

Housing, Homelessness and Fair Work Committee

10.00am, Tuesday, 14 May 2024

Housing (Scotland) Bill – summary and potential impacts

Executive/routine
Wards

1. Recommendations

- 1.1 Housing Homelessness and Fair Work Committee is asked to note:
 - 1.1.1 That the Housing (Scotland) Bill was introduced on 26 March 2024 and will now progress through the Scottish Parliament;
 - 1.1.2 That, should the Bill be passed and receive royal assent, it is likely to be implemented in late 2025 / early 2026; and
 - 1.1.3 The summary of the Bill provided in this report, including the potential risks and impacts if the Bill is passed in its current form.

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Housing (Scotland) Bill – summary and potential impacts

2. Executive Summary

- 2.1 The Housing (Scotland) Bill was presented on 26 March 2024 and is now subject to scrutiny and debate by the Scottish Parliament. Given the breadth of content covered in the Bill, this is likely to be a lengthy process which would then require secondary legislation to be developed.
- 2.2 Should the Bill pass in its current form, it would bring about a number of significant changes for tenants, landlords, local authorities and partner organisations. This report provides a summary of the Bill as it currently stands and an overview of what the main impacts would be for the Council and for Edinburgh's housing market.

3. Background

- 3.1 The Bill was introduced on 26 March 2024 and will now make its way through the Scottish Parliament legislative process. It follows emergency rent control legislation 'Cost of Living (Tenant Protection) (Scotland) Act 2022' which was in place from October 2022 until March 2024.
- 3.2 The Bill was informed by three public consultations:
 - 3.2.1 [New Deal for Tenants: Draft Rented Sector Strategy consultation](#) (Dec 2021 – April 2022);
 - 3.2.2 [Prevention of homelessness duties consultation](#) (December 2021- April 2022); and
 - 3.2.3 [Mobile Homes Act 1983 – Pitch Fee Uprating Consultation](#) (January 2023 - April 2023).
- 3.3 The Scottish Government also issued a '[Landlord and tenant engagement questionnaire on rented sector reform](#)' (September – October 2023). This sought views on some of the proposals for rented sector reform.
- 3.4 Members of the Scottish Parliament (MSPs) will examine and discuss the Bill. The Scottish Parliament issued the first call for views on the Bill on 19 April 2024. The Council will submit a coordinated response before the deadline of 17 May 2024.

- 3.5 If the Bill is passed, Royal Assent is normally sought around four weeks after. Overall, it is anticipated that the Bill, if passed, is unlikely to be implemented before late 2025/26.

4. Main report

- 4.1 This section sets out the main changes that would take effect, should the Bill be passed in its current form. The Bill is made up of six main parts. A summary of each is set out below.

Part 1: Rent

- 4.2 Part 1 relates to the rent paid by tenants under private residential tenancies (PRTs) and the potential to introduce rent control areas. The Scottish Government policy objectives are to improve housing outcomes for those who rent, in recognition of concerns around the affordability of some private rented accommodation - creating a framework to deliver a nationally consistent approach to rent control whilst maintaining a link to local circumstances.
- 4.3 A duty is imposed on local authorities to carry out an assessment of rent levels and the rate of rent increases in their area. This is to be completed by 30 November 2026 and then at five yearly intervals thereafter. This applies for PRTs and assured tenancies under the Housing (Scotland) Act 1988.
- 4.4 The Bill includes powers to obtain rent information from landlords, including powers to report landlords who do not comply with the request to the First Tier Tribunal, who may face a fine of up to £1,000.
- 4.5 Local Authority assessments are to be reported to Scottish Ministers with a recommendation on whether a rent control area should be introduced. Scottish Ministers must then decide whether all or part of the area of a local authority should be designated as a rent control area. Eight weeks of consultation with potential stakeholders is required before designation is made.
- 4.6 Scottish Ministers will have the power to place limits on rent increases on properties in a rent control area. Under the legislation as presented, landlords will be prevented from increasing rent by more than a specified amount (for example, a specified percentage or an amount falling within a specified range). Any regulations made to specify this level may remain in force for a maximum of five years. Some properties can be exempted on application and landlords of certain properties in a rent control area may be permitted to increase the rent by more than would be permitted by the regulations.
- 4.7 Changes are also set out around when rents can be increased, through modifications to the Private Housing (Tenancies) (Scotland) Act 2016. These changes would place restrictions on rent increases at the start of a tenancy in rent control areas, and limit on how often rent can increase during a tenancy both in and outside rent control areas.

- 4.8 **Potential Impact:** The Bill places an additional burden on Local Authorities to gather and assess rent levels, a task that is currently very difficult to achieve as there are over 43,000 private landlords registered in the city and the data available to the Council is limited (advertised rents only). It is also likely that an ICT solution at either national or local level would be required in order to achieve this objective. Even with an ICT solution, this is likely to be highly resource intensive for officers and the initial date for assessment submission of November 2026 is likely to be extremely challenging for local authorities to meet. Enforcement action where landlords do not comply with any new statutory duties will also require to be properly resourced.
- 4.9 The proposals around rent control areas, coupled with further changes to the eviction process (as outlined in Part 2), whilst intended to protect tenants, create a risk that landlords may sell their properties and leave the private rented market. This would reduce the size of the private rented sector in Edinburgh. Given levels of demand, this could push rents up further for those properties that do remain. This could also reduce the Council's contracted Private Sector Leasing properties, creating greater reliance on unsuitable accommodation for those presenting as homeless.
- 4.10 It should be noted that there has been considerable analysis by industry professionals into the impacts arising from the emergency legislation. This shows that there has been significant impact on investment flows which has resulted in a dramatic reduction in the supply of new housing. This has affected Council projects where there is a 'build to rent' component. There is also evidence that rent levels increased more in Scotland than elsewhere in the UK during this period. In moving forward with permanent legislation, care must be taken to avoid creating homelessness through the same legislation designed to prevent it.

Part 2: Dealing with Evictions

- 4.11 Part 2 makes provision about dealing with evictions, including duties to consider delaying evictions and the amount of damages awarded to tenants for unlawful evictions. The Scottish Government policy objectives are to provide greater protection for tenants during the eviction process (except in certain limited circumstances).
- 4.12 The Bill introduces a duty to consider delaying an eviction or repossession from private, assured or secure tenancies (the latter of which applies for Council tenancies). The First Tier Tribunal (FTT) or Sheriff Court must 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. Exemptions are in place for anti-social behaviour, for tenants not residing in the property and for tenants with a relevant conviction.
- 4.13 This Bill also amends the Housing (Scotland) Act 1988 in terms of unlawful evictions. The court or FTT may now award damages of between three and 36 months' rent where a landlord unlawfully deprives a resident from occupying the premises.

- 4.14 **Potential Impact:** Clarification is required around both the grounds for applying the duty to consider delaying an eviction and how the court will interpret the final wording. Should the Council attempt to evict a tenant for non-payment of rent, the court would have to apply the test. If the court considered that the eviction through the non-payment of rent would lead to financial hardship or negative health outcomes (including homelessness) for the tenant, the court may agree to delay the eviction. It can be foreseen that such delays would become common place as eviction from a property is likely to lead to both of these outcomes. This could potentially have a positive impact on homelessness, as it would provide more time to support households to avoid homelessness or to secure alternative accommodation if required.
- 4.15 However, there are already existing protections in place within the social rented sector to ensure court/eviction action is used only as a last resort, with the focus very much on prevention. There is a long-standing approach in the social sector that ensures that households would not be evicted due to financial hardship as long as they are engaging, have a repayment agreement and that arrangement is being maintained, and so the effect of this aspect could be minimal.
- 4.16 Extending notice periods risks households getting into higher levels of debt they cannot afford. Maintaining a culture of responsibility in meeting rent payment obligations in the social rented sector is essential to enable landlords to maintain income collection levels that pay for services and investment in housing stock. If the likelihood of eviction is decreased, there is less incentive for tenants to pay their rent. This could lead to increased rent arrears on the Housing Revenue Account with no recourse to secure payment. The risks associated with this are further detailed in the Financial Impacts section of this report.

Part 3: Keeping pets and making decorative changes to the property

- 4.17 Part 3 makes provision about residential tenants keeping pets and making changes to let property. The Scottish Government policy objectives are to give private and social housing tenants greater opportunity to have a pet, as well as give all tenants with a PRT greater opportunity to personalise their home while seeking to balance this strengthening of tenant rights with sufficient protections for landlords.
- 4.18 **Pets:** The Bill sets out that tenants can keep a pet (or pets) at the let property with the landlord's consent and the landlord's consent may not be unreasonably refused. The landlord must notify the tenant within 42 days for PRTs (or within one month for a Short Secure Tenancy) of a request as to whether consent is given. A tenant may appeal to the FTT against consent conditions or a refusal of consent. Pets do not include dangerous wild animals within the scope of the Dangerous Wild Animals Act 1976, however the scope otherwise remains wide and subject to further guidance.
- 4.19 **Making Changes:** For PRTs, the tenant may make certain changes without the landlord's consent, and may make other changes with the landlord's consent, which cannot be unreasonably refused, but may be subject to reasonable conditions. The

landlord must notify the tenant within 42 days of a request as to whether consent is given. A tenant may appeal to the FTT against consent conditions or a refusal of consent.

- 4.20 **Potential Impact:** Whilst benefiting tenants, these changes will potentially squeeze the private rented sector further, resulting in reduced supply, further driving up costs and potentially increasing homelessness. It is also anticipated these, and other measures introduced by the Bill, would see an increase in FTT and Court workload, which may lead to resource and/or capacity issues. It would be reasonable to assume pet ownership will increase as a result of this proposed change, and this may result in associated increases in complaints around pets and pet noise.

Part 4: Other matters relating to tenants

- 4.21 Part 4 makes provision about other matters relating to tenants including unclaimed tenancy deposits, registration of letting agents, ending joint tenancies, delivery of notices by social landlords and converting assured tenancies into private residential tenancies. The Scottish Government policy objectives include: using unclaimed deposits to benefit other PRS tenants; improving clarity around letting agent registration; ensuring a fair process is in place when a joint tenant in the PRS wishes to leave a tenancy; making changes to the way notices and other documents may be given in connection with Scottish Secure Tenancies; and proposing the creation of a regulation which would enable a date to be set on which tenancies under the Housing (Scotland) Act 1988 would convert to PRTs under the Housing (Scotland) Act 2016.
- 4.22 Under the new Bill, in a joint tenancy, one tenant may now end a PRT. They must give a pre-notice of at least two months before the end day to every other joint tenant and the landlord, and a subsequent notice within 28 days of the end of the two-month pre-notice period. The whole tenancy will not come to an end on the day stated in the notice if, before that day, the interest of the joint tenant is assigned to another person.
- 4.23 Scottish Ministers may now direct Tenancy Deposit Scheme administrators to transfer any unclaimed deposits (those which have not been claimed within five years) to them or another person (a 'fund administrator').
- 4.24 The options available to social landlords to serve a notice (such as rent increases or charges) have been enhanced and will include the possibility of using electronic communication in specific circumstances.
- 4.25 **Potential Impact:** Unclaimed tenancy deposits could be used to help fund services which would benefit private tenants, such as information and advice provision; supporting tenant participation in local and national activities; homelessness prevention or domestic abuse support.
- 4.26 The two-month joint tenancy pre-notice period would provide time for remaining tenants to seek assistance around their housing options, if required. However, there is a risk that this notice period and process could negatively affect those who need to leave a tenancy in certain circumstances (such as domestic abuse or commercial

sexual exploitation). Further consideration should be given to this with input and expertise from the relevant agencies.

Part 5: Homelessness Prevention

- 4.27 Part 5 makes provision about homelessness prevention including duties of relevant bodies, assessment of housing support services and supporting tenants affected by domestic abuse. The Scottish Government policy objectives are to shift focus away from crisis intervention and towards homelessness prevention without diluting existing rights of people assessed as being homeless, and to help give those living in social housing experiencing domestic abuse through financial control to remain in their home, or be re-housed, and ensure arrears accrued as a result are not a barrier to accessing social housing in the future.
- 4.28 The Bill also changes the definition of Domestic Abuse and places requirements on social landlords to have a domestic abuse housing policy.
- 4.29 The Bill crystalises much good practice around Homelessness Prevention. There are three main areas introduced in this part of the Bill. The Bill introduces a new 'ask and act' duty on specified public sector bodies, requiring them to ask about a person's housing situation and act to prevent them becoming homeless wherever possible.
- 4.30 Relevant bodies with this duty include Health Boards; Special Health Boards; Integration Joint Boards; Local authorities; Police Scotland; Registered Social Landlords and Scottish Ministers' functions relating to people in prison and young offenders institutions.
- 4.31 One option for these public bodies would be to make a referral to the local authority homelessness service where homelessness is perceived as a risk.
- 4.32 The Bill also extends the time period where households threatened with homelessness can seek assistance. Households will be able to present to local authorities and receive support up to six months prior to being homeless (rather than the current two).
- 4.33 In addition, the Bill requires Local Housing Strategies to identify support needs and the availability of support in their area.
- 4.34 Every social landlord must publish a domestic abuse policy on how it will help tenants it believes are experiencing or at risk of domestic abuse, with a view to preventing homelessness. When a social landlord considers that a tenant is experiencing domestic abuse, which partially explains why rent has not been paid, the landlord must support the tenant and provide them with details of other domestic abuse services. This is in line with current Council practices and a Domestic Abuse Policy has been in place for the last four years with work expected to commence shortly on an updated and extended policy.
- 4.35 **Potential Impact:** Whilst the Council supports earlier intervention and prevention, there are initial concerns at how the legislation would operate. Whilst the Bill states that a referral to the local authority homelessness teams is just one option, it is

foreseeable that this will become the default response. Coupled with a household's ability to seek assistance up to six months prior to becoming homeless, it is foreseeable that there will be a rise in the number of households seeking or receiving homelessness assistance. This will impact on resources required in homelessness services to deliver the desired policy objectives of the Bill and, given the financial memorandum accompanying the Bill will be largely unfunded.

- 4.36 In conjunction with other aspects of the Bill, there is a risk of an unfunded over reliance on local authorities to administer the legislation. It is likely that the legislation as proposed may create the conditions for private sector landlords to seek to leave the private rented market prior to implementation (indicatively 2026), thus creating short term pressures on homelessness services and an ongoing risk of exposure around compliance, legal, reputational and economic risks.

Part 6: Other housing matters

- 4.37 Part 6 makes provision about other housing matters including mobile homes, fuel poverty and disclosure of information. The Scottish Government policy objectives include ensuring protections relating to pitch fee uprating for residents of residential mobile homes remain fair; fuel poverty governance is strengthened; and barriers are reduced in terms of cooperative information sharing.
- 4.38 Minor modifications are made to the Mobile Homes Act 1983 to change the way mobile home pitch fees are calculated so increases follow the Consumer Prices Index (CPI) rather than the Retail Prices Index (RPI). This change is not applicable for the Council's site at North Cairntow as the tenancies here are charged Housing Revenue Account (HRA) rental charges.
- 4.39 Minor modifications have been made to the wording of the Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019 in regards to consultations, periodic reports and the advisory panel.
- 4.40 Minor modifications have been made to the wording of the Scottish Public Services Ombudsman Act 2002 relating to relevant information which can be disclosed.

5. Next Steps

- 5.1 Officers will monitor the Bill as it progresses through the Scottish Parliament, particularly in regard to evidence submissions and amendments. Updates will be provided to Committee through the Business Bulletin.
- 5.2 Officers will also continue to engage in discussions with other organisations as the sector continues to digest and respond to the Bill. Officers will pursue opportunities to collaboratively explore the opportunities and implications of the Bill along with any potential mitigations, and to collectively highlight some of the risks arising from particular sections of the Bill.
- 5.3 The Housing and Homelessness Service is currently developing an updated Local Housing Strategy (LHS), which will set out key priorities, challenges and strategy across all tenures for housing and related services over the next five years. The

changes set out in the Bill will inform and be further examined through the development of the LHS. The private rented sector is already identified as a key area of focus within the LHS.

- 5.4 Council Officers will review development agreements with private sector partners and assess whether delivery plans need to be revised in light of viability challenges. Where necessary reports will be presented to both the Housing, Homelessness and Fair Work Committee and Finance and Resources Committee for consideration.

6. Financial impact

- 6.1 This report does not currently put forward any recommendations for decision or change; therefore, there are no direct financial impacts arising from this report. However, preparatory work is underway to understand the financial impacts that would present if the Bill is passed in its current form.
- 6.2 The Bill was accompanied by a number of supporting documents including a Financial Memorandum. The Memorandum for the introduction of the Homelessness Prevention Duties was developed on the basis that 60% of additional homeless referrals would go to local authority homelessness teams for resolution. This would increase pressure on the Council's homelessness service and, without sufficient funding for staffing, the Bill is unlikely to achieve its aims. The Council's own forecasting of the financial impacts of the prevention duty estimated that, if there was a 25% increase in presentations, an additional 42 employees would be required, at a cost of £1.9m per year. For comparison, the financial memorandum provides £1.6m per year for all 32 authorities combined. There is a risk that the Council could be significantly underfunded if the current Bill becomes legislation.
- 6.3 Further financial impacts would arise in relation to Rent Control Area assessments and the resourcing implications for this task, including information gathering, assessment and enforcement. Should parts or the whole of Edinburgh be designated as a rent control area, additional costs would be incurred in the implementation and running of the rent control area by the Council. This could include areas such as ongoing storing and updating of data, licensing, inspection, and enforcement.
- 6.4 There are additional financial risks attached to the changes around eviction proceedings. If the likelihood of eviction is decreased, there is less incentive for tenants to pay their rent. This could lead to increased rent arrears on the HRA account with no recourse to secure payment. A major consequence of this would be a reduction in the capacity to borrow to fund HRA capital investment and core spending from the HRA being placed under increasing strain, making it more challenging to deliver modernisation and energy efficiency programmes as well as new homes to address housing need driven by population change.
- 6.5 In summary, it is believed that the financial memorandum accompanying the Housing Bill significantly underestimates the resources the Council will reasonably

require in order to administer and comply with the legislation if introduced in its current form.

7. Equality and Poverty Impact

- 7.1 This report does not put forward any recommendations for decision or change; therefore, there are no direct Equality and Poverty Impacts arising from this report.
- 7.2 Equality and Poverty Impacts of the Bill, should it be passed, will be fully considered as part of the Integrated Impact Assessment process for the development of the LHS.

8. Climate and Nature Emergency Implications

- 8.1 This report does not put forward any recommendations for decision or change; therefore, there are no direct Climate and Nature Emergency implications arising from this report.
- 8.2 An Equality Impact Assessment has been drafted by the Scottish Government specifically for the Bill and will be published on the Scottish Government website in due course.
- 8.3 Climate and Nature Emergency Impacts of the Bill, should it be passed, will be fully considered as part of the Integrated Impact Assessment process for the development of the Local Housing Strategy.

9. Risk, policy, compliance, governance and community impact

- 9.1 Council officers have engaged in dialogue around the proposals outlined in the Bill on an ongoing basis and have consistently highlighted the risks and opportunities. This has included participation in a Rent Control Working Group with Scottish Government officials and other local authorities representatives and submitting responses to the New Deal for Tenants consultation and questionnaire, and the prevention of homelessness duties consultation.
- 9.2 The Bill is still to progress through the Scottish Parliament, and it is possible that amendments may be made. However, based on the Bill as it currently stands it is believed there are a number of significant risks facing the Council. These are principally:
 - 9.2.1 **Financial and resourcing:** as set out in the Main Report, there are financial impacts associated with the rent control area proposals, an anticipated increase in homelessness presentations and potential for increased rent arrears on the HRA due to changes to eviction proceedings – these would ultimately affect the Council’s ability to fund new housing and pay for the services required to maintain the housing stock, including Net Zero compliance and remedying damp and mould issues;

- 9.2.2 **Compliance and reputational:** an increase in homeless presentations would potentially increase the number of households living in unsuitable temporary accommodation. Without the appropriate funding in place, local authorities will struggle to deliver on the objectives of the Bill; and
- 9.2.3 **Housing market implications:** If the overall supply of private rental accommodation reduces and there is reduced churn of social rented accommodation due to changes to eviction proceedings, this could potentially lead to a short-term increase in the number of homeless households, and increased demand on temporary accommodation due to availability of suitable accommodation.
- 9.3 The housing market implications are likely to be felt long before the final bill receives Royal Assent. The uncertainty and potential impacts may be enough to see landlords leave the market, and there have been a number of investors stating publicly they are now unlikely to choose to develop new properties in Scotland.
- 9.4 Council officers will continue to engage at every opportunity with the Scottish Government to explore potential mitigations along with opportunities to collectively highlight the risks arising from the Bill.

10. Background reading/external references

- 10.1 [Housing \(Scotland\) Bill](#), 26 March 2024

11. Appendices

- 11.1 None.