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The Housing (Scotland) Bill

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The Housing (Scotland) Bill deals with rented, particularly private rented, accommodation and homelessness prevention. This briefing provides context and background to the development of the Bill and an overview of the Bill's provisions.



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Contents

Summary	4
Housing background to development of the proposals - overview	7
Private Rented Housing - Context, legislation and policy development	8
Rents levels in private rented housing	9
Rent control debate	11
Homelessness legislation and policy- background	12
The Bill - overview	14
Rent control areas	15
Rent control area (RCA) - process for designation	16
Effect of a rent control area	16
Information about private rented homes	17
Rent control areas proposals - issues arising	18
Rent increases - capping of rent increases on referral or appeal	20
Frequency of rent increases	22
Private and social housing tenancy evictions - duties to consider delay	23
Damages for unlawful evictions	25
Keeping a pet	27
Private residential tenancies	27
Scottish secure tenancies	28
Making changes to let property	29
Ending joint private residential tenancies	31
Unclaimed tenancy deposits	33
Other private rented housing matters - Letting agent registration	35
Other private rented housing matters - converting older tenancies.	36
Homelessness prevention - Scottish Government consultation and overview of the Bill	37
Homelessness prevention- 'Ask and Act' duty	38
Homelessness prevention - acting sooner to prevent homelessness	41
Homelessness - reasonable steps	43
Assessment of housing support services	44
Homelessness prevention - possible issues arising at Stage 1	45
Domestic abuse - background	46
Domestic abuse - the Bill's proposals	48
Other matters - fuel poverty	50
Other matters - mobile homes	51

Other matters - disclosure of information to the New Homes Ombudsman (NHO)	52
Bibliography	53

Summary

The Housing (Scotland) Bill is a Scottish Government Bill introduced in the Parliament on 26 March 2024.¹

The Bill deals mainly with rented, particularly private rented, accommodation and homelessness prevention.

The Scottish Government states that the package of reforms, "will help ensure people have a safe, secure, and affordable place to live while contributing to the ambition to end homelessness in Scotland."

Part 1 relates to rent paid by private tenants. It includes:

- duties on local authorities to assess rent conditions in their area, at least once every five years.
- powers for Scottish Ministers to designate rent control areas. In rent control areas, rent increases would be restricted for existing and new tenancies with some exceptions made for new to market properties.
- limits on how often rent can increase during a tenancy both in and outside of rent control areas.
- powers for local authorities to gather information on rents and other information about properties on the private landlord register.

Part 2 of the Bill deals with evictions. It places a duty on the First-tier Tribunal for Scotland and the courts to consider whether to delay when an eviction can be carried out. It also changes how damages for unlawful eviction are calculated.

Part 3 introduces new rights:

- for private and social housing tenants to request to keep a pet
- for private housing tenants to make changes to the property they are renting.

Part 4 makes changes to other matters affecting tenants, including:

- allowing unclaimed tenancy deposits to be used to provide support to private tenants across Scotland
- changing how a joint private residential tenancy can be ended by allowing a single joint tenant to end a joint tenancy after giving notice to the other tenant(s)
- giving Scottish Ministers the power to convert assured tenancies into private residential tenancies.

Part 5 of the Bill relates to homelessness prevention. Proposed changes include:

- placing duties on relevant bodies, such as health boards or the police, to ask if an individual is homeless or at risk of homelessness, and requires them to take action if they are - the aim being to make homelessness prevention a shared responsibility

across the public sector

- requiring local authorities act sooner to prevent homelessness by providing support to households threatened with homelessness up to 6 months before homelessness appears imminent rather than the current 2 months
- making social landlords put in place support for tenants if they are overdue on rent due to domestic abuse
- requiring social landlords to have a policy which sets out how they will support tenants who are at risk of homelessness due to domestic abuse.

Part 6 deals with other housing matters including:

- changing the way mobile home pitch fees are presumed to be calculated so increases follow the Consumer Prices Index (CPI) rather than the Retail Prices Index (RPI)
- changing the reporting and consultation requirements in the Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019 and removing some limits on the operating costs of the Scottish Fuel Poverty Advisory Panel
- allowing the Scottish Public Services Ombudsman (who investigates, reports on and helps settle complaints) to share information with the New Homes Ombudsman for the UK.

Potential areas of debate at Stage 1 proceedings

One of the main areas of debate will likely be rent control areas. The commitment to introduce a framework for national rent controls was contained in the [Bute House Agreement](#).

Rent control has been a contentious issue. Some argue that it is necessary to protect tenants from increasingly unaffordable rent increases. However, many private landlords have argued that rent controls can act as a disincentive for landlords to invest in private rented homes, which can reduce supply. The Scottish Government argues that the proposals in the Bill balance the needs of both renters and landlords.

The Bill provides a framework for rent control. There is still detail to be decided in secondary legislation, such as the method by which rent increases would be restricted; exemptions; and circumstances in which rents could increase above any limits. With the timescales proposed it would likely be at least mid-2027 before any rent control area could be introduced. Given the designation process, it's not possible to say yet whether any rent control areas would ever be introduced.

The framework for homelessness prevention set out in the Bill stems from work undertaken by the Prevention Review Group. The group considered the lack of clarity about how the statutory homelessness framework interacts with non-statutory prevention-focused activity.

There has been much support around the need for better inter-agency working to prevent homelessness at an earlier stage, particularly in light of the increasing number of homeless people living in temporary accommodation.

Again, the Bill provides a framework for legislative change and there are further details to

be developed, for example, what specific duties might mean in practice. If the Bill is passed the Scottish Government will work with stakeholders to develop the implementation timeline for the new duties. There will be further work needed, for example in terms of culture change and staff training, to ensure its successful implementation of the proposals. Local authorities have highlighted the particular impacts on local authority homelessness services and resourcing implications.

Housing background to development of the proposals - overview

The Scottish Government's housing policy document [Housing to 2040](#), published in April 2021, outlines its broad housing aims and policies. It set out its visions for the rented sector, including that:

“ We will take action so that the rented sector offers a range of high-quality homes that are affordable for those who choose to live in it. That means a private rented sector which offers affordable options for most people, allowing them to benefit from the flexibility the sector offers. It means a sector which is attractive to investors which, alongside increasing the choice of privately rented homes, can support jobs and create positive social and economic outcomes beyond only private gain.”

Scottish Government, 2021²

The Scottish Government committed to work with stakeholders to develop a new rented sector strategy. In December 2021, the Scottish Government consulted on a [A New Deal for Tenants: Draft Rented Sector Strategy](#),³ seeking views on a number of proposals for changes to improve the way the rented sectors in Scotland work. An [analysis of consultation responses](#) was published in August 2022.⁴ The strategy has not been published yet.

Some of the outcomes the Scottish Government proposed to achieve in the rented sector strategy require changes to legislation. Therefore, the Scottish Government committed to introduce a new housing bill to implement these changes.

A more detailed [landlord and tenant engagement questionnaire](#) on rented sector reform was issued in late 2023,⁵ followed by an analysis of consultation responses.⁶

The homelessness provisions build on the work of the [Prevention Review Group](#) which is discussed in more detail in the section [Homelessness legislation and policy - background](#).

Further detail on the consultation and other engagement the Scottish Government undertook to develop the proposals are set out in the Policy Memorandum.

Private Rented Housing - Context, legislation and policy development

This section provides an overview of private rented housing to provide context for the Bill's proposed measures.

Around 340,000 households in Scotland (around 14% of all households) live in private rented accommodation. [Private rented housing is concentrated in urban areas, particularly the main cities](#). Although there are relatively few private rented homes in rural areas, it can be an important tenure to help sustain local communities and provide homes for workers in remote areas.

Legislation and policy development

Since the early 2000s there has been a series of changes made to private rented sector policy and legislation.⁷ Changes include the introduction of private landlord registration, tenancy deposit schemes and the introduction of the [First-tier Tribunal \(Housing and Property Chamber\)](#) ('the Tribunal') to deal with civil disputes between tenants and landlords.

A key policy aim has been to improve standards and provide greater protections for tenants. One of the main ongoing debates in framing policy and legislation has been the need to balance the rights of tenants and landlords.

One of the recent changes in legislation was made by the [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#) ('the 2016 Act'). This introduced a new private residential tenancy (PRT) for all new tenancies from 1 December 2017, superseding the previous assured tenancy framework contained in the Housing (Scotland) Act 1988 (short assured tenancies created under the Act were most commonly in place before the PRT). The Bill's proposals regarding private tenancies mostly relate to changes to PRTs.

One of the key features of a PRT is that it is open ended and cannot be ended by the landlord at the end of a fixed term. To end a PRT, the landlord has to use one of the specified eviction grounds in the 2016 Act.

The PRT introduced new rules on rent with the aim of providing tenants with protection against excessive rent increases and providing rent predictability:

- **rents can only be increased by the landlord once every 12 months by giving the tenant three months' notice**
- **if a tenant thinks their rent increase is too high they can apply to a rent officer at Rent Service Scotland (RSS) for an adjudication.** If the rent officer considers that the proposed rent increase is above the open market rent for the property, they can specify what the maximum level of rent increase should be. If a tenant or landlord does not agree with the RSS decision they can appeal to the Tribunal
- **local authorities have powers to apply to the Scottish Government to have a rent pressure zone (RPZ) declared in their area.** Within an RPZ, annual rent increases for existing tenants with a PRT would be capped at no more than Consumer Price Inflation (CPI) plus 1%. No local authority has made an application to the

Scottish Government for a RPZ. The PRZ provisions in the 2016 Act have been criticised for several reasons including that the application process is onerous and there is a lack of existing data that could support an application.^{8 9}

Further legislative change was introduced through two pieces of emergency legislation.

The [Coronavirus \(Scotland\) Act 2020](#) sought to [protect renters from eviction during the coronavirus pandemic](#).

In 2022, the [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022](#) ('the 2022 Act') introduced a cap on rent increases for existing tenants and a delay on the enforcement of some evictions with the aim of protecting tenants during the cost of living crisis (see the [SPICe briefing on the Act for further detail](#)).¹⁰

The provisions of the 2022 Act ended on 31 March 2024. As a transition measure out of the rent cap, from 1 April 2024 changes to the rent adjudication process will apply for one year. There is no limit on the rent that a landlord can specify in the rent increase notice. However, if the tenant applies for adjudication then a rent officer/Tribunal may limit the rent that can be charged. [Further details are available in a SPICe blog](#).¹¹

In terms of the impact of legislative change, there is some research identifying that although the rights of renters may have improved there is still more to be done to support low-income households in particular. For example, the Nationwide Foundation has commissioned research which identified that "improving the rights and experiences of private renters is complex and requires addressing challenges that sit beyond the confines of private renting policy. These challenges include the enforcement and justice system, the benefit system, and social housing supply."¹²

Some landlords are concerned about an 'anti-landlord' attitude in the government and there is a perception that over-regulation, continuing regulatory change (including changes made by the UK Government to the tax regime for private landlords), and uncertainty are causing private landlords to leave the market with investor confidence in the build to rent market stalling.^{13 14}

Whether the number of private landlords or rented homes is declining is difficult to quantify in Scotland. The Scottish Government has previously cited data from the private landlord register which shows that the number of registered properties has not changed substantially. However, it recognises that as private landlord registrations last 3 years there could be a time lag in the data showing any changes.¹⁵

Rents levels in private rented housing

There are different sources of rent data available, including statistics from [Scottish Government](#) and letting agents such as [Citylets](#), [Homlet](#) and [Zoopla](#) (but not all landlords will use a letting agent to let their homes).

The existing data on private rents has some limitations. In particular, the statistics are largely based on advertised rents and there is a lack of statistics on rent levels for **existing tenancies**. There is also a lack of comprehensive statistics on **private rent levels at council area level and below**.

The Scottish Government publishes annual data on private rents in Scotland. This data is

sourced from the Rent Service Scotland market evidence database, which is collected for the purposes of determining Local Housing Allowance (LHA) levels (this is the maximum level of benefit support for housing costs private tenants can receive). The rental information contained in the market evidence database is largely based on advertised rents, so it does not represent rent increases for existing tenants. The data is based on 18 Broad market rental areas (BRMAs) in Scotland.

The [latest Scottish Government data](#) shows that average rents for two bedroom properties increased by around 14% between 2022 and 2023, compared to a Consumer Price Index (CPI) rise of 9%.

The average rent for a two-bed home in Scotland at September 2023 was around £840 a month. There are wide geographical variations with the highest rents in Lothian at almost £1,200 a month and lowest in Dumfries and Galloway at nearer £490 a month.¹⁶

Longer term trends (2010 to 2023) show particularly large increases in some parts of the country, with particular pressures in Greater Glasgow and the Lothian areas. Greater Glasgow and Lothian have seen the highest cumulative increase in private rents for two bedroom properties, with average rents rising by 86 % and 79% respectively, compared to the cumulative increase of 46% CPI over the same period. In some areas, cumulative increases have been below CPI inflation and have ranged from 11.8% in Dumfries and Galloway to 43.8% in Argyll and Bute.¹⁶

City lets data shows 11% annual increase in rents in Q1 2024, rents steadied in Edinburgh with a 6% annual increase in rents in 2023-24.¹⁷

ONS data (drawn from the same sources as Scottish Government data but using a different methodology) shows that average rents increased by 10% in the 12 months to April 2024 (to £952 a month).

Regarding increases in rents, some [landlords have pointed to their increasing costs](#), such as insurance, repairs and maintenance, increasing interest rates on buy-to-let loans.

The affordability of private rented housing for lower income households in particular has been highlighted in various publications.^{18 19}

For example, research conducted for Chartered Institute of Housing Scotland (CIH Scotland), Fife Council and the UK Centre for Collaborative Housing Evidence highlighted the impact of the local housing allowance levels (the maximum amount of benefit that tenants can receive to cover their rent) on affordability.²⁰ The research also argued that rent increase cap in the Scottish legislation has led to a "two-tier" pricing system with winners and losers:

“ Despite deficits in the robustness of the data, it is clear that rents are rising. According to official data, in the minority of cases these rises are above CPI, in the majority, they are not. Overall, it is concerning that the data currently being relied upon to inform policy decisions is heavily skewed towards advertised rents, which are increasing in response to inflation, but also, perversely, in response to recent and proposed legislation including those designed to restrict rent increases. As a direct result of the rent cap, the PRS now has a distinct two-tier pricing system with clear winners and losers. The implications are broad, but in the short-term, many tenants are trapped in tenancies with existing rents, which are far lower than advertised rents. This short-term affordability dividend is offset by greatly reduced opportunities for mobility. On the other hand, for those seeking to enter the PRS, the challenge is significant. Not only do they face high rents and high levels of competition, but high rents also mean high deposits. Unfortunately, sector entry is likely to be particularly difficult for those relocating from social housing or those seeking to use the PRS as a gateway out of homelessness.”

Source: Chartered Institute of Housing Scotland, Fife Council, UK Centre for Collaborative Housing Evidence, 2023²⁰

Rent control debate

There's been much debate about rent controls, particularly in light of the temporary rent cap and the Scottish Government's plans to introduce a framework for longer term rent controls. The issue of rent control was also raised in a previous Member's bill, the [Fair Rents \(Scotland\) Bill](#), introduced in the parliament in 2021 (this bill fell before the end of the parliamentary session).

Debate on this topic often focuses on the experience of countries which already impose some form of rent control. This briefing does not seek to cover practice in other countries in any detail or go into the detail of rent control arguments (other sources do this).^{21 22 23 24}

A key point when considering practice in other areas is that rent control can take different forms and that there is a need to consider the legislative and social context in which rent controls exist. Furthermore, it has been argued that "the detail and mechanism design can fundamentally affect the ultimate impact of the policy not only on tenants and rental affordability but on the size and shape of the sector."²⁵

In general, those supporting some form of rent control argue that it results in a positive outcome for tenants, helping to rebalance an unequal relationship with landlords.

On the other hand, arguments against rent controls include that it can discourage investment in private rented housing and have unintended consequences, such as pushing up rents as landlords exit the market or increasing prices before rent controls take effect. It may also reduce mobility amongst tenants. For some landlords, it's not rent control itself that is the issue but a lack of certainty about future government policy that can affect investment decisions.²⁶

In addition, an overall argument is that a range of measures are needed to increase the supply of affordable homes.

Homelessness legislation and policy-background

Local authorities currently have legal duties to support people who apply to them as homeless under the Housing (Scotland) Act 1987. These duties have been amended several times to strengthen the rights of homeless people, most notably by legislation in 2003.

Local authority homelessness duties are focused on providing support to people who are homeless or threatened with homelessness, i.e. could become homeless within two months. There are fewer statutory provisions relating to homelessness prevention.

Policy, however, has focused on homelessness prevention with the housing options approach developing from around 2010. This approach seeks to look at an individual's options and choices in the widest sense, featuring early intervention and exploring all tenure options.

Examples of housing options and prevention work could include family mediation, domestic abuse victim support, enhanced housing advice, outreach targeted at vulnerable groups, schemes to help access private rented accommodation, and tenancy sustainment work. A key aspect of this is the need for relevant agencies and services (such as housing, mental health, criminal justice services, health services, children's and social care services) to work together.

Although good practice has evolved there are concerns that effective homelessness prevention practice is not widespread. In 2014, the [Scottish Housing Regulator](#) identified tensions between the statutory homelessness framework and non-statutory housing options framework.

In September 2017, the then First Minister, Nicola Sturgeon MSP, set out a new commitment to eradicate rough sleeping, transform the use of temporary accommodation in Scotland, and end homelessness. The Homelessness and Rough Sleeping Action Group (HARSAG) was established to make recommendations on how these changes could be achieved.

In November 2018, the Scottish Government and COSLA responded to HARSAG's recommendations with the [Ending Homelessness Together action plan \(updated in October 2020\)](#), which sets out the actions they will take in partnership with others.

A key action was to develop wide-reaching prevention duties. The Scottish Government asked homelessness charity Crisis to convene the Prevention Review Group (PRG), chaired by Professor Suzanne Fitzpatrick, to develop recommendations for legal duties on Scottish local authorities and wider public bodies to prevent homelessness, and how these might be best implemented.

The recommendations in the [final report of the Prevention Review Group were published in early 2021](#).²⁷ The Group was supported by the [Prevention Commission](#), a group of people with lived and frontline experience of homelessness, who met regularly during the lifetime of the PRG to discuss and shape the proposals.

The PRG's final report set out its overall principles of change ²⁷ :

- responsibility to prevent homelessness should be a shared public responsibility, and not rely solely or primarily on the homelessness service
- intervention to prevent homelessness should start as early as possible - in many cases this should be before issues have escalated to a point where homelessness appears imminent
- people facing homelessness should have choice in where they live and access to the same range of housing outcomes as members of the general public, with appropriate protections to mitigate further risk of homelessness.

This work has taken place within the context of rising numbers of homeless people and increasing numbers of people living in temporary accommodation. The [Scottish Housing Regulator](#) has found that not all councils always met their statutory duties to provide temporary accommodation. Advice agencies sometimes find examples of 'gatekeeping', i.e. people who are homeless are told by councils to try other housing alternatives before applying as homeless. ²⁸

In December 2023, the [Scottish Housing Regulator updated its findings on homelessness](#) and concluded that there is "systemic failure in the services provided to people who are homeless by some councils and that there is a heightened risk in other councils. "

Increasing numbers of people who are homeless or living in temporary accommodation is one of the reasons why some councils, and the Scottish Government, have [declared a 'housing emergency'](#).

The Bill - overview

The Bill has seven main parts:

- Part 1 makes provision about rent, including the designation of rent control areas.
- Part 2 makes provision about dealing with evictions, including duties to consider delaying evictions and the amount of damages for unlawful evictions.
- Part 3 makes provision about residential tenants keeping pets and making changes to let property.
- Part 4 makes provision about other matters relating to tenants, including unclaimed tenancy deposits, registration of letting agents, ending joint tenancies, delivery of notices and converting assured tenancies into private residential tenancies.
- Part 5 makes provision about homelessness prevention, including duties of relevant bodies, assessment of housing support services and tenants affected by domestic abuse.
- Part 6 makes provision about other housing matters, including mobile homes, fuel poverty and disclosure of information to the New Homes Ombudsman.
- Part 7 makes provision about commencement and other ancillary matters.

The Policy Memorandum to the Bill outlines the Scottish Government's objectives as follows:

“ The Bill is ambitious in responding to the need to improve the housing outcomes in Scotland for people who live mainly in rented accommodation or face homelessness. At the same time, it continues to safeguard the proportionate use of a landlord's property for rental purposes, seeking to deliver a fair balance between protection for tenants and the rights of landlords. The Bill contains a package of reforms which will help ensure people have a safe, secure, and affordable place to live. It also helps to deliver the Scottish Government's 'New Deal for Tenants' and some aspects of 'Housing to 2040', while contributing to the ambition to end homelessness in Scotland. ”

Source: Scottish Government, 2024²⁹

Full information on the Bill can be found in the following documents:

- [Housing \(Scotland\) Bill – as introduced](#) ¹
- [Housing \(Scotland\) Bill – Policy Memorandum](#) ²⁹
- [Housing \(Scotland\) Bill – Explanatory Notes](#) ³⁰

The remainder of the briefing considers the Bill's proposals in further detail.

Rent control areas

The Bill proposes that a rent control area (RCA) can be designated in all or part of a local authority area. Within an RCA, rent increases would be restricted for existing tenants with a private residential tenancy and some new tenancies, i.e. the rent control would apply to the property if had been 'previously let'.

Background

The earlier sections of the briefing provided context on the policy and legislative framework for private rented housing.

The Scottish Government's New Deal for Tenants consultation sought views on the proposed vision underlying the introduction of a framework for rent control, including that it would provide a localised approach to rent controls, based on evidence, which ensures openness and transparency.

The analysis of consultation responses found some respondents expressed support for this approach but many responses were informed by opposition to any form of rent controls.⁴

The landlord and tenant engagement questionnaire sought views on more detailed proposals. For example, the paper asked whether rent control should be universally applied across Scotland or on a local basis where assessment shows there is a need. Respondents were divided on this issue, with 59% thinking that rent control should be universally applied across Scotland and 41% that it should be introduced on a local basis where assessment shows there is a need.⁶

Respondents were also divided on whether any restrictions should be applied to both sitting tenants and in-between tenancies or to sitting tenants only. The majority (58%) thought they should apply to both sitting tenants and in between tenancies, while the remaining 42% thought they should apply to sitting tenants only.

The Bill proposals

The Bill proposes to remove the rent pressure zone provisions from the 2016 Act and replace them with rent control area (RCA) provisions. As the Policy Memorandum states:

“ Rent control policies are aimed at making rents more affordable and ensuring tenants are less likely to be ‘priced out’ of housing due to rent increases. The introduction of a national system of rent controls in the private sector through the measures included in the Bill will contribute towards achieving the Scottish Government’s overarching objective of improved outcomes for tenants. Rent control is designed to help stabilise rents in areas where market rents have been increasing particularly steeply, whilst ensuring there can be a balanced approach that provides appropriate protection for the property rights of landlords.”

Source, Para 39 Scottish Government, 2024²⁹

The following sections provides a summary of the Bill's provisions regarding :

- [The process for designating an RCA](#)
- [The effect of an RCA](#)
- [Information about private rented homes.](#)

Rent control area (RCA) - process for designation

The Bill sets out how an RCA can be designated. There are roles for local government, the Scottish Government and the Scottish Parliament in this process. To summarise this process:

- **local authorities** would be required to **assess and report on rent conditions** (rent levels and rent increase) in their area
- the **first assessment of rents must be sent to the Scottish Government by November 2026** (this can be changed by regulations) and every 5 years from then
- local authorities must send their assessment of rent conditions to the Scottish Government including **a statement on whether they recommend that the Scottish Ministers should designate all or part of their area as an RCA to safeguard the “social and economic” interest of tenants**
- the Scottish Government can only designate an RCA if they are satisfied that it is both **“necessary and proportionate for the purpose of protecting the social and economic interests of tenants in the area, and is necessary and proportionate control of landlords’ use of their property in the area”**
- the **Scottish Government must consult** with the local authority and representatives of tenants and landlords in the area affected before designating an RCA
- if the Scottish Government decides to introduce an RCA, the **decision would need to be approved by the Scottish Parliament in regulations.**

Given the timescales set out in the bill, assuming the first local authority assessments are received by the Scottish Government at the end of November 2026, it would appear to be at least mid-2027 before any RCA could be operational.

Effect of a rent control area

The following summarises the effect of an RCA designation.

- **Within an RCA rent increases for existing tenants with a PRT would be limited.**
- **Rent increases for some new properties would also be limited. Initial rents of ‘previously let property’, i.e. the new rent of a property that has been let in the previous 12 months would be also be restricted** to the final rent under the immediately preceding tenancy. This would not apply if the property was purchased by the landlord with vacant possession and the current tenancy is the first PRT of the property granted since the purchase.
- **The frequency of rent increase would be limited.** Rent increases in existing

tenancies would be limited by the rent cap. Rent increases at the start of new tenancies would be limited by the rent cap too, with the increase being assessed against the last rent paid by the previous tenant. There are exemptions for new-to-market properties as defined in the Bill. Scottish Ministers can remove or relax rent control in specified circumstances under the powers in sections 13 and 14 of the Bill.

- **Further details of how rent increases would be limited will be subject to further consultation and regulations.** The limit could be set out as a specified percentage (including 0%), an amount falling within a specified range, or an amount calculated with reference to other specified factors or criteria.
- **Landlords advertising their property for rent in an RCA must include certain information about the rents in any advert about the property.**
- Tenants in an RCA could **check with Rent Service Scotland whether any proposed rent increase is allowed within the RCA.**
- **There may also be exemptions for some types of property/landlords. Scottish Ministers would have power** to set these out in regulations. Consideration may, for example, be given to **an exemption based on circumstances related to the landlord or tenant of the property or the type of property.**
- Scottish Ministers would also be able to make **regulations about the circumstances in which rents could increase by more than the limits** in the RCA.

Information about private rented homes

The Bill proposes to give local authorities powers to request information, including rent levels, from landlords and tenants of homes registered on the private landlord register.

Background

The Scottish Government's [New deal for Tenants](#) consultation noted views amongst stakeholders around the need for more comprehensive data on private rented housing.³¹

The landlord and tenant engagement questionnaire sought views on the proposal that local authorities would be required to carry out an assessment of rent conditions in their area, but it did not cover any detail about how this would be done or what the data should be used for.³¹

The Bill's proposals

Section 15 of the Bill proposes to give local authorities powers to request information from landlords and tenants of homes on the private landlord register.ⁱ This would help local authorities to comply with their duty to assess rent conditions in their area.

ⁱ Private landlords must register with the local authority which covers the area where their property is located under provisions in the Antisocial Behaviour etc. (Scotland) Act 2004 and associated regulations. There is a searchable database of all private landlords online which contains limited information.

Section 15 (2) sets out the range of information that local authorities can request, which includes:

- the rent and details of the previous rent increase
- size of the house
- type of house, e.g. whether the property is a semi-detached, flat etc.

This list of information can be modified by regulations.

Local authorities would need to have regard to any Scottish Government guidance about the form, content, and frequency of such data requests.

If a landlord does not provide the requested information, the local authority can apply to the Tribunal, which could fine the landlord up to £1,000.

Rent control areas proposals - issues arising

The section on the rent control debate highlights some of its key themes. The following considers some Bill-specific issues that might arise during Stage 1 proceedings.

The RCA proposals appear quite similar to the existing rent pressure zones (RPZs), which can be created under the Private Housing (Tenancies)(Scotland)Act 2016.

The Bill aims to provide a national system of rent controls and this is achieved through the mandatory requirement for local authorities to carry out an assessment of rents in their areas. Previously, it was for a local authority to decide whether to carry out an assessment to inform an application for an Rent Pressure Zone. In the [Financial Memorandum](#), the Scottish Government does not assume RCAs would be introduced in all local authority areas.³²

Another key difference is that within an RCA, restrictions on rent increases will apply between some tenancy changes. In contrast, under the 2016 Act, within an RPZ the rent increase could only be limited for existing tenancies.

There may be issues around:

- the detail that might be contained in further regulations around the method of restricting rent increases and exemptions from the RCA - when the rent cap was in force, for example, some social landlord subsidiaries who provide mid-market rented homes were concerned about restrictions on increases in rents for mid-market rented housing which is let at a below market rent rate
- whether the provisions provide appropriate certainty to tenants and landlords about the future introduction of any rent controls
- the resource implications for local authorities in undertaking the assessments of rents in their area
- whether the available data, including what might be collected through local authority requests to landlords, will be sufficient to assess the need for rent controls at a local

level -this might depend on further details that the Scottish Government has yet to specify

- how to encourage landlords to comply with requests for data from local authorities and whether the Bill's compliance provisions are sufficient to encourage this
- whether the provisions provide appropriate protection for tenants in terms of the information they might need to challenge any rent increase that might be outwith the scope of the rent control. [Living Rent's submission](#) to the Local Government, Housing and Planning Committee's call for views on the Bill, for example, argues that "the bill as it stands places the onus too heavily on tenants to challenge excessive rent increases"
- assuming RCAs might not be operational until at least 2027, what happens when the current rent adjudication measures end at the end of March 2025.

Rent increases - capping of rent increases on referral or appeal

The Bill proposes that, on referral or appeal of a rent increase notice, Rent Service Scotland/the Tribunal will not be able to set a rent higher than that proposed by the landlord.

Background

The [previous section on the private residential tenancy explains the existing rules on rents and adjudication](#).ⁱⁱ When rent officers/Tribunal decide on a proposed rent increase, the open market rent set can be the same, higher, or lower than the proposed new rent.

In general, the rent adjudication process under the PRT has been limited. The Policy Memorandum (para 76) notes that only 181 applications were made to Rent Service Scotland between 2018 and 2022, when the measures were temporarily suspended by the 2022 Act.

In practice, [rent officers normally either maintain or reduce the proposed new rent](#).³³ However, the concern is that the current process may act as a disincentive to tenants seeking to challenge a rent increase due to the risk of the rent being set above that requested by the landlord.

The Bill's proposals

The Bill proposes that, following an application for adjudication on a rent increase notice, Rent Service Scotland/ Tribunal, would not be able to set a rent higher than that proposed by the landlord (section 22 proposes this for PRTs and section 23 proposes this for assured tenancies).

The aim is to address the concerns that the current process may act as a disincentive to tenants from making use of their right to an independent adjudication.

This proposal was consulted on in the New Deal for tenants consultation, the analysis of which summarised:

ii Similar procedures exist for the Tribunal who adjudicate on rents for assured tenancies

“ Many respondents supported proposals to remove the potential for the adjudication process to lead to a larger rent increase than that proposed by the landlord. There was agreement that the risk of this happening has limited the effectiveness of adjudication in addressing affordability pressures, and a view that this is an unreasonable risk for tenants. ... Other respondents – including most ‘Private landlord, letting agent or their representative bodies’ respondents and some ‘Local authorities’ – disagreed with the proposals, and some questioned the robustness of evidence on the reasons for tenants choosing not to use adjudication procedures. It was argued that the proposed changes would result in adjudication being unfairly balanced against the landlord, and that current rules should remain unchanged to ensure fairness to landlords and to prevent ‘speculative’ rent appeals”

Source: Scottish Government, 2022⁴

Frequency of rent increases

The Bill proposes that rent for a private residential tenancy may not be increased during the first 12 months of the tenancy.

Background

The 2016 Act provides that rent for a PRT may not be increased more than once in a 12-month period. This means that there is potential for a landlord to serve a rent increase notice giving their tenant three months' notice within the first 12 months of a tenancy.

As the Policy Memorandum notes (para 64), rent increases in the first 12 months of a tenancy do not appear to be widespread in practice.²⁹

The Bill's proposals

Section 21 of the Bill proposes that rent increases in a PRT will not be allowed within the first 12 months of a tenancy.

The policy intention is "to provide tenants with the security of knowing that the rent they have agreed to at the start of the tenancy will not increase during the first 12 months."

Scottish Ministers would have power to make regulations to disapply this requirement in some circumstances, to allow for flexibility in cases where this may be appropriate.

The Scottish Government did not specifically consult on this proposal except in the context of RCA designation, and the majority agreed with this approach. The Scottish Government intends to undertake further engagement and consultation before implementation of this provision.²⁹

Private and social housing tenancy evictions - duties to consider delay

The Bill proposes to **require the Tribunal and court to consider whether it is reasonable to delay an eviction** for tenants living in private rented or social housing due to factors such as seasonal pressure, detriment to health or financial hardship

Background

Before a landlord can evict a tenant, they will need to obtain an eviction order from the court (to approve an eviction in social housing) or from the Tribunal (for private rented housing). The court or the Tribunal will consider the circumstances of the case and decide whether it is reasonable to approve an eviction.

In its New Deal for Tenants consultation, the Scottish Government sought views on delaying when an eviction could be carried out based on the circumstances of the case during the winter period.³ However, some responses to the consultation expressed a view that the time of year should not be relevant and challenges exist at other times of the year.³¹

The landlord and tenant engagement questionnaire therefore explored a more general approach which would see the Court/Tribunal considering a delay regardless of the time of year.³¹

The Bill's proposals

The Bill proposes that the Tribunal and court will need to consider if it would be reasonable to delay the date of an eviction order (section 24 proposes the duty for the Tribunal where it is a private sector tenancy and section 25 proposes the duty for the court in relation to social sector tenancies).

The Tribunal/court may consider if the absence of a delay would cause the tenant, the tenant's household or the landlord financial hardship or have certain other detrimental effects. The aim of this would be to give those being evicted more time to find accommodation and support and reduce, as far as possible, the negative impact of eviction during times of greater stress.

The circumstances in which an eviction order could be delayed might include, for example, whether disruption caused by the ending of a tenancy during exam periods for school-aged children or University students would have a detrimental effect on the health of the tenant or a member of the tenant's household.

Consideration might also be taken into account, for example, whether the ending of a tenancy during or around any a period of religious observance or traditional festive period might cause the tenant or a member of the tenant's household to experience financial hardship or have a detrimental effect on the individual's health.³⁰

This duty to consider a delay does not apply where an eviction is based on certain eviction

grounds. For a PRT, this includes:

- the tenant is not occupying the let property as the tenant's home
- the tenant has a relevant conviction
- the tenant has engaged in relevant anti-social behaviour.

For tenancies other than a PRT, there are similar eviction grounds where the duty to consider a delay does not apply.

The consultation analysis found an overall majority support for the proposal, but with more private rented landlords disagreeing with the proposal:

“ Overall, a majority – 59% of those answering the question – either strongly agreed or agreed that, in the private sector, the Tribunal should be required to consider whether it is reasonable to delay the enforcement of an eviction at any time of year. This rose to 98% of PRS tenants. However, 67% of PRS landlords either strongly disagreed or disagreed.”

Source: Scottish Government, 2024⁶

The Tribunal and courts already have discretion to delay the enforcement of an eviction. However, this provision would make this a statutory consideration.

The Financial Memorandum notes that no data is available on whether the existing discretion to delay an eviction is used in practice in the courts. A review of Tribunal decisions during 2022-23 that fall outwith the emergency measures, show that the Tribunal used their discretion to delay the enforcement of an eviction order in a small number of cases. The length of delay was between two and eight weeks.

The Financial Memorandum also notes that the impact of the provision in terms of numbers of cases is expected to be small, but it provides an additional layer of protection for tenants where an eviction is granted. Furthermore, in terms of impact on eviction cases where rent arrears are involved, it states that it will not usually be in the interests of the tenant or their landlord for the Tribunal to continue to allow rent arrears to accrue by granting a delay to the enforcement of an eviction order, unless there are exceptional reasons for doing so.³²

Damages for unlawful evictions

The Bill proposes to change how **damages for unlawful eviction are calculated**.

Background

An [unlawful eviction](#) is when a landlord does not follow the correct procedures for ending a tenancy. For example, if a private landlord changed the locks when the tenant was out the house or harassed a tenant into leaving their home without serving the appropriate notices and getting an eviction order from the Tribunal.

Unlawful eviction is a criminal offence and can give rise to a claim for damages under section 37 of Housing (Scotland) Act 1988. Residential occupiers, including people that don't have a formal tenancy agreement, also have the right to claim damages for unlawful eviction

The 1988 Act specifies that the calculation of damages is the difference between the landlord's interest in the property with and without a sitting tenant. The New Deal for Tenants consultation paper noted "This requires expensive expert evidence from a surveyor and can lead to a nil valuation being made." Furthermore, little use has been made of the provision in the 1988 Act.³

The consultation paper proposed a reformed and simplified way of calculating damages to better empower tenants to seek redress where a landlord does not follow the correct legal process for ending a tenancy. It proposed calculating damages on a multiple of the monthly rent. A majority (94%) of those responding to the consultation agreed that there should be reform and simplification.⁴

The [2022 emergency cost of living legislation](#) introduced a temporary reform to the unlawful eviction proposals and set the minimum and maximum level of damages that the Tribunal and court can award at three times and 36 times the monthly rent respectively.

The Financial Memorandum notes that in relation to Tribunal cases:

“There were 14 applications to the Tribunal in relation to unlawful evictions in 2020-21 (Summary of Work of the Housing and Property Chamber), five applications received in 2021-22, and nine applications received by the Tribunal in 2022-23. From April – December 2023 there were nine applications received. Assuming the same rate for the rest of the year, the Scottish Government would estimate around 12 applications will be made in 2023-24.”

Source: Scottish Government, 2024³²

The Bill's proposals

Section 28 of the Bill would reform the 1988 Act's provisions on how damages for unlawful eviction would be calculated.

The court or the Tribunal may award damages of between three and 36 months' rent. The award may be less than three months' rent but only if the court or Tribunal considers it appropriate in all the circumstances.

The Bill would also place an additional requirement on the Tribunal to inform: i) the relevant local authority and police where a private landlord has been found to have unlawfully evicted a tenant; and ii) the Scottish Housing Regulator, where a social landlord is found to have unlawfully evicted a tenant

Keeping a pet

The Bill proposes to introduce a new right for tenants to **request to keep a pet and for tenants' requests not to be unreasonably refused by the landlord.**

Background

Part 3 of the Bill introduces two new rights for tenants, the first of which is the right to **request to keep a pet and for tenants' requests not to be unreasonably refused by the landlord**. The Bill extends this right to tenants in both [private residential tenancies \(PRT\)](#) and [Scottish Secure Tenancies \(SST\)](#) (the tenancy for those living in social rented housing).

The Scottish Government consulted on tenants' rights to keep a pet as part of the 'New Deal for Tenants: Draft Rented Sector Strategy' consultation.³ They asked questions regarding the mechanism for introducing the right, and whether or not to allow exceptions. There were questions relating both to PRTs and SSTs.

The majority of respondents expressed the opinion that the right should be tenure-neutral, and extend to social housing as well as the private rental sector. There were concerns raised by private landlords and letting agents regarding the proposals.

The Scottish Government followed up the consultation with further engagement with both tenants and landlords. Broadly, the proposals were supported by a majority of tenants and tenant organisations in both sectors, but were not supported by a majority of PRS landlords, landlord organisations and SRS landlords.²⁹

The Policy Memorandum states that "policy measures have taken account of responses" and that the Bill creates a framework that strikes a balance between "a right for tenants to request and not be unreasonably refused permission to keep a pet and for landlords to set reasonable conditions for approval."²⁹

Private residential tenancies

Currently, tenants with a PRT are only allowed to keep pets with explicit written agreement from the landlord. It is up to the landlord whether they agree to a tenant having a pet.

The Easy Read Notes that must accompany every PRT state that if the tenancy agreement bans pets, a tenant can ask the landlord to change it, for example, to allow an assistance dog if the tenant needs one. This is known as making a 'reasonable adjustment'. The Notes also make clear that if the landlord refuses to make a reasonable adjustment, it may be discrimination on the grounds of a protected characteristic (as prescribed by the Equality Act 2010) and they could be acting illegally.

The Bill aims to give tenants greater flexibility to have a pet by introducing a right to request to keep a pet, and for tenants' requests not to be unreasonably refused. It does this by amending the 2016 Act.

In relation to PRTs, the provisions included in the Bill seek to:

- insert the right to request to keep a pet and for this not to be unreasonably refused by the landlord
- this could then be prescribed as a statutory tenancy term via regulations made under the Act
- allow the landlord to consent to the tenant keeping the pet at the let property with or without conditions, or refuse to consent to this. The landlord has 42 days to respond. If they do not respond the landlord is deemed to have refused consent.
- provide the Scottish Ministers with powers to prescribe reasonable reasons for refusal and reasonable conditions for approval.

The Bill also requires Scottish Ministers to consult with relevant bodies in developing the regulations on reasonable conditions for refusal and approval.

Tenants could appeal to the Tribunal in relation to any unreasonable refusal to allow the keeping of a pet or unreasonable conditions for the keeping of a pet.

Scottish secure tenancies

In the social rented sector, the Model Tenancy Agreements include a clause for keeping pets, but this is discretionary. In practice, each landlord sets their own criteria relating to pets, including whether pets are allowed, the type and number of allowed pets, and any criteria applied to the keeping of pets in a property.

In relation to SSTs, the provisions included in the Bill seek to amend the Housing (Scotland) Act 2001 Act (which governs the tenancy arrangements) and :

- insert the right to request to keep a pet and for this not to be unreasonably refused by the landlord (consent is not required if the tenancy allows the tenant to keep a pet without consent)
- allow the landlord to consent to the tenant keeping the pet at the let property with or without conditions, or refuse to consent to this. The landlord has 1 month to respond to the request. If they do not respond the landlord is understood to have consented to the application.
- provide the Scottish Ministers with powers to prescribe reasonable reasons for refusal and reasonable conditions for approval.

The Bill also requires Scottish Ministers to consult with relevant bodies in developing the regulations on reasonable conditions for refusal and approval.

Making changes to let property

The Bill proposes to introduce **greater flexibility for tenants with private residential tenancies to make changes to their homes.**

Background

Currently, private landlords are usually responsible for the decoration of a let property, and properties can be let furnished or unfurnished. Tenants with a PRT are free to negotiate their own terms around decoration and personalisation of their home.

In practice, some landlords will agree specific terms that allow tenants to make certain changes to the let property or stipulate restrictions, for example tenants may be restricted from putting up pictures that will damage the walls.

Measures in the Bill aim to give tenants with a PRT greater discretion to personalise their home. These measures include:

- allowing tenants to be able to make certain minor modifications without the consent of the landlord (called Category 1 modifications— e.g. putting up pictures and posters)
- tenants would also have the right to request certain other modifications (Category 2 – e.g. painting walls) that a landlord could not unreasonably refuse after they have lived in the let property for 6 months or more
- requiring landlords to notify the tenant within 42 days regarding whether or not category 2 modifications are consented to or refused, and whether consent is subject to conditions. If no notice is given the landlord is deemed to have refused consent.
- providing Scottish Ministers with regulation-making powers to set out in more detail the types of changes under Category 1 and 2 as well as detailing when it is reasonable for a landlord to refuse a Category 2 change to a let property and when a consent condition is reasonable
- requiring that Scottish Ministers consult persons representing tenants and landlords before laying draft regulations.

Scottish Ministers will also have powers to make necessary amendments to tenancy deposit requirements in relation to a supplementary deposit.

Tenants would be able to appeal to the Tribunal in relation to unreasonable refusal to allow a Category 2 change to let property or unreasonable conditions for the making of any such change.

The Policy Memorandum ²⁹ states that the aim of these measures is intended to:

- improve the renting experience for private tenants by giving them more control over personalising their home supporting mental health and wellbeing
- more closely align the rights of private tenants with other tenures while continuing to take account of the differing legal frameworks

- seek to appropriately balance the strengthened rights for tenants with sufficient protections for landlords.

During the 'New Deal for Tenants: Draft Rented Sector Strategy' consultation ³, questions relating to the personalisation of PRT properties were raised. Many of the responses from landlords expressed concerns regarding the potential problems that could arise and the cost of returning a property to its original state at the end of a tenancy.

Ending joint private residential tenancies

The Bill proposes to change how a joint private residential tenancy could be ended. It would:

- allow one joint tenant to end a joint tenancy without the agreement of all joint tenants after giving the other joint tenants at least two months' pre-notice that they will be giving the landlord notice.

Background

A joint tenancy is when someone signs the same tenancy agreement with one or more other people such as partners, flatmates or family members.

Joint tenants are all jointly and individually responsible for the terms and conditions of the tenancy agreement. This is usually called joint and several liability. For example, if one tenant does not pay their share of the rent, the landlords can ask any or all the other tenants to pay.

Under the 2016 Act, all joint tenants must agree to give notice to end the tenancy. Where the remaining joint tenants wish to stay in the property, tenants could also negotiate a new agreement with the landlord with or without a new joint tenant. A landlord could also agree to 'assign' the interest of the leaving joint tenant to a new joint tenant without the need to create a new tenancy.

The [New Deal for Tenants consultation](#) outlined that the process of ending a joint tenancy could cause some tenants to be 'trapped' in their tenancy:

“ The Private Housing (Tenancies)(Scotland)Act 2016 changed the way that a joint tenancy could be ended so that all joint tenants must agree to give notice. This approach aimed to ensure that no joint tenant could be inadvertently made homeless. Unfortunately, this means that a person can be 'trapped' in a tenancy by other joint tenants, regardless of the circumstances, if agreement cannot be reached. Even if a joint tenant moves out of the let property, they are still responsible, along with other joint tenants, for rent and other obligations if the tenancy has not ended for all tenants. This can be difficult for any joint tenant needing to leave a tenancy but can be particularly problematic for those experiencing domestic abuse.”

Source: Scottish Government , 2021³

The consultation paper proposed a process to enable one, or more, joint tenants to end the tenancy without the agreement of all but only after providing reasonable notice to other joint tenants.

The Bill's provisions

Section 38 of the Bill proposes to modify the 2016 Act and would allow:

- one joint tenant to end a PRT by giving the landlord notice (the tenancy would not come to an end if the joint tenant's interest is assigned to another person)

- the departing joint tenant must give the other tenants a pre-notice of their intention to end the tenancy at least two months in advance
- any subsequent notice to bring the tenancy to an end has no effect unless it is given within 28 days of the end of the two-month pre-notice period and is accompanied by a statement that a pre-notice has been given to every other joint tenant
- Scottish Ministers have powers to make regulations to specify requirements that must be met by a pre-notice.

In relation to the proposed two month notice period the Policy Memorandum states:

“ Usually this period of time would give the other joint tenants time to consider their own circumstances and to come to an agreement with the exiting tenant – through finding someone to replace the tenant leaving, assessing whether they are able to continue to afford to remain in the property either on the same tenancy agreement or under a new tenancy (subject to the landlord’s agreement) or find alternative accommodation.”

Source: Scottish Government, 2024²⁹

In response to the New deal for Tenants consultation, the majority of respondents agreed that the 2016 Act should be amended to allow joint tenants to terminate their interest in a PRT without agreement of other joint tenants. Among organisations that responded, a majority of those who disagreed were from the ‘Private landlord, letting agent or their representative bodies’ group. Feedback highlighted concerns around the remaining tenants’ ability to afford the rent, and the possibility of a build-up in rent arrears. ⁴

In the landlord and tenant engagement questionnaire, views were sought on a proposed two month notice period. A majority of respondents agreed that the notice period which the departing joint tenant must give to the other joint tenant should be two months. ³¹

Unclaimed tenancy deposits

The Bill proposes that any tenancy deposits lodged with an approved tenancy deposit scheme which have not been claimed after five years can be repaid to the Scottish Ministers or into another fund so that they can be used to provide support to private tenants across Scotland.

Background

Currently, if a tenant pays a tenancy deposit it should be [lodged with one of the three tenancy approved tenancy deposit schemes](#).ⁱⁱⁱ

When a tenancy ends, a landlord or letting agent will arrange with the scheme provider the return of the deposit minus any reasonable deductions. The provider will ask the tenant if they agree with the application. If tenants do not reply, their share of the deposit will remain in the scheme.

Unclaimed tenancy deposits occur where the landlord has started the process to return the deposit (via an application to the deposit scheme provider), but the tenant does not respond and cannot be contacted.

A [review of tenancy deposit schemes carried out in 2018](#) found that most unclaimed deposits belong to students, in particular, overseas students who regularly return home without claiming their money back from the schemes. In addition, some of the larger unclaimed deposits relate to tenancies taken out by companies on behalf of their employees. Scheme administrations try to return deposits but this becomes more difficult when contact information is out of date.³⁴

There is currently around £4 million of unclaimed tenancy deposits.²⁹ To put this in context, Safe Deposit Scotland, the largest scheme provider in Scotland recorded 235,000 lodged deposits with a value of around £176 million in January 2023.³⁵

The Bills' proposals

Section 31 of the Bill proposes that any tenancy deposits lodged with an approved tenancy deposit scheme which have not been claimed after five years can be repaid to the Scottish Ministers or into another fund so that they can be used to provide support to private tenants across Scotland.

The Bill proposes that the fund can be used for the provision of:

- advice, information or assistance to private tenants in relation to their rights as tenants
- other services or facilities that promote or support the interests of such tenants
- preventing private tenants from becoming homeless
- reasonable administrative costs.

ⁱⁱⁱ Part 4 of the Housing (Scotland) 2006 Act, sections 120 to 123 and associated regulations make provision for tenancy deposit schemes

Scottish Ministers can change these purposes by regulations and must report on the use of unclaimed deposits.

These proposals were consulted on in the New deal for Tenants consultation and the landlord and tenants engagement questionnaire and attracted a high level of support.⁴

Some respondents made other suggestions to reduce the risk of tenancy deposits going unclaimed such as the time limit for reclaiming deposits, and the need to maintain up-to-date contact details, should be highlighted when a tenancy commences and that tenancy deposit scheme providers should obtain multiple means of contacting a tenant.⁴

Other private rented housing matters - Letting agent registration

There is a letting agent registration scheme in operation in Scotland. Those carrying out letting agency work must

- register on the Scottish Letting Agent Register. This list is run by Scottish Ministers. It makes sure that every letting agent is suitable to do the job and has met minimum training requirements
- follow a Letting Agent Code of Practice.

Sections 32- 37 of the Bill makes minor changes to the letting agent registration scheme to improve clarity on existing requirements. The changes do not represent a change in policy or direction.

Other private rented housing matters - converting older tenancies.

The Bill gives Scottish Ministers powers to convert assured tenancies into PRTs.

As noted in an earlier section of this briefing, since December 2017, new tenancies will be a PRT. Assured tenancy agreements created by the 1988 Act that started before that date can still continue until they are ended.

Section 40 of the Bill gives the Scottish Ministers regulation-making powers to provide a date on which assured tenancies come to an end and become a PRT (this must be at least 12 months after the regulations come into force. This would not apply if the tenancy is already one that would be exempt from a PRT (exemptions are set in [Schedule 1 of the Act](#)).

Scottish Ministers must consult representatives of tenants and landlords under assured tenancies before laying draft regulations.

It's not clear how many assured tenancies remain in place but as time goes on their number will decrease. Landlords and tenants with an assured tenancy can agree to change the tenancy agreement to a PRT. The Policy Memorandum notes that an alternative would be to allow assured tenancies to continue to reduce over time but:

“ ... this would be a slower process over a much longer timescale. In the meantime, those tenants would not benefit from the protections of the 2016 Act or the provisions in this Bill. In addition, there would continue to be a level of complexity and potential for confusion caused by operating several differing tenancy regimes in the private sector.”

Source: Scottish Government, 2024²⁹

The Scottish Government sought views on this proposal in the landlord and tenant engagement questionnaire. A majority (71%) of those answering the question agreed with the proposal, with support being strongest amongst tenants. ²⁹

Homelessness prevention - Scottish Government consultation and overview of the Bill

Based on the proposals from the PRG, the Scottish Government / COSLA issued a consultation on homelessness prevention duties and paper in 2022 which received 113 responses.³⁶

An analysis of responses to the consultation summarised:

“ The analysis shows there is widespread support for the package of proposals, which were described as comprehensive, transformational and welcome. Supporters recognised the importance of early intervention and enabling a joined-up approach to prevention. Respondents believed the proposals would strengthen existing practice, improve consistency, positively impact those at greater risk of homelessness, and noted the potential long-term savings or benefits to services which could result from a focus on prevention. Others stressed that implementing the proposals will require significant investment in public services, homelessness services and housing stock.”

Scottish Government and COSLA, 2022³⁷

As the Policy Memorandum notes, each specific proposal attracted its own level of support and opposition. This is covered in more detail in the next sections.

The Scottish Government sets out the policy objectives of the homelessness measures in the Bill:

“ The overarching policy objective of the homelessness prevention measures is to shift the focus away from crisis intervention and towards prevention activity which can eliminate the need for a household to go through the trauma of homelessness in the first place, without diluting the existing rights for people who are assessed as being homeless. This can help reduce reliance on temporary accommodation, which has been an increasing feature of Scotland’s response to homelessness in recent years.”

Source: Scottish Government, 2024²⁹

The following sections of the briefing cover specific provisions in more detail:

- [the ask and act duty](#)
- [acting sooner to prevent homelessness](#)
- [reasonable steps](#)
- [assessment of housing support services.](#)

Homelessness prevention- 'Ask and Act' duty

The Bill proposes to place a duty on relevant bodies, such as local authorities, health boards and the police, to ask if an individual is homeless or at risk of homelessness, and to take action if they are.

Background

The current legal and policy context for homelessness was described in previous section of the briefing.

The joint COSLA and Scottish Government's consultation asked if respondents agreed that public bodies should be required to 'ask and act' to prevent homelessness? There was a high level of support for the changes:

“ Introducing new duties on public bodies was supported by 93% of those answering Q3; 40% agreed strongly. Some respondents felt new duties could prevent homelessness by introducing prevention frameworks and pathways which enable public bodies to work with individuals who are most at risk before they reach crisis point. While some felt new duties will drive change, others had concerns, such as the need for well-trained staff to correctly support those in need. Some argued that statutory duties are unnecessary as they would be ineffective unless it is backed up with sufficient resources.”

Scottish Government and COSLA, 2022³⁷

The Bill's proposals

Part 5 of the Bill amends provision in the 1987 Act and gives relevant bodies specific duties, referred to as the "Ask and Act" duty.

Relevant bodies

The relevant bodies defined in the Bill are:

- Health Boards including special health boards
- Integration joint boards
- local authorities
- The Police Service of Scotland
- registered social landlords
- Scottish Ministers in so far as they have functions relating to prisons and young offenders institutions and the persons detained in them.

The list of relevant bodies can be amended by regulations.

The 'ask' duty

If the relevant body, when it is assessing the needs of a person in the exercise of its functions, has reason to believe that the person **may be homeless, or threatened with homelessness, the body must ask the person:**

- whether the person is homeless or threatened with homelessness
- if the person is aware of any application having being made to a local authority for homelessness assistance
- whether the person consents to the body making such an application to a local authority if appropriate.

The 'act' duty

If the person may be homeless:

- if the relevant body is satisfied that it is appropriate and it has the person's consent, it must make a homeless application to the appropriate local authority . This duty does not apply if a homelessness application has already been made and the application is under consideration.

If the person **may be threatened with homeless:**

- the relevant body must take **action it considers appropriate** to remove that threat within its own existing powers, or, where that is not possible, to minimise it (other than by making a homeless application to the local authority).
- if the relevant body is satisfied that it is unable to take action itself to remove the threat, it must also make a homelessness application to the appropriate local authority but only if satisfied that this is appropriate and that it has the person's consent.

The relevant body must have regard to the need to prevent homelessness and any relevant Scottish Government guidance.

The intention is that a referral to the local authority should not be the default action, but that it should be considered alongside other actions that can be taken within the relevant bodies' existing powers.

In terms of the financial impact of the proposals, the [Financial Memorandum](#) (para 363) recognises that the Bill will have costs, particularly in the early years of implementation. However these costs may be offset by savings from reduced pressure on services due to lower homelessness rates, including less use of temporary accommodation.

The Financial Memorandum also notes that the impact on local authorities is likely to be greater than that on the relevant bodies.

“ For relevant bodies, other than local authority housing departments, as set out above the caseload will relate primarily to approaches which would have been made to the bodies anyway but which will now trigger Ask and Act requirements. For local authority housing departments, however, there are two potential sources of caseload. The first arises from approaches they would have received anyway which trigger the new requirements but which would not have been dealt with under the current voluntary approach to prevention, which is known as Housing Options. The second relates to additional approaches due to referrals from other relevant bodies.”

Source: Scottish Government, 2024³²

Costs could include training (in addition to Scottish Government training materials) and changes to IT systems. Ongoing costs to local authorities will include staff salaries for any staff recruited to meet the anticipated increase in demand for services along with consideration of the impact on the use of temporary accommodation and provision of the reasonable steps which will require to be considered when supporting households at risk of homelessness.³²

Homelessness prevention - acting sooner to prevent homelessness

The Bill proposes to extend the time in which someone is considered threatened with homelessness from two months to six months.

Background

Currently, the 1987 Act provides that someone is threatened with homelessness if they are likely to become homeless within two months.

The PRG proposed extending the statutory definition of threatened with homelessness from two 2 months to six months to encourage prevention activity at an earlier stage, for example, before financial difficulties or rent arrears have grown, and to avoid decisions being made in crisis mode.

The Bill's proposals

Section 41 of the Bill proposes to amend the 1987 Act to provide that a person is threatened with homelessness if it is likely that the person will become homeless within six months. As the Policy Memorandum notes:

“ The additional time will allow for considerations of household need and preference in a way that crisis response cannot. The changes to legislation will also ‘re-balance’ the system to put preventative activity on a more even footing with crisis response. The changes are not intended to affect existing housing rights for people assessed as being homeless by local authorities, but to allow earlier opportunities to consider a wider range of options and support to help people avoid becoming homeless in the first place.”

Scottish Government, 2024²⁹

[Responses to the Scottish Government/COSLA consultation](#) on homelessness prevention agreed with the proposal to extend the time in which the prevention duty applied although there were some caveats to that support:

“ Almost nine in ten (87%) of those answering ... agreed with the proposal for an extended prevention duty; 38% strongly agreed. The most common theme in support was that the additional time is beneficial in allowing meaningful prevention activity to occur and for housing options to be explored. A few noted six months would mirror the tenancy notice period. Many, however, caveated their agreement or were unsure because of concerns about how an extended duty would work in practice. While a few stated their current prevention processes would simply begin earlier, concerns about training, capacity and resourcing due to increased caseloads was a recurring theme. The next most common theme was defining what constitutes a threat of homelessness. Some stated that a six month timeframe is too broad for the proposal to be practicable, arguing that it could be hard to predict who may find themselves homeless in six months. For example, leaving an institution or receiving a Notice to Quit are clear risks, but other circumstances leading to homelessness such as relationship breakdown are harder to predict. Several stated that a referral through a clear referral pathway should trigger an assessment. Several respondents called for the legislation to clearly define what constitutes a risk and be supported by guidance about how to identify early warning signs of homelessness.”

Source: Scottish Government and COSLA, 2022³⁷

The PRG was clear that such a change would require a cultural shift in homelessness services:

“ A duty starting so early will require a cultural shift in homelessness services and across the local authority, assisting people to remain in their homes or to be rehoused rapidly without resort to temporary accommodation, and with a strong emphasis on integrated or co-ordinated working with other services. Strategic planning across local services within and beyond the local authority is critical to the implementation of this duty..”

Source:Scotland Prevention Review Group, 2021²⁷

Homelessness - reasonable steps

Local authorities have a duty to take 'reasonable steps' to make sure that accommodation does not cease to be available for those who are unintentionally threatened with homelessness, and to give advice and assistance to others threatened with homelessness.

In relation to the reasonable steps that local authorities must take to assist those threatened with homelessness, the PRG noted:

“ The definition of what steps are reasonable is not explicit in legislation or the guidance, and it is not clear what duration and security of tenure is sufficient to sustainably resolve the homelessness risk. The role of applicant choice in accepting preventative measures or choosing to seek a new settled option through a homelessness application is also not clear. Thus, it is difficult for local authorities to know at what point their responsibility to prevent homelessness is discharged, or when their reasonable steps have failed and its responsibility to secure settled accommodation arises. In summary, a change to the law is required in order to: clarify the place of homelessness prevention in the existing statutory homelessness framework, so that prevention is not perceived as gatekeeping; clarify what must be done to meet the duties; and to bring the law into line with best practice.”

Scotland Prevention Review Group, 2021²⁷

The Bill's proposals

Section 41 of the Bill amends the wording of section 32 of the 1987 Act to require a local authority to remove or, where this is not possible, minimise the threat of homelessness, and to take reasonable steps to secure that accommodation is available for occupation by the applicant. The aim of this is to create more consistency and transparency around the support available from local authorities.

Further details on the 'reasonable steps' that need to be taken will be set out in secondary legislation.

The PRG proposed that the minimum statutory framework of a duty to take reasonable steps to prevent homelessness should include: housing options information, advice and advocacy; advocacy support; welfare and debt advice; referral to other relevant agencies; support for landlords and tenants in the private rented sector; family mediation services; support for people experiencing domestic abuse; and supply of furniture or similar goods.

27

Assessment of housing support services

The Bill proposes that a local authority's local housing strategy should include an assessment of the needs of persons and the availability of housing support services, including in relation to homelessness.

Background

All local authorities have a duty under the Housing (Scotland) Act 2001 to carry out an assessment of homelessness in their area and to set out their approach to the prevention and alleviation of homelessness as part of the Local Housing Strategy.

The PRG recommended that, as part of this requirement, an assessment should be carried out of the need of persons in the area for housing support to retain their accommodation. The aim is to help inform service development, including the ability to plan services and work with other agencies to meet the needs of households at risk of homelessness.²⁷

Under the 1987 Act provisions, local authorities must also assess whether any unintentionally homeless applicant has housing support needs. If it finds that housing support services are needed, it must ensure they are provided.

The Bill's provisions

The Bill contains a provision to implement the PRG recommendation.

Section 42 of the Bill requires that as part of that assessment of homelessness in their area, the local authority must assess the needs of persons in the area for, and the availability of, services that must be provided in accordance with section 32B(4) of the 1987 Act and other housing support services.

The services that must be provided under section 32B(4) are specified in regulations and include, for example, advising on tenants rights, or advising or assisting a person in settling into a new tenancy. Other 'housing support services' include any service which provides support, assistance, advice or counselling to an individual with particular needsto help a person to live or continue to live in their home.

A majority of respondents, 89%, to the COSLA/Scottish Government consultation which proposed this change, were supportive. Many respondents noted that they already do this.³⁷

Homelessness prevention - possible issues arising at Stage 1

Issues that may be relevant to the scrutiny of the homelessness prevention proposals at Stage 1 proceedings include:

- how the measures in the bill can be successfully implemented to ensure that a homeless application to a local authority does not become the default response
- the extent to which statutory requirements might change existing culture and practice to improve homelessness prevention
- as the Bill provides a framework, much of the detail has to be decided, for example, what type of action might a relevant body consider adequate to prevent homelessness
- whether the list of relevant bodies are appropriate or are there others that should be included
- what happens if an individual or a local authority thinks that a relevant body has not taken appropriate action to remove the threat of homelessness
- how might the duties be enforced and monitored
- the financial support and cultural change needed to make the changes happen
- whether some of the proposals that the PRG made that have not been taken forward in the Bill should be (for example, that GPs should refer to local authorities where there is a risk of homelessness, appeals to the Tribunal and social work to take a lead role for 16 and 17 year olds at risk of homelessness ([see para 254 of the Policy Memorandum](#))).

The [Homelessness Prevention Task Finish Group published a report in late 2023](#)³⁸ outlining the work needed to achieve the potential of the proposed new duties, grouped under the following headings:

- cross-sector culture change
- recognition of the importance of a home
- clarity on legislation
- continuous cross-sector reflective practice
- cross-sector long term resourcing.

Domestic abuse - background

The Bill contains a few measures aimed at improving the situation of those affected by domestic abuse.

Background

The biggest cause of homelessness for women in Scotland is a violent or abusive dispute.
27

The PRG set out a range of proposals to be complementary to changes in [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#). Amongst other provisions, the 2021 Act gives the courts a new power to impose Domestic Abuse Protection Orders and also allows a social landlord to apply to the court to end a perpetrator's interest in a social housing tenancy or joint tenancy, to allow the victim to remain in the family home where they wish to do so. The main provisions of the 2021 Act are not yet in force.

The proposals were also intended to be complementary to implementation of the recommendations (accepted by the Scottish Government) in the [Improving Housing Outcomes for Women and Children Experiencing Domestic Abuse](#) report - co-chaired by the Chartered Institute of Housing Scotland (CIH Scotland) and Scottish Women's Aid.³⁹ As an example, the report noted that financial abuse is a significant element of coercive control in domestic abuse and can leave a woman with debt, including rent arrears which she may be unaware of. The report recommended that rent arrears pre-action requirements could include a requirement that social landlords consider the extent to which rent arrears are due to domestic abuse.

Where a social landlord is pursuing an eviction due to rent arrears they must comply with ['pre-action' requirements](#). These are a number of steps social landlords are required to take to ensure they have exhausted all attempts to resolve rent arrears with a tenant before taking action to evict, including, for example, giving tenants information, offering help and advice and agreeing a payment plan. Social landlords must also satisfy the court that all the pre-action requirements have been complied with before court action for eviction can begin.

The PRG recommendations included that:

- people at risk of homelessness as a result of domestic abuse should be able to access free legal aid in order to obtain an exclusion order
- the definition of abuse within homelessness legislation is expanded to cover both the Protection from Abuse (Scotland) Act 2021 and the Domestic Abuse (Scotland) Act 2018
- assistance from homelessness services to prevent homelessness must include support and security measures to enable applicants to remain in their homes safely where this is their preference
- homelessness prevention services should work with other partners to ensure they are able to meet the needs of people requiring housing assistance due to domestic abuse

- local authorities support victims of domestic abuse to access exclusion orders
- when considering the suitability of accommodation offered to a perpetrator or victim of domestic abuse, consideration must be given to its proximity to the other party in the abuse
- social landlords should put in place protocols to address housing issues relating to domestic abuse.

Many social landlords already have policies to support survivors of domestic abuse facing homelessness. A range of organisations published [good practice guidance for social landlords on domestic abuse in 2019](#). However, a [review of policies undertaken by CIH Scotland and Scottish Women's Aid in 2023](#) found that, with a few exceptions, policies were inadequate:

“ Many social landlords placed considerable emphasis on victims reporting their experiences – an attitude which puts women and children at risk as the time of reporting or immediately after reporting is incredibly dangerous. Policies also failed to use the Scottish Government definition of domestic abuse and did not recognise domestic abuse as gender-based violence.”

Source: CIH Scotland and Scottish Women's Aid , 2023⁴⁰

Domestic abuse - the Bill's proposals

The aim of the specific proposals in the Bill are:

“ ... to help protect the rights of women and children experiencing domestic abuse financial control living in social housing to remain in their home, or be re-housed if that is their wish, and ensure arrears accrued because of domestic abuse are not a barrier to accessing social housing in the future.”

Source: Scottish Government, 2024²⁹

The bill updates the definition of domestic abuse in certain parts of housing legislation to reflect abusive behaviour within the meaning of more recent domestic abuse legislation in the Domestic Abuse (Scotland) Act 2018 and the Protection from Abuse (Scotland) Act 2021 as proposed by the PRG (the 2021 Act defines abusive behaviour as behaviour likely to cause the person the behaviour is directed against to suffer physical or psychological harm and this definition covers financial abuse.)

Section 44 of the Bill would **introduce a new pre-action requirement where a social landlord is seeking to evict a tenant for rent arrears**. Where the social landlord considers that a tenant has experienced or is experiencing domestic abuse and this explains or partly explains the rent arrears, the social landlord:

- must take such action to support the needs of the tenant arising in connection with rent arrears as the landlord considers reasonable having regard to its domestic abuse policy
- must provide the tenant with details of such other support that may be available to the tenant in relation to domestic abuse. In this context, “domestic abuse” means abusive behaviour within the meaning of section 2 of the Domestic Abuse (Protection) (Scotland) Act 2021.

In response to the Scottish Government's landlord and tenant engagement questionnaire, 83% of those answering the question agreed with the proposal to amend social housing pre-action requirements to consider where rent arrears is related to domestic abuse.⁶

Section 45 of the Bill would require social landlords to develop and **implement a domestic abuse policy setting out how they will support their tenants who are risk of homelessness as a result of domestic abuse**. In exercising its functions, a social landlord must have regard to its domestic abuse policy and any guidance from the Scottish Government about the form and context of a domestic abuse policy.

Note that the Bill's provisions regarding how a joint private residential tenancy can be ended are also intended to help support victims of domestic abuse.

In terms of implementing the domestic abuse proposals, the PRG Task and Finish Group's final report made the point that recommendations set out in the Improving Housing Outcomes for Women and Children Experiencing Domestic Abuse report, and the Domestic Abuse Protection (Scotland) Act 2021 must be implemented if a new approach to homelessness prevention is to be a success. In addition, other non-legislative change is required:

“ The need is not just in terms of legislation change, but there needs to be a spotlight placed on what housing options that are for women experiencing domestic abuse; these are currently limited, and frequently do not provide safe solutions for women (and often children). Continuing discussions with women’s services on appropriate provisions that meet the needs of people and their geographical settings, must be part of the plans moving forward. In both the solutions for preventing youth homelessness, as well as women’s homelessness (which often includes children) arising as a result of domestic abuse, we already know what works - information that has already been collated across several Scottish Government and third sector documents. We need a Scottish Government spotlight and strategy to ensure they do not remain only as good practice on paper, and instead plan and implement solutions in line with these.”

Source: Scottish Government, 2023³⁸

Other matters - fuel poverty

The Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019 (“the 2019 Act”) set targets relating to the eradication of fuel poverty; reporting provisions; and includes the establishment of the Scottish Fuel Poverty Advisory Panel (“the SFPAP”) amongst other matters.

The Bill proposes minor technical amendments to the 2019 Act. The policy objective is:

“ ... to strengthen the fuel poverty governance under the 2019 Act, ensuring that consultation and preparation requirements are streamlined and improved; and that the operating costs for the SFPAP are sufficient to allow its operations and scrutiny function to be carried out effectively. There is no change to the current policy or direction.”

Source: para 303 Scottish Government, 2024²⁹

Other matters - mobile homes

The Bill proposes to change the ways that pitch fee increases in residential mobile home sites are calculated, from a presumption that increases should no more than the Retail Price Index to the Consumer Price Index.

The Mobile Homes Act 1983 provides the legal framework for the rights and responsibilities of site owners and mobile home owners on residential park home sites ([See SPICe Briefing Mobile \(Park\) Homes for further information](#)).

The pitch fee is the amount the mobile home owner has to pay to the site owner for living on the site and also covers use of the communal areas of the site and their maintenance. It will also include water and sewerage charges, unless they are specifically excluded.

The 1983 Act sets out the process for review of the pitch fee. There is a presumption that the pitch fee should increase or decrease by a percentage which is no more than any percentage change in the Retail Price Index (RPI) unless that would be unreasonable, having regard to certain factors.

In both England (as a result of the Mobile Homes (Pitch Fees) Act 2023) and Wales (as a result of the Mobile Homes (Wales) Act 2013), the pitch fee uprating index has changed from the RPI to the Consumer Price Index (CPI).

The CPI is used by the UK Government as the inflation rate for the indexation of public service pensions, tax credits and benefits since 2011. It has been argued that the CPI is a more appropriate measure and it is consistent with the measure of inflation used by the Bank of England.

The Scottish Government consulted on changing the basis for uprating the pitch fee to the CPI in 2023. The [majority of responses agreed with the proposed change](#).

The main changes the Bill proposes to make to the 1983 Act are:

- to change an existing presumption that pitch fees for mobile homes should not rise by more than RPI to a presumption that they should not rise by more than CPI annually
- a power for the Scottish Ministers to change the inflation index in future by secondary legislation
- provisions to improve protection for residents should a site owner seek to undertake activity to compensate for the loss of income as a result of the change to indexation.

Other matters - disclosure of information to the New Homes Ombudsman (NHO)

The Bill makes minor changes to existing legislation to enable the Scottish Public Services Ombudsman to share information with the new UK-wide New Homes Ombudsman.

The Policy Memorandum explains that the UK Building Safety Act 2022 includes provisions for a New Homes Ombudsman (NHO) scheme. The aim of the scheme is to drive up standards in housebuilding and to independently resolve disputes between developers and purchasers where there is an issue concerning the standards of conduct or quality of a new-build home. Following the consent of the Scottish Parliament, the scheme will apply in Scotland as well as the rest of the UK.²⁹

The 2022 Act provides for the NHO to co-operate with other redress schemes which could, for example, include the Scottish Public Services Ombudsman (SPSO). The Scottish Public Services Ombudsman Act 2002, however, places restrictions on the disclosure of information by the SPSO. Given the potential for interaction between the SPSO and the NHO in relation to developers which are public bodies, it would be beneficial to ensure that there are no barriers to information sharing which could hinder the intended co-operation.

Section 51 of the Act amends the 2022 Act to facilitate disclosure of information to the NHO on certain matters.

As this represents a minor change to allow information to be shared, it was not consulted on.

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