

# Consultation response

# Eviction of Tenants in the Social Rented Sector: Protection of Tenants with Rent Arrears

From the Shelter policy library

April 2010

[www.shelter.org.uk](http://www.shelter.org.uk)

© 2010 Shelter. All rights reserved. This document is only for your personal, non-commercial use.  
You may not copy, reproduce, republish, post, distribute, transmit or modify it in any way.

This document contains information and policies that were correct at the time of publication.

# Shelter

## Summary

- Shelter Scotland believes that eviction for rent arrears should be a measure used only as a last resort. Currently 95 per cent of all evictions are for rent arrears and in many cases more could be done to resolve the dispute before it goes to court.
- While eviction as a last resort may happen in some cases, it often costs more to carry out than the tenants' arrears and can compound social and financial hardship for individuals and families<sup>1</sup>.
- The Scottish Government has identified significant variation in eviction policy and practice across Scotland. With around 3,200 evictions for rent arrears in 2008/2009<sup>2</sup> and disparate rates of eviction in different areas, there is no consistency in the interpretation of 'last resort' across all social landlords.
- We have pushed for reforms to eviction policy to give tenants in the social rented sector the same rights and protection as home owners through the introduction of Pre Action Requirements (PARs) in the Home Owner and Debtor Protection (Scotland) Act 2010. We propose similar PARs for social tenants.
- PARs would be a series of steps that landlords would have to take in order for an eviction decree to be granted and would ensure early action has been taken to resolve the conflict in the best interests of the landlord and tenant.
- Shelter Scotland firmly believes that the introduction of Pre-Action Requirements would reduce the number of evictions and potentially reduce local authority expenditure on unnecessary court hearings and eviction proceedings.
- While the introduction of PARs would mean an amendment to the existing Housing (Scotland) Bill, it only seeks to reflect existing good practice and ensure there is a consistent response to potential evictions from all social landlords.
- We welcome the range of options laid out in this consultation and believe they are far from mutually exclusive. We support these reforms as part of a package of modernisation and believe they put emphasis on early intervention and the avoidance of eviction wherever possible.

---

<sup>1</sup> Eviction of children and families: the impact and alternatives (Nov 09):

[http://scotland.shelter.org.uk/data/assets/pdf\\_file/0004/223672/Evictions\\_Nov09\\_Shelter.pdf](http://scotland.shelter.org.uk/data/assets/pdf_file/0004/223672/Evictions_Nov09_Shelter.pdf)

<sup>2</sup> Scottish Government Housing Statistics for Scotland – Evictions (2008/2009)

<http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/Hsfs/Evictions>

## Introduction

Shelter Scotland welcomes the opportunity to respond to the Scottish Government's consultation on protection from eviction for tenants in the social rented sector. We believe that, in many cases, eviction is not the most effective tool for resolving rent disputes and eviction policy is in need of modernisation to reflect the consensus that eviction for rent arrears should be a measure taken only as a last resort.

Over the past two years Shelter Scotland has published a series of reports on the rates and impact of eviction and has argued for revisions to current legislation to ensure social tenants have the same rights as home owners<sup>3</sup>. Research shows that social landlords evict disproportionately more tenants than mortgage lenders for arrears<sup>4</sup> and we feel, wherever possible, social landlords should attempt to keep tenants in their homes. We know that many social landlords agree with and, indeed, act upon this proposition; however there remains significant variation in eviction rates across different local authorities that cannot be explained through local social, economic or demographic context alone and must be attributable at least in part, to eviction policy and management priorities. Some landlords have managed to achieve quite a dramatic reduction in evictions from one year to the next and this cannot be explained by any change in their tenants or tenant behaviour in such a short period. This shows the potential for all social landlords to scrutinise their practices and bring in policies which ensure eviction is truly a last resort. The Scottish Government has recognised this variation across different local authorities and we support this attempt to bring in measures to ensure consistency.

Shelter Scotland firmly believes that the introduction of Pre Action Requirements (PARs) would reduce the number of evictions by establishing a series of steps that landlords would have to take in order for an eviction decree to be granted. This would ensure emphasis is placed on early intervention and prevention of homelessness in the best interests of the landlord and tenant. The proposed introduction of PARs seeks to mirror, as far as possible, provisions set out in the Home Owner and Debtor Protection (Scotland) Act 2010 and ensure equal protection for social tenants and home owners.

Introduction of these requirements would build on existing good practice by progressive social landlords and ensure consistency of approach across Scotland. Shelter Scotland supports the proposed amendments to the current Housing (Scotland) Bill as a vital step towards homelessness prevention.

---

<sup>3</sup> Evictions by social landlords in Scotland 2008-09 (Dec 09):  
[http://scotland.shelter.org.uk/\\_data/assets/pdf\\_file/0006/235149/Evictions\\_by\\_social\\_landlords\\_in\\_Scotland\\_2008-09.pdf](http://scotland.shelter.org.uk/_data/assets/pdf_file/0006/235149/Evictions_by_social_landlords_in_Scotland_2008-09.pdf)

<sup>4</sup> Evictions by social landlords in Scotland (Dec 08)  
[http://scotland.shelter.org.uk/\\_data/assets/pdf\\_file/0003/152517/Evictions\\_2007-2008.pdf](http://scotland.shelter.org.uk/_data/assets/pdf_file/0003/152517/Evictions_2007-2008.pdf)

The Scottish Government has identified 5 options:

1. Identifying and sharing good practice
2. Including an outcome on sustaining tenancies in the Social Housing Charter
3. Pre-action protocol
4. Pre-action requirement
5. Allowing tenants to retain the existing tenancy

We welcome the range of options laid out in this consultation and believe they are not all mutually exclusive. In addition to the introduction of statutory Pre Action Requirements (Option 4) we support the implementation of options 1, 2 and 5 as a package of modernisation practices. Option 3 however would represent a voluntary approach to reforming policy which we believe has a natural threshold and so we recommend adoption of the Pre Action Requirements as a strengthened version of a pre-action protocol.

## Responses to questions

### **Question 1: Do you think that there is a need to do more to reduce the number of tenants evicted in the social rented sector for rent arrears?**

Shelter Scotland research shows that eviction action is still a very common way for social landlords to deal with rent arrears, constituting 95 per cent of all eviction actions<sup>5</sup>. We believe that eviction can be an ineffective tool for dealing with debt and is rarely the most constructive option for either landlord or tenant. Furthermore there is evidence to show that the cost of eviction and subsequent homelessness assistance and costs can be significantly more than the arrears they aim to recover. In 2008/09, Stirling Council processed 23 evictions for housing rent arrears of almost £33,000.00. Taking into account the cost of the eviction process and the subsequent associated costs relating to the void properties and re-housing of the evicted tenants, the Council incurred costs of £117,000.00<sup>6</sup>. This example shows how costly eviction actions are to local authorities and we believe more must be done to limit evictions and take a more preventative approach to dispute resolution.

---

<sup>5</sup> 2008/09 figures show rent arrears as the reason for 93% of RSL evictions. Scottish Government figures show 2.7% of local authority evictions are for anti-social behaviour so it can be concluded that the remaining 97% are for arrears. This means 95% of evictions in the social rented sector are for rent arrears. <http://www.scotland.gov.uk/Publications/2010/03/29163921/0>

<sup>6</sup> <http://minutes.stirling.gov.uk/pdfs/servicedp/Reports/SD20090827CallInItem08ManagingRentArrearsWithoutEvictions.pdf>

**Question 2: Do you think that identifying and sharing good practice on preventing rent arrears would help to reduce the number of tenant evictions?**

**Question 3: How can we encourage landlords to adopt good practices in sustaining tenancies?**

**Question 4: What examples of good practice in preventing rent arrears do you think should be shared with other social housing providers?**

**Question 5: How best do you think the sharing can be done?**

**Response to Qs 2, 3, 4 and 5:**

Shelter Scotland believes that the introduction of statutory PARs would simply be cementing existing good practice to ensure that in cases of rent arrears a standard set of guidelines are followed so that eviction is a genuine last resort.

There are some notable best practice examples of progressive social landlords successfully reforming their policies and practice:

- Stirling Council took the decision in June 2009 to ban evictions and subsequently took steps to implement a policy of early intervention in cases of rent arrears. It has done this through more face-to-face engagement with tenants before and during tenancy and working with tenants to find alternative payment methods to avoid eviction.
- Glasgow Housing Association (GHA) has totally revised its policy and procedures for collecting rent and managing arrears resulting in a 24 per cent drop in evictions 2008-09. This has been achieved through more pre-tenancy support and use of a wide range of payment options<sup>7</sup>.

In both examples a comprehensive review of existing practice revealed that significant improvements could be made by these two social landlords to reduce evictions. Early analysis from GHA has shown that changing policy and fewer evictions has not had a negative impact on arrears; quite the opposite in fact. GHA has seen arrears fall at the same time as the number of evictions has fallen. These best practice examples represent significant changes in culture across the organisations with an emphasis on prevention rather than sanctions.

By highlighting where evictions have been reduced without increased arrears, Shelter Scotland hopes that other social landlords will be encouraged to identify where

---

<sup>7</sup> More information about these examples can be found in the following report: Evictions by social landlords in Scotland 2008-09 (Dec 09)  
[http://scotland.shelter.org.uk/data/assets/pdf\\_file/0006/235149/Evictions\\_by\\_social\\_landlords\\_in\\_Scotland\\_2008-09.pdf](http://scotland.shelter.org.uk/data/assets/pdf_file/0006/235149/Evictions_by_social_landlords_in_Scotland_2008-09.pdf)

improvements can be made in their own practices. With the 2012 homelessness commitment deadline drawing nearer, sustaining tenancies where possible must be a priority. Evicting tenants for rent arrears only to house them again under homelessness legislation is disruptive, inefficient and expensive. Both these cases represent good practice examples for other social landlords seeking to reform their policies and reduce evictions. These and other examples of good practice are being identified by a number of bodies and should be collated centrally. Greater scrutiny by the Scottish Housing Regulator and proactive dissemination of best practice through the Scottish Government and organisations such as Shelter Scotland, CoSLA, the SFHA and CIH should be supported.

**Question 6: Do you think that including in the Social Housing Charter an outcome on landlords' effectiveness in helping tenants maintain their tenancies would help to reduce the number of tenants evicted for rent arrears?**

Including a set of outcomes that social landlords should be achieving for their tenants in a Social Housing Charter (SHC) would be a useful strategic emphasis of the provisions set out in the PARs. Scrutiny and reporting on these outcomes by the Scottish Housing Regulator would be a good way to map progress and identify good practice. However, the SHC is at least 2 years away and too little is known about the new regulatory regime for us to be confident about this alone driving policy forward.

**Question 7: Do you think that a pre-action protocol would help to protect tenants from eviction?**

A pre-action protocol would essentially represent a voluntary approach to instilling good practice which would not increase consistency. Despite the introduction of a pre-action protocol for the protection of homeowners in mortgage arrears in England in 2008, a Shelter study in 2009 found that in a third of cases taken to court this protocol had not been followed and in the majority of cases, there were no sanctions for non-compliance<sup>8</sup>. Because of this disparate adoption of practice, Shelter Scotland firmly supports the introduction of statutory Pre Action Requirements (Option 4) rather than a protocol.

**Question 8: Are there any unintended consequences in pursuing this option?**

The introduction of a pre-action protocol would not ensure statutory protection for all tenants. The consequence of bringing in a set of guidelines to try and avoid eviction where adherence is voluntary would be that application would be inconsistent. Progressive landlords who are committed to best practice would likely engage best, whereas landlords whose practices are concerning are likely to fall further behind if there is no statutory obligation to comply. The introduction of a pre-action protocol would be

---

<sup>8</sup> Turning the tide (Dec 2009)

[http://england.shelter.org.uk/data/assets/pdf\\_file/0020/236342/Turning\\_the\\_tide\\_FINAL.pdf](http://england.shelter.org.uk/data/assets/pdf_file/0020/236342/Turning_the_tide_FINAL.pdf)

insufficient as a means to ensure tenant protection and would amplify the inconsistency of approach.

**Question 9: Do you think that a pre-action requirement would help to protect tenants from eviction?**

Shelter Scotland firmly supports the introduction of primary legislation in the form of Pre Action Requirements (PARs) to ensure social landlords take an agreed set of measures before they are able to take a tenant to court. This would offer tenants in the social sector the same protection given to home owners in the Home Owner and Debtor Protection Act (Scotland) Act and eliminate poor practice and unnecessary court action.

Introducing PARs would place emphasis on resolving the payment of arrears and making sure tenants have been offered information, guidance and support on managing arrears. In many cases this would remove the need for eviction and with fewer cases going to court, more time would be available to resolve the complex cases that do warrant legal intervention. While some social landlords have robust processes in place to try and avoid eviction, we believe the volume and variation in eviction rates across Scotland means there is a need for a process which would ensure 'last resort' means the same in all cases.

**Question 10: Are there any unintended consequences in pursuing this option?**

Shelter Scotland does not foresee any negative unintended consequences of this option.

**Question 11: What do you think should be included in a pre-action protocol or pre-action requirement for social landlords?**

Shelter Scotland believes that the Pre Action Requirements should establish a set of broad principles in the Housing (Scotland) Bill that would be followed up in secondary legislation giving detailed guidance to social landlords and regulatory bodies. The landlord would need to demonstrate that each step had been taken before legal action could begin.

The aim of introducing PARs would be to create a clear set of guidelines to be followed by all social landlords to simplify the process and ensure consistent communication between landlord and tenant.

In primary legislation the requirement could include the following steps:

- Provide plain English information to the tenant of the outstanding debt. This should include the amount due, the timescale of when payment was missed and the next steps and potential consequences if payment is not received.

- Discuss payment options with the tenant and make efforts to agree a repayment plan suitable to both landlord and tenant.
- Take steps to ensure the tenant's eligibility for financial assistance is checked and where necessary, access to support is secured.
- No action to repossess should be taken if the tenant is complying (in part or in full) with a repayment plan or where financial assistance (i.e. housing benefit) is pending
- Provide information to the tenant about sources of advice, support and counselling for managing debt and help the tenant access those services if required.
- If the landlord is not a local authority, put the tenant in touch with the local authority where tenancy is located.

It is important to establish a firm timescale for the enactment of the PARs and we believe this should mirror the Home Owner and Debtor Protection (Scotland) Act 2010 with this process beginning when the landlord applies for a court warrant for eviction. Secondary legislation would then provide additional detail and information on financial assistance, information providers and timescales. The introduction of PARs would be a pre-court process and would be complementary to the "reasonableness" text as applied in court. What it seeks to avoid is unnecessary court action where a solution could be reached through enhanced dialogue between landlord and tenant.

**Question 12: Should landlords be able to retain tenants in their existing tenancy?**

Current legislation means that landlords are likely to want to see action through to ejection once a case has been heard, even if a payment solution has been reached. If the landlord wishes to maintain tenancy, arrears up to that point must be converted to former tenants' arrears which are in turn harder to recover. This disincentive to maintain the tenancy may result in unnecessary evictions; therefore Shelter Scotland is in support of an amendment to section 16(5) of the Housing (Scotland) Act 2001 giving landlords the power to maintain the existing tenancy even after decree has been granted. This amendment would allow for continuation of an existing tenancy, post-decree, where a solution has been reached between tenant and landlord.

**Question 13: Are there unintended consequences in pursuing this option?**

Shelter Scotland does not foresee any negative unintended consequences of this amendment which would provide the option of maintaining the tenancy if an agreement

has been reached between tenant and landlord. The option of eviction would remain a last resort sanction against tenants would do not take reasonable steps to repay arrears.

**Question 14: Is there anything else that we could do to make sure that the eviction of tenants for rent arrears is a last resort?**

Introduction of Pre Action Requirements and the amendments to maintain an existing tenancy (Options 4 and 5) would help to ensure eviction of tenants for rent arrears is only used as a last resort. We believe these statutory amendments are in the best interests of both tenants and landlords and would reduce the number of evictions.

All social landlords should conduct a full review of their policy and practice on evictions and rent arrears management; any reforms should focus on early identification of problems and a culture of increased communication.

**Question 15: Are there issues around evictions for particular groups, for example, around age, disability, gender, race or religion?**

Particular households may experience difficulties paying rent because of factors relating to their age, disability, gender, race or religion although there is insufficient data to draw detailed conclusions on this. Provisions should be made in the PARs to ensure any additional support needs are identified early in the process and services and support can be adapted accordingly. In addition, we believe that PARs should be structured and written in a clear and simple way to ensure tenants have a full understanding of the PAR and eviction process and possible implications. This would be advantageous to tenants whose first language is not English or who have mental health difficulties.

**Question 16: What comments do you have on our Partial Regulatory Impact Assessment, specifically on any other costs or additional burdens associated with the options set out in this consultation document?**

The proposed introduction of PARs and the amendment to section 16(5) both aim to reduce court actions and unnecessary evictions. PARs would codify existing best practice and offer additional guidance on procedure and we do not foresee negative cost implications for landlords while the reduction of court actions may result in a cost saving.

For further information contact Fiona King on 0344 515 2456 or [fiona\\_king@shelter.org.uk](mailto:fiona_king@shelter.org.uk)