



Housing (Scotland) Bill 2024

GWSF briefing, May 2024

1 Introduction

This briefing focuses on the Bill's social rented sector provisions. We include a short section at the end of the briefing, on the private rented sector rent control provisions, which are likely to be the highest profile parts of the Bill for MSPs and the media. All Bill documentation, including the Explanatory Notes, [can be seen here](#).

2 At a glance – what GWSF members need to know most

Homelessness prevention

- The timescale associated with being threatened with homelessness is extended from two to six months (especially relevant to housing list cases)
- As 'relevant bodies', RSLs (along with councils, health boards and Police Scotland) are included in the 'ask and act' provisions – again this will be most relevant in dealing with housing list applicants
- A new pre-action requirement in arrears cases involving domestic abuse
- Social landlords must have a policy on dealing with domestic abuse

Evictions

- A new Sheriff Court duty to consider if it would be reasonable to delay enforcement of eviction action

Keeping pets

- Strengthened right for tenants, but landlord permission still needed

Delivery of rent increase and other notices

- Allows for electronic communication where tenant has agreed, and also clarifies that recording of delivery doesn't require tenant confirmation

PRS rent controls

- Onus will be on councils to submit rent control applications and the Scottish Govt to then make a decision: nothing likely to be in place before 2028
- Currently RSL mid market rent is not exempt from the provisions but efforts are being made to achieve this

3 Homelessness prevention measures

‘Threatened with homelessness’: Relevant to both local authority homelessness assessments and social landlord housing list assessments, the timescale attached to the concept of being threatened with homelessness is to be extended from two months to six months.

LA homelessness prevention duty: Councils, where satisfied that someone is threatened with homelessness, must take reasonable steps to remove or minimise the threat, and to provide accommodation

GWSF comment: These provisions effectively aim to make homelessness prevention mandatory to explore and deal with, and confirm the requirement to provide accommodation if the homelessness can’t be prevented. Whilst hard to argue with in principle, the issue here is clearly local authority resources, both in terms of staff capacity to do potentially intensive individual casework to try to prevent homelessness occurring, and in terms of available stock to house someone. In this respect the Bill risks being a further example of decent, well-intended legislation which councils don’t have the resources to implement properly.

‘Ask and Act’ provisions: The Bill does not use the phrase ‘Ask and Act’ – this is the informal name being widely used when referring to the provisions.

‘Relevant bodies’, including RSLs, health boards and the Police, where they believe someone may be homeless or threatened with homelessness, must ask the person if this is the case, and whether the person wants a homeless application to be made on their behalf by that body.

If the relevant body has been informed that someone is homeless, it *must* make an application if it is satisfied that this is appropriate and if the person consents to it.

If the relevant body believes someone is threatened with homelessness, it must take action to remove or minimise the threat, or, if it cannot do this, must make a Section 28 application to the local authority if this is appropriate and the person consents.

Relevant bodies, in the exercise of their functions, must have regard to the need to prevent homelessness, and must have regard to any guidance produced by the Scottish Government.

GWSF comment: In practice, these new duties shouldn’t have much, if any, impact on how housing associations try to prevent homelessness among their existing tenants: this is already a significant priority.

But the position with regard to housing list applicants is less clear. Carrying out ‘housing options’ assessments has long been promoted as good practice, but it isn’t

clear how many associations do actual casework to help housing applicants resolve their housing problem, for example by directly contacting someone's private landlord or trying to sort out a Housing Benefit/UC issue.

GWSF believes there is a limit to how much housing associations can be expected to do here: without bespoke funding for this, they would be spending tenants' money on resolving other people's housing issues, and this clearly raises big questions about how appropriate and fair this is.

As is often the case, the SG guidance that is expected to accompany the provisions will be important, and GWSF will be keen to influence the content of this.

LA duty to assess provision of housing support services: A new duty will require councils to assess the need for and provision of housing support services in their area. The services in question are already defined (in previous legislation) as:

- advising or assisting a person with personal budgeting, debt counselling or in dealing with welfare benefit claims
- assisting a person to engage with individuals, professionals or other bodies with an interest in that person's welfare
- advising or assisting a person in understanding and managing their tenancy rights and responsibilities, including assisting a person in disputes about those rights and responsibilities
- advising or assisting a person in settling into a new tenancy

The new duty also covers 'other housing support services' (again as defined in previous legislation), including any service which provides support, assistance, advice or counselling to an individual with particular needs with a view to enabling that individual to maintain a tenancy.

GWSF comment: It is welcome that the importance of effective housing support services is recognised by this requirement. But legislation can never, by itself, guarantee that the level and quality of any provision is adequate. Also capacity issues often raised by GWSF member associations include not just local housing support services, but associated statutory services such as addictions and mental health services.

4 Domestic abuse provisions

Within the Bill, these are part of the homelessness prevention measures, but for the purposes of this briefing we are devoting a separate section to them.

Ignoring ownership of a home: Currently, social landlords must ignore a housing applicant's ownership of a home where it is probable that occupation of it will lead to abuse. The Bill amends this by applying the wider definition of abuse consistent with

the Domestic Abuse (Protection) (Scotland) Act 2021, which refers to ‘physical and mental injury, fear, alarm or distress’.

New pre-action requirement in rent arrears cases: Where the social landlord considers that arrears may have been partly caused by circumstances involving domestic abuse, it must take action to support the tenant’s needs, having regard to its domestic abuse policy, and provide the tenant with details of other support that may be available in relation to the abuse.

Duty to have a domestic abuse policy: Every social landlord must prepare and publish a policy on how it will address the needs of tenants believed to be experiencing domestic abuse, with a view to preventing homelessness.

Landlords must have regard to any Scottish Government guidance on domestic abuse policies.

Again this provision too adopts the newer (2021 Act) definition of abuse, as referred to above.

GWSF comment: Most of these provisions have long been signalled, although the additional pre-action requirement was not expected until more recently. Domestic abuse is never easy for social landlords to tackle, for a wide variety of reasons, including the ongoing failure of the Scottish Government to implement the 2019 legislation on terminating a joint tenant’s interest in the tenancy where they have perpetrated domestic abuse.

GWSF has played its part in sharing model policies from other housing associations, and promoting guidance from CIH Scotland and Scottish Womens Aid, along with holding sessions on what training and other activity would normally go alongside the policy. We will continue to support members with appropriate information, alongside any further guidance produced by the Scottish Government.

5 Evictions

Sheriff Court duty to consider delay: The Bill imposes a new duty on Sheriff Courts, having specified a date on which recovery action takes effect, to consider if it would be reasonable to delay the eviction if it would cause financial hardship or exacerbate health/disability issues. This will *not* apply to anti social behaviour evictions.

GWSF comment: We are not clear what this adds to the current discretion which Sheriffs can exercise in non-ASB cases. Most arrears cases which reach eviction stage are long running and involve substantial amounts of unpaid rent. There is some irony in the fact that a tenant who has been living rent free will indeed suffer financially if this ceases.

6 Keeping pets

Clarification on keeping of pets: The Bill sets out what has generally been normal practice with most social landlords, i.e. that a tenant may keep a pet with the landlord's consent and that this consent cannot be unreasonably withheld; also that consent can be subject to reasonable conditions (as to be covered in Scottish Government guidance).

7 Delivery of notices

Clarification and additional means of delivery: The Bill clarifies that recorded delivery post is acceptable to use. It also provides that delivery may be recorded in a way that evidences it was delivered to the address, including in a way that evidences this without the need for the tenant to confirm it (we assume this relates mainly to witnessed hand delivery).

Specifically for rent increase notices, electronic communication is added (i.e. email) as long as the tenant and landlord have agreed in writing that this is the tenant's preferred means of receiving the rent increase notice.

GWSF comment: At one point GWSF had understood that following some sector uncertainty about delivery of rent increase notices in recent years, the Scottish Government was going to use the Bill to clarify that normal post (not using recorded delivery) was an acceptable means of delivery, but this is not the case. However, the addition of email for rent increase notices, and the clarification around tenants not having to confirm receipt where delivery is otherwise evidenced, are helpful.

8 Private rented sector measures

Rent controls: The Bill sets out the system by which councils will need to apply to have an area designated as a Rent Control Area, and the Scottish Government will then assess and decide on the application after local consultation. The detail will all be in subsequent guidance, so it is hard to get a sense of what the 'tipping point' might be. Also the Bill does not set out exactly what declaration of a Rent Control Area would mean for rent levels.

The Bill includes a provision to exempt certain properties through regulations. Both GWSF and SFHA wish to see mid-market rent (MMR) operated by RSLs exempted.

GWSF comment: On the principles of rent control, our sense is that in some respects, the proposed measures look like Rent Pressure Zones by another name. It sometimes seems that rent control measures are designed to be so fraught to implement that they rarely end up being put in place. Even with a smooth Bill

process, some parties estimate it will be at least 2028 before any rent control is actually introduced anywhere in Scotland.

Specifically on MMR, GWSF believes there is both a point of principle here, about it not being appropriate for RSLs to have their activities unduly controlled by government, and more practical considerations, including the risk of further investment in MMR being reduced because of the uncertainty caused by the prospect of long term rent control.

Registration of letting agents: At Part 4 the Bill includes what appear to be minor changes in the provisions on letting agent registration: these may be relevant to associations providing MMR.