

Eviction of Tenants in the Social Rented Sector:

Protection of Tenants with
Rent Arrears

Eviction of Tenants in the Social Rented Sector:

Protection of Tenants with Rent Arrears

© Crown copyright 2010

ISBN: 978-0-7559-9278-2 (web only)

The Scottish Government
Victoria Quay
Edinburgh
EH6 6QQ

Produced for the Scottish Government by RR Donnelley B63804 3/10

Published by the Scottish Government, March 2010

EVICTION OF TENANTS IN THE SOCIAL RENTED SECTOR: PROTECTION OF TENANTS WITH RENT ARREARS

Ministerial Foreword



The Scottish Government has already put in place extra protection for homeowners faced with repossession through the Home Owner and Debtor Protection (Scotland) Bill recently passed by the Scottish Parliament. It is only right that we consider whether tenants in the social rented sector who face eviction for arrears of rent also need extra protection. That is why we want to hear your views.

Being a tenant brings with it both rights and responsibilities. The right to security of tenure, rights to succession and the right to be consulted, amongst others. In return, tenants have responsibilities: to look after their home, behave appropriately and pay their rent. When rent isn't paid there are implications for the landlord and the wider community, with fewer resources available to provide services to tenants and maintain properties.

It is important then, to be clear that payment of rent is a responsibility of every tenant, but it is equally important to be clear that evicting tenants with rent arrears must always be a last resort. Tenants can find themselves in a variety of circumstances which may make it difficult to pay their rent. I know that many landlords do all they can to provide advice and support to tenants facing financial difficulties, including individual support to those who need it, yet in 2008-09 almost 20,000 tenants were taken to court as a first step to eviction for rent arrears.

Evictions are traumatic for tenants and their families and are often very costly for landlords and the public purse. Not only are court proceedings very costly, there are also costs involved in re-housing and providing additional support to tenants as well as loss of rental income when the property is vacant. This consultation asks you whether more needs to be done to protect tenants, reduce the social and financial costs and what form that protection should take. I encourage you to let us know what you think.

Alex Neil MSP
Minister for Housing and Communities

Contents	Page
Foreword	1
Introduction	3
Consultation - Protection of Tenants	4
Responding to the Consultation	12
Consultation Questionnaire	14
Respondent Information Form	20
Annex A - Partial Regulatory Impact Assessment	21
Annex B - General Information on Scottish Government Consultations	28

Introduction

1. In response to the rising rates of home repossession in Scotland, we set-up a Repossessions Group in January 2009 to consider whether we needed to strengthen the existing protection for home owners in Scotland. In their final report in June 2009, the Group made it clear that it was as important to consider the eviction of tenants in social housing.
2. We held an event with a wide range of stakeholders on 19 November 2009 to consider the eviction of tenants in social housing. The event confirmed that the primary responsibility for avoiding eviction through rent arrears rests firstly with the tenant through regular payment of rent. However, the event also revealed widespread variation in practice around rent arrears and evictions across Scotland and an opportunity for reducing variation by sharing good practice.
3. We know that there are a variety of steps and alternatives to evictions social landlords are using to support successful tenancies, however, these practices vary from landlord to landlord. After the event, we agreed to consider options to improve the consistency and rigour of pre-eviction processes and procedures.
4. This consultation outlines the current legislation around the eviction of tenants in the social rented sector and includes options to improve the consistency and rigour of pre-eviction processes and procedures. These options aim to balance the needs of landlords who have a duty to protect public finances and prevent homelessness along with the needs of tenants.
5. We welcome your views on the questions in this consultation paper. Your responses will help us decide our next actions.

CONSULTATION

Protection of Tenants

The number and reasons for eviction

6. The level of evictions in the social rented sector across Scotland has been fairly stable over the last few years, with the rate of evictions currently 0.6% of social landlords housing stock. But, there is a lot of variation between social landlords in:

- the level of rent arrears;
- the rate of evictions in relation to each landlord's homes for let;
- the balance between eviction of tenants and abandonment of tenancies;
- the level of court actions; and
- the proportion of cases taken to court leading to an eviction.

These variations in performance could not be fully explained by background economic and social factors alone. Variation in housing management practice must be a significant factor.

7. In 2008-09 social landlords in Scotland took 19,708 cases to court for eviction action. Of these, the courts issued 7,818 eviction decrees (40%). Social landlords evicted tenants or tenants abandoned their homes in 3,297 of these cases (42% of eviction decrees and 17% of the cases taken to court).

8. The main reason for the eviction of tenants in the social rented sector is rent arrears. Figures from the Social Housing Regulator show that this was the reason in 93% of evictions by Registered Social Landlords in 2008-09. Anti-social behaviour accounts for a further 6.5%, with 0.5% for 'other' reasons. The same detailed breakdown isn't available for tenants of local authorities, however figures from the Scottish Government show that only 2.7% of local authority evictions were for anti-social behaviour.

Existing protection for tenants in the social rented sector

9. Almost all tenants of social landlords will have a Scottish Secure Tenancy. The Housing (Scotland) Act 2001 ('the 2001 Act') sets out the limited grounds under which social landlords can seek to recover possession of a house. This includes where 'rent lawfully due from the tenant has not been paid...' (Ground 1, Schedule 2, 2001 Act).

10. Landlords seeking to raise eviction proceedings against a tenant who has broken one or more of the terms of their tenancy agreement under a Scottish Secure Tenancy are required to firstly issue a Notice of Proceedings letter to the tenant. They must also consider other qualifying occupiers in the property, this includes family members and lodgers. The notice must, under section 14 of the 2001 Act, include:-

- the grounds on which the proceedings for recovery of possession are to be raised;
- a date not earlier than 4 weeks from the date the notice has been served for proceedings to commence.

11. The date given in the Notice of Proceedings letter is the earliest date the landlord can take court action. After that date, the landlord is allowed to start possession proceedings against a tenant at any time during the next 6 months. If the 6 month period passes without proceedings being started the notice falls and the landlord cannot raise proceedings unless they have served a new notice of proceedings on the tenant.

12. Where landlords are seeking to evict tenants for rent arrears, this is subject to the test of reasonableness. In deciding whether it is reasonable to make an order for termination of a tenancy, the court must take into account all of the circumstances of a case. There are a number of set criteria which courts must take into account, although they can also take account of any other relevant factors. The set criteria, in section 16 of the 2001 Act, are:

- the nature, frequency and duration of the action by the tenant leading to eviction proceedings;
- how far the tenant was personally responsible for the action leading to eviction proceedings or whether it was the consequence of acts or omissions by others, (for rent arrears cases this could be whether any housing benefit entitlement has been paid on time or in full, and if not, why not);
- the effect of the tenants conduct on others, for example, where there are serious harmful consequences for other local residents; and
- whether the landlord has considered and, if appropriate, taken forward other possible courses of action in relation to the tenant's conduct before raising eviction proceedings,

13. We know that a lot of good practice around helping tenants to avoid falling into/repay their arrears and keep their tenancies is already in place in Scotland. This includes:

- pre-tenancy support and advice;
- identifying tenants who are vulnerable when tenancy commences and offering enhanced support at the start of their tenancy;
- early face-to-face contact with tenants in arrears;
- a wider range of rent payment options;
- assistance with Housing Benefit applications and other welfare benefit applications; and
- revising current processes to better support tenant's needs.

However these practices vary from landlord to landlord.

14. Practices also vary around the methods for recovering rent arrears. Alternatives to eviction include: -

- wages arrestment;
- voluntary wage deductions; and
- benefit deductions.

These options are however not feasible in every case.

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

Options to help protect tenants from eviction for rent arrears

15. To help to address the variation in performance around rent arrears and evictions across social landlords there are 5 possible options:

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

16. Each of these options are set out in more detail below. Not all of the options are mutually exclusive. So, to help us decide on the best way forward, which may involve more than one option, please answer each of the questions below.

Option 1: Identifying and sharing good practice

17. The majority of tenants in the social sector pay their rent in full and on time, but where this doesn't happen social landlords have in place arrangements to help tenants who have fallen behind with their rent. Landlords have access to advice available online (for example from the Chartered Institute of Housing¹) as well as a wide range of research reports and guidance from a variety of organisations, for example:

- 'Thematic Report: RSLs and Homelessness, Scottish Housing Regulator, November 2009
- 'Evictions of Children and Families: the Impact and the Alternatives', Shelter, November 2009
- 'Prevention of Homelessness Guidance', Scottish Government and the Convention of Scottish Local Authorities, June 2009

¹ <http://www.cih.org/practice/online/>

- ‘Evictions by Social Landlords in Scotland Research Report’, Shelter, December 2008
- ‘Thematic Study: Evictions in Practice’, Communities Scotland, March 2005
- ‘Raising Standards, Rent Arrears, Chapter 15’, Scottish Federation of Housing Associations, February 2002
- Managing Rent Arrears, Accounts Commission and Scottish Homes, June 2000
- Scottish Housing Regulator Performance Standards and self assessment material.

18. As well as managing rent arrears, more and more social landlords are focusing on preventing them in the first place: by allowing tenants to pay rent in a variety of ways; discussing rent arrangements with every new tenant; offering financial and benefits advice to all tenants and by identifying those who may be at risk of falling into rent arrears in the future and providing them with extra support.

19. While sharing good practice alone may have limits, we think that identifying and sharing good practice on preventing rent arrears more widely could be done relatively easily. It could help to reduce the number of tenants who fall into rent arrears or whose rent arrears become significant. This in turn could reduce the number of actions social landlords would take to evict tenants.

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

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

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

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

Option 2: Including an outcome on sustaining tenancies in the Social Housing Charter

20. The Scottish Housing Regulator expects social landlords to act to prevent arrears of rent and service charges building up, and for them to recover any arrears fairly and effectively². We will introduce new arrangements if the Scottish Parliament approves the Housing (Scotland) Bill which is before it at

² Activity Standard 1.8

present. Under these new arrangements, we will set the outcomes that social landlords should be achieving for their tenants in a Social Housing Charter. And a new independent Scottish Housing Regulator will assess, report and if necessary make sure that social landlords meet these outcomes (the current Scottish Housing Regulator will continue to assess risks and take proportionate action until the Social Housing Charter has been developed).

21. We will set the Charter outcomes after consulting stakeholders, including tenants and landlords. This will be an opportunity to discuss and debate what all landlords should be achieving for their tenants. We will then ask the Scottish Parliament to approve the Charter and landlords would have to achieve the outcomes the Charter has set. The Charter will not specify how landlords deliver these outcomes.

22. The detail of what the Charter will include will come from the discussions with stakeholders, but we expect one of the Charter's outcomes to relate to how effective social landlords are in helping tenants maintain their tenancies. Setting such an outcome would give the Scottish Housing Regulator a remit to assess and report on how different landlords perform in this area. It will be able to point to good performance over time, and – if necessary – to require others to match it. This would provide extra information to the Scottish Housing Regulator to help to make sure that all landlords give proper weight to sustaining tenancies and, because of that, reduce the need to take action to evict tenants.

23. During the second half of 2010, we will start discussions with stakeholders about what we might include in the Charter and, if the Scottish Parliament passes the Housing (Scotland) Bill, we will consult with stakeholders again on a draft Charter in 2011, with a view to the Charter coming into force on 1 April 2012.

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

Option 3: Pre-action protocol

24. Identifying and sharing good practice coupled with regulation by the Scottish Housing Regulator would focus on the actions taken by social landlords. A further step would be to bring this work to the attention of the courts through the creation of a pre-action protocol.

25. The aim of a pre-action protocol would be to encourage more contact between social landlords and tenants before action to evict is taken by landlords. The protocol would be built on good practice and would help to improve consistency of approach across all social housing providers.

26. We anticipate that social landlords would follow the steps in the protocol as part of the on-going rent arrears/eviction process. Sheriff's could then take

into account whether social landlords had followed the protocol before they granted any orders to repossess.

27. We would consult on the content of such a protocol, but it could include what was expected of the landlord and the tenant before any action is taken to proceed to court.

28. Paragraph 31 below provides examples of the areas which the protocol may cover.

29. A pre-action protocol would not be statutory and would take the form of guidance to social housing providers. Landlords and the courts would not then be legally required to use it but may choose to do so.

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

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

Option 4: Pre-action requirement

30. We could make sure that there was greater consistency for tenants by making the pre-action protocol a legal requirement. Landlords would have to follow the steps set out in the pre-action requirement before going to court to take eviction action. Sheriff's would then have to consider whether landlords had done so before they granted any orders to repossess. This would require us to introduce new legislation.

31. We would consult on the content of a pre-action requirement. Examples of the areas the pre-action requirement may cover are listed below (these areas are likely to be the same for a pre-action protocol – see option 3):

- clear information to the tenant about the debt;
- efforts made to agree and adhere to repayment plans;
- the circumstances under which no action to repossess should be taken;
- information provided to the tenant about sources of advice, counselling and support for managing debt;
- steps taken around the tenant's eligibility for sources of assistance with payment of rent;
- consideration of the circumstances around the tenant's health, wellbeing or ability to comprehend the nature of the debt.

32. A pre-action requirement would help improve consistency in practice around evictions by guiding the courts as well as social landlords towards a greater consistency of practice around evictions.

33. A pre-action requirement would also bring protection for tenants in line with the protection introduced for homeowners in the Home Owner and Debtor Protection (Scotland) Bill passed by the Scottish Parliament on 11 February 2010.

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

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

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

Option 5: Allowing tenants to retain the existing tenancy

34. Most of the focus has been on early action because this is most effective for tenants, landlords and court time. But, in reality, action to maintain people in a tenancy can continue right up to the day of actual eviction.

35. The Court decree for repossession has the effect of bringing a tenancy to an end on a specified date. Even where the landlord and tenant can agree a way forward at the eleventh hour, the only way that a landlord can retain the tenant in the property is to start a new tenancy³. Removing this need would require legislative change.

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

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

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

Equality Impact Assessment

36. We are undertaking an Equality Impact Assessment on social housing evictions and the proposed changes outlined in this consultation paper. As part of the Equality Impact Assessment we want to talk to equality groups.

³ This is often referred to as “technical eviction” – that is landlords end the tenancy and start a new one, but the tenant remains in their existing home.

The evictions data we hold is not broken down enough to enable us to understand the diverse needs and experiences of different equality groups.

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

Regulatory Impact Assessment

37. We have drafted a Partial Regulatory Impact Assessment which accompanies this consultation document at Annex A. This aims to identify the implications of each of the options for tenants, registered social landlords, local authorities and potentially the Scottish Court Service, the Scottish Legal Aid Board and the Scottish Housing Regulator.

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

38. Alternative formats and community language versions of this consultation paper are available on request from the Scottish Government, Social Housing Division, Area 1-H, Victoria Quay, Edinburgh EH6 6QQ Tel: 0131 244 1514 or 5515.

Responding to the Consultation - Eviction of Tenants in the Social Rented Sector: Protection of Tenants with Rent Arrears

We invite responses to the consultation paper by **28 May 2010**.

Please respond by completing the questionnaire, which covers all the questions included in the consultation paper.

Please send your completed Respondent Information Form with your reply (see 'handling your response' below)

You can download a Word version of the questionnaire and Respondent Information Form from our website.

Please reply by e-mail to: SocialHousing@scotland.gsi.gov.uk

Or by post:

Housing Management and Affordability
Social Housing Division
Scottish Government
Area 1-H
Victoria Quay
Edinburgh EH6 6QQ

If you have any queries about how to reply, please contact a member of the team on 0131 244 1514 or e-mail us at SocialHousing@scotland.gsi.gov.uk

Handling Your Response

We need to know how you wish us to handle your response and, in particular, whether you are happy for us to make your response public. **Please complete and return the Respondent Information Form** which comes with this questionnaire. This will help us to treat your response appropriately. If you ask for your response not to be published, we will regard it as confidential, and we will treat it as such.

The Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002. This means we have to consider any request made to us under the Act for information relating to responses made to this consultation exercise.

Completing the Questionnaire

There are questions on:

1. Protection of tenants (Questions 1-14);
2. Equalities Impact Assessment (Question 15); and
3. Partial Regulatory Impact Assessment (Question 16).

You don't need to answer all the questions if you don't want to. Different questions may be more or less important to different groups of people or organisations. We want your comments on the areas that matter most to you, so please feel free to focus on as many or as few as you wish. However, we would particularly welcome comments on the Equalities Impact Assessment and the Partial Regulatory Impact Assessment.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on the Eviction of Tenants in the Social Rented Sector: Protection of Tenants with Rent Arrears. We aim to issue a report on this consultation process by autumn 2010.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please contact a member of the team on 0131 244 1514 or e-mail us at SocialHousing@scotland.gsi.gov.uk

Consultation Questionnaire

Question 1

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

Question 2

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

Question 3

How can we encourage landlords to adopt good practices in sustaining tenancies?

Question 4

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

Question 5

How best do you think the sharing can be done?

Question 6

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

Question 7

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

Question 8

Are there any unintended consequences in pursuing this option?

Question 9

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

Question 10

Are there any unintended consequences in pursuing this option?

Question 11

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

Question 12

Should landlords be able to retain tenants in their existing tenancy?

Question 13

Are there any unintended consequences of pursuing this option?

Question 14

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

Question 15

Are there any issues around eviction for particular groups, for example, around age, disability, gender, race or religion?

Question 16

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

Please send your completed **Respondent Information Form** and questionnaire to:

SocialHousing@scotland.gsi.gov.uk

Or by post:

Housing Management and Affordability
Social Housing Division
Scottish Government
Area 1-H
Victoria Quay
Edinburgh EH6 6QQ

You can download a Word version of the questionnaire and Respondent Information Form from our website.

We invite responses to the consultation paper by **28 May 2010**.

If you have any queries about how to reply, please contact a member of the team on 0131 244 1514 or e-mail us at SocialHousing@scotland.gsi.gov.uk



RESPONDENT INFORMATION FORM

Please Note That This Form **Must** Be Returned With Your Response To Ensure That We Handle Your Response Appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Forename

2. Postal Address

Postcode	Phone	Email

3. Permissions

I am responding as...

Individual	/	Group/Organisation
<input type="checkbox"/>		<input type="checkbox"/>
Please tick as appropriate		

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes

No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

ANNEX A: PARTIAL REGULATORY IMPACT ASSESSMENT

1. Title of proposal

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

2. Purpose and intended effect

Objectives:

The objective of the consultation is to seek views on options for strengthening the protection for tenants against eviction for rent arrears and improving the consistency of pre-eviction processes. It sets out five options for consideration:

- Identify and share good practice in the sector about preventing rent arrears.
- Include outcomes landlords should be achieving to support their tenants in the Social Housing Charter.
- Introduce a pre-action protocol for rent arrears cases.
- Introduce a pre-action requirement for rent arrears cases.
- Amend legislation to allow tenants to retain their existing tenancy if a way forward is agreed with the landlord following court decree for eviction.

The consultation will close 9 weeks after publication on 28 May 2010. The consultation is seeking views on the five options listed above.

Background:

In response to the rising rates of home repossession in Scotland, we set-up a Repossessions Group in January 2009 to consider whether we needed to strengthen the existing protection for home owners in Scotland. In their final report in June 2009, the Group made it clear that it was as important to consider the eviction of tenants in social housing.

We held an event with a wide range of stakeholders on 19 November 2009 to consider the eviction of tenants in social housing. The event confirmed that the primary responsibility for avoiding eviction through rent arrears rests firstly with the tenant through regular payment of rent. However, the event also revealed widespread variation in performance around rent arrears and evictions across Scotland and an opportunity for reducing variation by sharing good practice.

One of the key actions arising from the evictions event was for the Scottish Government to consider options to improve the consistency and rigour of pre-eviction processes and procedures, including the suggestion of a pre-action protocol or pre-action requirement.

Rationale for government intervention

We are aware that there is a lot of good practice in the social rented sector for supporting tenants and prevent them from falling into rent arrears. For example, current practice includes the following measures:

- pre-tenancy support and advice;
- identifying tenants who are vulnerable when tenancy commences and offering enhanced housing management support at the start of the tenancy;
- early face-to-face contact with tenants in arrears;
- a wider range of rent payment options;
- assistance with Housing Benefit applications and other welfare benefit applications; and
- revising current processes to better support tenant's needs.

However, these practices vary from landlord to landlord and the Scottish Government intends to consult on the five options listed in points 2 and 4 to improve consistency in the sector regarding eviction for rent arrears. For example, considerable variation exists in the rate of evictions/abandoned dwellings in relation to normal letting stock levels amongst local authorities, ranging from less than 1 to 13 evictions/abandoned dwellings per 1000 units. Eviction actions in urban local authorities also tend to result in a higher proportion of abandoned properties than in rural areas. The rate of evictions ranged between 0% and 3.2% for individual RSLs in 2008-09.

Only a very small proportion of local authority evictions are for anti-social behaviour (2.7% in 2008-09) and it appears that eviction for rent arrears is the main reason for eviction. Figures from the Scottish Housing Regulator show that 1,414 Registered Social Landlord (RSL) evictions for rent arrears occurred in 2008-09. This represents 93% of the total RSL evictions.

3. Consultation

The following were consulted prior to drafting the consultation paper:

Out with government:

Scottish Federation of Housing Associations
Legal Services Agency
Shelter Scotland
Citizens Advice Scotland
COSLA and Local Authority representatives
Association of Local Authority Chief Housing Officers (ALACHO)
Chartered Institute of Housing (CIH)
Money Advice Scotland
Scottish Legal Aid Board
Scottish Courts and the Sheriffs' Association
Glasgow Housing Association
Stirling Council
TC Young Solicitors

Within government:
Homelessness Division
Scottish Housing Regulator

Public consultation:

This consultation paper is the first public consultation element regarding the current proposals for evictions in the social rented sector for rent arrears.

4. Options

Option 1 - Identifying and sharing good practice across social landlords on preventing rent arrears:

The aim of this option is to help reduce the number of tenants who fall into arrears or whose rent arrears become significant. This in turn would potentially reduce the number of actions social landlords would take to evict tenants. However, this option is for the wider sharing of good practice only and it would not necessarily reduce the rates of eviction, or ensure consistency of practice across the sector. It would be up to each individual landlord to decide whether to adopt further good practice.

Option 2 - Including an outcome on landlords' effectiveness around helping tenants to maintain their tenancies in a Social Housing Charter:

If the Housing (Scotland) Bill, which is before the Scottish Parliament at present, is approved, we will set the outcomes that social landlords should be achieving for their tenants in a Social Housing Charter and a new independent Scottish Housing Regulator will assess, report and if necessary ensure that social landlords meet these outcomes. As with the previous option, individual landlords would be free to decide how they meet this outcome. However, the Scottish Housing Regulator will also have a role to play in monitoring and reporting progress.

Option 3 - Introducing a pre-action protocol for rent arrears cases:

The aim of a pre-action protocol would be to encourage more contact between social landlords and tenants before eviction action is taken by landlords. The protocol would be built on good practice and would help to improve consistency of approach across all social housing providers. Sheriff's could then take into account whether social landlords had followed the protocol before they granted any orders to repossess. The pre-action protocol would however be non-statutory and would act only as guidance for social housing providers. As with option 1, it would be up to individual landlord to decide whether to adopt the protocol.

Option 4 - Pre-action requirement:

Greater consistency for tenants could be achieved by introducing legislation to make the pre-action protocol a legal requirement. Under this option social landlords would be required to follow the pre-action requirement and Sheriff's would then consider whether landlords had done so before they granted any orders to repossess. This would make the requirement compulsory for the sector and the courts and ensure that each landlord was following the same practice before taking eviction action.

Option 5 - Allowing tenants to retain the existing tenancy:

The Court decree for repossession has the effect of bringing a tenancy to an end on a specified date. Even where the landlord and tenant can agree a way forward at the eleventh hour, often the only way that a landlord can retain the tenant in the property is to start a new tenancy. Removing this need will require legislative change.

Option 6 - Do nothing:

Under the "do nothing" option, local authorities and RSLs will continue with current eviction practice for rent arrears. This will mean that variation will continue to exist across the sector in relation to evictions and it will be for each individual landlord to take action as set out in current legislation and guidance.

5. Costs and benefits

Sectors and groups affected:

This proposal will affect tenants, registered social landlords, local authorities and potentially the Scottish Court Service, the Legal Aid Board and Scottish Housing Regulator.

Benefits:

Option 1 - Will help to prevent rent arrears by sharing good practice with landlords across the sector. In turn, this could potentially reduce the need for eviction action. It will also help to ensure consistency across the sector if landlords adopt good practice guidance.

Option 2 - Will set out a specific outcome that landlords should achieve in the Social Housing Charter. This will also help to ensure consistency and the Scottish Housing Regulator will assess and report on social landlords' achievement of outcomes which would help to drive up performance over time.

Option 3 - Will provide local authorities with guidance to follow through a pre-action protocol for rent arrears cases before commencing eviction

proceedings. This option could also help improve consistency of approach across social housing providers. It may also improve consistency in decision making by the courts. Landlords and the courts will however be free to choose whether to use the pre-action protocol.

Option 4 - Will ensure that landlords are applying consistent practice before evicting tenants with rent arrears through a statutory pre-action requirement. This option will also improve consistency across the sector as the Sheriff Court will assess whether landlords have taken appropriate action before granting an order to evict.

Option 5 - Will enable tenants to remain in their tenancy following a decree for eviction. This will prevent landlords from having to start a new tenancy and will act as an alternative to eviction, should an agreement be made on the way forward with a tenant.

Each of the options above aims to standardise and ensure consistency in practice across the social housing sector for evicting tenants with rent arrears and to ensure that alternative actions have been explored before going through the eviction process, which is costly for the landlord and traumatic for tenants and families.

Costs:

The main reason for social housing evictions in Scotland appears to be rent arrears. Whilst the consultation's aim is to ensure greater consistency in practice for evicting tenants with rent arrears, the costs incurred by social landlords for the eviction process could potentially decrease if court action for eviction is avoided. However, it is possible that costs may increase if landlords are not already adopting good practice, but we expect this will be in limited circumstances.

Greater support for tenants with rent arrears could also potentially save landlords the costs incurred from accruing rent arrears, as well as social hardship for the tenants and families involved. Rent arrears across social landlords in Scotland are currently as follows:

Local Authorities:

- Rent arrears in local authorities across Scotland in March 2009 totalled £37.3 million. This is an increase of £1.9 million on March 2008. This amounted to 4.4% of local authority annual standard rental income compared to 4.3% in March 2008. The level of arrears in each local authority at March 2009 varied from 1.3% to 11.3%.
- Court action was initiated in 13,323 local authority cases in 2008-09. An eviction decree was subsequently issued in 5,246 cases (39.4% of cases taken to court) and eviction occurred in 1,773 cases (13.3% of cases taken to court).

Registered Social Landlords (RSL):

- Evictions against RSL tenants resulted in 1,524 evictions or abandoned dwellings in 2008-2009 (894 evictions, 630 abandoned dwellings).
- Rent arrears for tenants of RSLs in 2008-09 totalled £42.6 million. This is a decrease of £2.0 million on 2007-08. This amounted to 2.9% of the gross rental income in 2008-09 compared to 3.3% in 2007-08 (no collated information is currently available on the variation between RSLs).
- Court action was initiated in 6,385 RSL cases in 2008-09. An eviction decree was subsequently issued in 2,572 cases (40.3% of cases taken to court) and eviction occurred in 1,524 cases (23.9% of cases taken to court). The rate of evictions ranged between 0% and 3.2% for individual RSLs in 2008-09.

Option 1 – Costs are expected to be minimal for sharing good practice and guidance. Greater support for tenants with rent arrears could also potentially save landlords the costs incurred from accruing rent arrears. As discussed above, local authority rent arrears in Scotland totalled £37.3 million in March 2009.

Option 2 – An outcome relating to social landlords effectiveness in helping tenants to sustain tenancies could drive up performance of landlords in the long-term, for example, through supporting tenants in addressing their rent arrears.

Option 3 – A pre-action protocol would serve as guidance for social landlords and for landlords who are not already doing intensive pre-action work, this may incur minimal costs if implemented. However, initial costs are likely to be off-set by long-term savings in legal costs for eviction. This protocol would serve as guidance only and it would not be compulsory for landlords to adopt.

Option 4 – As with option 3, the pre-action requirement could incur some short-term costs for implementation, but long-term savings in legal costs for evictions. This could also offer potential savings through pre-tenancy support, such as addressing rent arrears i.e. through payment options.

Option 5 – amending legislation to enable tenants to stay in their existing tenancy following decree for eviction could have increased costs for landlords if rent arrears continue. However, administration costs and costs for re-housing would be reduced if the tenant stayed in their accommodation.

6. Small/Micro Firms Impact Test

The proposals will affect all social landlords including the smaller RSLs, which are classified as those with less than 250 units by the Scottish Housing Regulator. However, this impact is not expected to be a negative impact as it will provide them with greater guidance and support.

For example, in meetings with representative organisations of the social housing sector and key stakeholders, it was felt that the ratio between staff and stock numbers is often higher in smaller organisations and they are likely to be more geographically focussed. Therefore smaller organisations should be in a better position to their larger, more geographically dispersed counterparts in the sharing of good practice.

The consultation will go out to all RSLs, including smaller RSLs to gauge their views on the proposals being put forward.

7. Legal Aid Impact Test

Initial consultation with the Scottish Legal Aid Board has taken place around the options being consulted on. Impact on the Legal Aid Fund of the options being consulted on is however complex to assess, and will require further time to identify the impact, particularly cost, in a structured way. The Government will continue to work with SLAB to refine estimates of impact following the consultation.

8. "Test Run" of business forms

There are currently no forms for a test run. Any forms created would be prepared in consultation with the sector and test run in advance.

9. Competition assessment

There will be no competitive impact on social landlords as each potential option would apply to the sector as a whole.

10. Enforcement, sanctions and monitoring

Option 1 and 3 will have no impact on enforcement, sanctions and monitoring as it is guidance only and for each individual landlord to adopt.

If the new arrangements in the Housing (Scotland) Bill are approved by the Scottish Parliament, which is before it at present, we will set the outcomes that social landlords should be achieving for their tenants in a Social Housing Charter (Option 2). A new independent Scottish Housing Regulator will assess and report on these outcomes.

Under Option 4, social landlords would have to follow the pre-action requirement and the Sheriff Court would have to consider whether landlords had done so before they granted any orders to evict.

If Option 5 was taken forward, responsibility of enforcement would lie with the Scottish Housing Regulator, as part of their wider role of regulating the housing services provided by RSLs and local authorities.

Social Housing Division

March 2010

ANNEX B: GENERAL INFORMATION ON SCOTTISH GOVERNMENT CONSULTATIONS

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses⁴. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (e.g. analysis of response reports) can be accessed at: Scottish Government consultations <http://www.scotland.gov.uk/Consultations/Current>

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

⁴ <http://www.scotland.gov.uk/consultations>

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



The Scottish
Government

© Crown copyright 2010

ISBN: 978-0-7559-9278-2 (web only)

RR Donnelley B63804 3/10

w w w . s c o t l a n d . g o v . u k