



## **MSP BRIEFING: SHELTER SCOTLAND RESPONSE TO THE COST OF LIVING (PROTECTION OF TENANTS) (SCOTLAND) BILL AT STAGE 1, 4 OCTOBER 2022**

Shelter Scotland exists to defend the right to a safe home and fight the devastating impact the housing emergency has on people and society. We work in communities to understand the problem and change the system. We run national campaigns to fight for home.

### **Key criteria for the draft Bill**

We welcome the emergency measures announced on 6<sup>th</sup> September which will provide short term protections for tenants to support them to keep their homes. However, we stated at the time that we would need to see the detail to ensure that there were no unintended consequences and that the following two criteria are met:

#### **1) The measures should not impact on the delivery of new social homes, given this is the structural solution to the housing emergency to address the need for secure and affordable housing.**

As well as strengthening protections for tenants in the short term to prevent homelessness, we also need to prioritise and address the structural causes of the housing emergency. **The rent freeze measures must therefore be funded to ensure that they do not impact on the delivery of new social homes required to reduce housing need.**

Social landlords have expressed significant concern on the impact that these emergency measures will have on their ability to build new social homes. Additional funding is required to ensure that any social rent revenue lost due to the rent freeze, or the rent cap after the first six months, is reimbursed to ensure social landlords can continue to build the 38,500 social homes required by 2026. Failure to deliver these homes by the end of this parliament will mean affordable housing need will increase.

#### **2) The measures should support tenants to keep their homes**

**The following actions are now required to ensure the legislation meets this criteria:**

- **The exemption to the eviction moratorium which will allow tenants to be evicted if their home is repossessed by a lender should be removed.** If this exemption is included, it will in effect keep tenants at risk of homelessness, contrary to the objectives of the bill. Instead we should be strengthening tenant rights and finding ways to enable tenants to remain in their home. In the event a landlord was in mortgage arrears and has their property repossessed, then these homes should be sold on to social housing providers with the tenant in situ. The national social housing acquisition

plan we have called for could support this process and would ensure that tenants were able to remain in their home with an affordable and secure tenancy<sup>1</sup>.

- **The exemption to the eviction moratorium which will allow tenants to be evicted if their home is sold by the landlord should be removed.** If this legislation is to protect tenants from becoming homeless during this period, we believe this exemption should be removed. Tenants should be allowed to remain in their home when the property is sold, and the landlord should be supported to sell the property to a social housing provider through a national acquisition scheme. This is something which we have called for as part of our Scottish Social Housing Emergency Plan<sup>2</sup>. The tenant will then be offered the opportunity to continue to live in their home as a social tenant.
- **The exemption to the eviction moratorium which allows for eviction of social tenants where there are 'substantial rent arrears' should be amended.** The amount of rent arrears defined as substantial in the Bill should be increased and we believe from the evidence available it should be changed from £2,250 to £8,500. From independent research we know that the average rent arrears for social tenants who were evicted in 2019/20 is £9,687 for Housing Association tenants and £8,786 for Local Authority tenants<sup>3</sup>. We therefore believe this exemption will defeat the point of the bill to protect tenants to remain in their homes. There is also the potential for this £2,250 figure to create a perverse incentive for social sector evictions to be granted for far lower levels of rent arrears than previously. We also have serious concerns for the long-term implications of £2,250 being considered to be 'substantial rent arrears' in the social sector after this emergency legislation ends.

In addition, the independent research commissioned by Shelter Scotland into the cost of social sector evictions shows that it is far more costly to evict a social tenant than it is to support a tenant with rent arrears to remain in their home, while setting up a repayment plan and supporting them to access financial support. The average total cost of evicting a single person with rent arrears of just over £9000 and low support needs into homelessness, with a not unusual 9 month stay in temporary accommodation, is nearly **£24,000**<sup>4</sup>.

- The draft bill states that 'Scottish Ministers may by regulations amend this section to permit the rent payable under a private residential tenancy **to be increased a second time within a 12-month period** in such circumstances as may be specified in the

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<sup>1</sup> Full details of Shelter Scotland's proposed action plan which includes a national social housing acquisition plan can be found at: [Scottish Housing Emergency Action Plan](#)

<sup>2</sup> [Scottish Housing Emergency Action Plan](#)

<sup>3</sup> Shelter Scotland (2021) [Understanding the True Cost of Evictions in Scotland](#)

<sup>4</sup> Shelter Scotland (2021) [Understanding the True Cost of Evictions in Scotland](#)

regulations.' We believe that rents should only be allowed to increase once a year in line with the original private rented tenancy legislation.

### **Additional requirements to ensure the legislation is implemented effectively**

- **Implementation and effective enforcement action is essential**

As the Bill allows for a number of exceptions to the Rent Freeze and the Evictions Moratorium the First Tier Tribunal (FTT) will need to ensure that **all** circumstances are taken into account before a tenant is evicted and that the landlord provides adequate proof that they are in hardship and need to sell or move back in to the property. The concern is that these exemptions could mean tenants will lose their homes and have to apply as homeless, overstressing an already overburdened and underfunded homelessness system.

**The pre-action requirements** must be fully adhered to in both the social and private rented sectors and the FTT must be sure that adequate support and effort have been made to prevent an eviction.

Tenants will be able to challenge a rent increase through Rent Service Scotland and while this is an underused service, we would want to ensure that it is fully resourced to deal with the anticipated increase in cases. In addition tenants must be supported to access it with information on how it will work with these new measures in place.

The Scottish Government must ensure that the First Tier Tribunal is adequately resourced and has the capacity to deal with the additional requirements of this legislation.

**Illegal Evictions** Even when tenants and landlords are aware of their rights and responsibilities, we know that illegal evictions do take place and tenants often feel powerless to act. We welcome the additional illegal eviction measures introduced through the legislation, but the Scottish Government will need to work closely with Police Scotland to ensure that these cases are always treated as a criminal matter, not a civil one. Information on illegal evictions should be included in the rights awareness raising work the Scottish Government is planning and enforcement action should be swift to send a clear message to landlords that such activity will not be tolerated and that tenants have support available to them.

- **A large-scale rights awareness programme is required.**

We welcome additional measures such as the increase to Discretionary Housing Payment funds and the widening of access to the Tenant Grant Fund, but they will **not** be effective without tenants and their landlords being aware of what support is available to tenants during this cost of living crisis. From the limited data available and our own case work we know that private tenants for example were unaware of financial support put in place during the pandemic through the Tenant Grant Fund, and we must learn from this experience.

Shelter Scotland have had multiple queries from concerned tenants who are unsure about when and how the measures will come into force. Clarity is therefore crucial for landlords, advice organisations supporting tenants on their rights, and local authorities in terms of their duties under the homelessness legislation.

A large-scale awareness campaign is required, ensuring PRS tenants as well as social tenants are aware of their rights and the support that is available to ensure as many tenants as possible are supported to prevent homelessness increasing. We suggest the Scottish Government also writes to all private and social tenants to make them aware of this emergency legislation and the resulting changes to their rights, as it did with the emergency legislation changes during the coronavirus pandemic.

If you require further information, please contact: [David\\_Aitchison@shelter.org.uk](mailto:David_Aitchison@shelter.org.uk)

**Further information:**

- [Joint Briefing: Cost of Living \(Protection of Tenants\) \(Scotland\) Bill](#) (published 3/10/22)
- [Shelter Scotland's MSP Briefing: Emergency Measures on Rent and Eviction](#) (published 27/09/22)