agreement locally, for their use as temporary accommodation during this pandemic emergency

No recourse to public funds

Shelter Scotland is calling on the Scottish Government to ensure that any restrictions to providing support and accommodation for people with 'no recourse to public funds' are lifted immediately by all Local Authorities.

Guidance, role of courts, tribunals, local authorities and Scottish Housing Regulator

While changing legislation is the foundation of action, it must also be accompanied by other actions, such as ministerial guidance, and the role of the courts and tribunals are key in ensuring that people do not lose their homes. Equally, local authorities, in their role as Landlord Registration authorities, must take a very firm view of the future registration status of landlords who carry out unlawful evictions during this health emergency. The Scottish Housing Regulator also has a role to play in ensuring that all social landlords are fully supporting their tenants to be able to remain in their homes during this emergency period and that Local Authorities are supporting people who are homeless into suitable temporary accommodation with the required support provided.

Until there's a home for everyone
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Appendix: List of amendments Shelter Scotland would support to strengthen the Bill

1. New Notices

From the commencement date (expected to be w/b 7 April) any landlord which wants to bring a tenancy to an end will have to give 6 months' notice to leave tenants, with some exceptions. The exceptions relate to situations of abandonment (where 28 days notice applies) or some other grounds (where 3 months notice applies). We think situations of abandonment should be subject to the 3 month period, to acknowledge those tenants who are temporarily residing with families etc. More generally, we believe that the exceptions to the 6 month principle are drawn more widely than we had anticipated and query, for example, whether alignment with landlord registration and HMO licensing or evicting to replace a tenant with a family member should be as high a priority.

2. Existing actions

Actions which have already begun and issued notices will not be affected by the new longer notice period. However, there will be some protection from immediate action by the fact that neither Sheriff Court nor Housing and Property Tribunal are hearing eviction cases until at least the end of May. Further, the Scottish Government proposes changing grounds within private tenancies from mandatory to discretionary. This allows the Tribunal to come to a view on whether there is good reason for arrears having accrued. This is a welcome change but needs to acknowledge a significant asymmetry in both Sheriff Court and Tribunal proceedings where landlords are much more likely to be represented. To account for this we proposed that the exercise of discretion in Schedule 1 is framed as follows:

1) Insert Article 1(j) and re-letter remainder of existing paragraphs

Para 1 (j) in paragraph 12 (rent arrears), in sub-paragraph (4) after the words "failure in the payment of a relevant benefit" insert: "or as a result of the impact of coronavirus"

(k) in paragraph 12 (rent arrears), after sub-paragraph (4) insert: (4A) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to have particular regard to any government guidance issued in relation to Covid-19

2) Insert Article 3(2)(d)

"at end of 4A after the words Universal Credit insert "and the extent to which any arrears have arisen as a result of the impact of Covid-19".

3) Insert Article 3(2)(e)

(4B) In deciding under subsection 4 whether it is reasonable to issue an eviction order, the Tribunal is to have particular regard to any government guidance issued in relation to Covid-19

4) Insert new Article 7A of Coronavirus Bill-

After Section 16(3)(d) in Housing (Scotland) Act 2001 insert:

"(e) the extent to which the arrears have arisen as a result of the impact of Covid-19 and any government guidance issued"

However, it may be that Parliament should consider going further than simply framing discretion but should consider suspending all or some grounds. Partial suspension could include grounds related to refurbishment, sale or conversion of a property to non-residential use. It would be more far-reaching and more consistent with the policy intention simply to suspend all grounds for the 6 month period

- For the social rented sector this could be done by suspending Section 16(2) of the 2001 Act until 30th September 2020, unless suitable alternative accommodation is available
- For the private rented sector the equivalents would be to suspend section 18 of the Housing (Scotland) Act 1988 until 30th September 2020 unless there are exceptional circumstances/ alternative accommodation has become available; and suspend section 33 Housing (Scotland) Act 1988 until 30th September 2020 unless there are exceptional circumstances/ alternative accommodation has become available; and suspend section 51 of the Private Housing (tenancies)(Scotland) Act 2016 until 30th September 2020 unless there are exceptional circumstances/ alternative accommodation has become available.

3. Exclusions from protection

The Bill, as it stands, still does not prevent all evictions from happening in the next 6 months. Where a landlord has previously obtained an eviction decree or order, even some months ago, there is nothing currently to stop a landlord implementing that decree. Indeed, for the next few weeks any evictions which were to happen would almost certainly fall into that category. We believe that, for social landlords, Scottish Ministers must issue guidance, as they have the power to do under Section 16(5A)(d) to ensure that previously obtained decrees are not implemented during the emergency period. Equally, it should urgently consider ways in which eviction orders granted by the Tribunal, but not yet implemented, can be suspended until 30 September 2020.

The legislation as drafted seeks to cover a range of tenancy types but may not offer the same protection to people in a range of circumstances, such as lodgers, hostel residents or people in tied housing.

4. Other actions

While changing legislation is the foundation of action, it needs to be accompanied by other actions, such as ministerial guidance, as suggested above, and the role of the courts and tribunals in ensuring that people do not lose their homes. Equally, local authorities in their role as Landlord Registration authorities need to take a very firm view of the future registration status of landlords who carry out unlawful evictions.

5. Other issues for the Bill to cover.

While the Bill covers the key issue of evictions it does not offer as full a package of measures on homelessness as might be necessary. We have been developing proposals in three areas:

a) Ending the use of shared temporary accommodation for all homeless people and ending the 7-day exemption

For the period until 30 September 2020, The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 is amended as follows:

1. In Article 3 to delete

but only where the applicant is—

(a)

pregnant;

(b) a person whose household includes a pregnant woman; or

(c) a person whose household includes dependent children.

2. In article 7(2) change “7 days” to “1 day”

b) Strengthening the powers of local authorities to bring holiday accommodation into use
Housing (Scotland) Act 1987

Section 2 Powers of local authority to provide housing accommodation.

Insert new section 1A, 1B and 1C

1A For the period until 30 September 2020 for the purposes of providing accommodation to persons who are homeless or otherwise in emergency need of accommodation a local authority may temporarily take possession of accommodation provided for the purposes of holiday letting, provided that such accommodation meets the standards set out in The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014.

1B Accommodation for holiday letting in section 1A is defined by Regulation 4(4) subject to Regulation 4(5) in the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (SSI 2020, No. 103)

1C In exercising powers under section 1A local authorities must have regard to such provisions as Scottish Ministers may prescribe by order made by statutory instrument, subject a resolution of the Scottish Parliament.

c) Strengthening the powers of local authorities to offer accommodation to people with no recourse to public funds.

Measures to achieve this could include

- Ensuring that all persons approaching social work services for assistance including accommodation, are able to access those services, in a non-discriminatory manner. [There is a legal challenge being taken to the use of NRPF conditions, which we hope SG fully support. More info here <https://dpglaw.co.uk/high-court-to-consider-suspending-nrpf-policy/>]
- Where local authorities have concerns about their ability to provide assistance, including accommodation, as a result of statutory exclusions imposed by Westminster legislation, local authorities can and should exercise their power under Section 20 Local Government (Scotland) Act 2003.