

SHELTER SCOTLAND: EVIDENCE ON THE IMPACT OF THE COST OF LIVING (TENANT PROTECTION) (SCOTLAND) ACT

Shelter Scotland exists to defend the right to a safe home and fight the devastating impact the housing emergency has on people and society. We work in communities to understand the problem and change the system. We run national campaigns to fight for home.

We welcome the opportunity to provide evidence to the Committee on the impact of the measures introduced as part of the Cost of Living (Tenant Protection) (Scotland) Act 2022. These emergency measures included a freeze on rents and a moratorium on evictions for social and private tenants. We would reflect that the intention stated when the bill was introduced to protect tenants from rent rises and eviction has unfortunately been limited in practice.

From our work we know that people across Scotland are struggling because of the cost-of-living crisis and increasing numbers of people are finding it difficult to afford their housing costs and having to make impossible choices – such as choosing between eating or heating their homes.

Protections from eviction and increased housing costs are essential during this time of significant financial hardship. The Cost of Living Act has taken steps towards protecting people by providing some short-term protections for tenants to support them to keep their homes. These protections are required due to the housing emergency that has been with us since well before the pandemic and the cost of living crisis.

While we support most of the short-term measures in the Cost of Living Act and believe it should be extended for a further six months, it should be noted that we continue to have concerns about some of the measures. In particular the rent arrears measure which allows social tenants to be evicted for rent arrears of over £2,250. We called for this amount to be increased as evidence from our Law Service showed that of the 84 social sector eviction cases which they have worked on from January to October 2022 (prior to the Cost of Living Bill being introduced), the average amount of rent arrears was £5,701.

To provide effective, **long-term solutions to Scotland's housing emergency**, we are also calling on the Scottish Government to:

- Reverse its planned cuts to the housing capital budget to ensure 38,500 social homes are delivered by 2026 to reduce housing need. They should prioritise funding in the Affordable Housing Supply Programme exclusively to delivering homes for social rent and introduce a national acquisition programme.
- Fully fund local government and local homelessness services, including carrying out a full audit of existing homelessness spend and creating a new Homelessness Emergency Fund to direct money where it is most needed.
- Guarantee the right to a home for everyone experiencing homelessness.

Social housing supply

Increasing the supply of social housing in Scotland is crucial if we are to address the housing emergency. It requires adequate funding in order to ensure enough homes are delivered to reduce housing need and to get people out of temporary accommodation.

The large cut to the social housing capital budget announced by John Swinney in December poses real problems for increasing the supply of social homes and reducing housing need, particularly when we have seen the cost of building increase over the past year. Failing to deliver the new social homes Scotland needs will keep Scotland in the grip of a devastating housing emergency.

We acknowledge the current challenges in meeting social housebuilding targets across Scotland – that is why we have [offered urgent solutions to the Scottish Government](#) to help ensure the social homes we need are still delivered:

- redirect all public subsidy in the AHSP exclusively to homes for social rent
- develop a national acquisition programme to increase the supply of social homes
- reverse the cuts announced in the draft budget, which will prove doubly devastating for the delivery of social homes in the current inflationary environment.

Social sector rents

We understand that the Scottish Government has come to an agreement with Councils and Registered Social Landlords (RSLs) on social sector rents and will remove the rent freeze/cap from this legislation. This will allow RSLs and councils to effectively plan and deliver their social house building/delivery programmes and this is positive, as it is the single most important structural policy solution to tackle the housing emergency and reduce housing need.

However, it is vitally important that social rents do remain affordable, especially at a time when tenants are struggling to pay their rent, heating and food bills. There is we understand the potential for rents to rise almost in line with inflation, which could mean an 11% increase. This would be devastating for many households who are already struggling. We know that "come April 2023 half of all households in the social rented sector will be in extreme fuel poverty"¹ and 63% of social rented households (and 40% of private rented households) in Scotland were estimated to be financially vulnerable over period 2018 – 2020 (defined as households with savings which would cover less than one month of income at the poverty line)².

It is therefore vital that the Scottish Government adequately supports households in the social rented sector to ensure they can pay their rent and other essential bills and ensure that they are not at risk of losing their home. In addition, the Scottish Government should consider what support social landlords may require to keep rents affordable and to continue to deliver for current and future tenants.

¹ The Cost of Living (Tenant Protection) (Scotland) Act 2022: First Report to the Scottish Parliament, p.11.

² [Cost of Living Bill - Key Statistics Scottish Government](#)

Evidence from the front line

We have spoken to our housing advisers, legal team and digital advice team to better understand the impact this emergency legislation is having.

We recognise that to date the evidence is limited, but we have seen some impact of the Act with our advisers successfully challenging and stopping some evictions and rent increases using this emergency legislation.

This indicates that some of the emergency legislation is working, but as it has also required the support of our advisers to ensure it is enforced, we would urge the Scottish Government to do more to support private tenants in particular to understand their rights and how to enforce them.

We are also aware that some landlords are acting unscrupulously to circumnavigate the emergency legislation and evict tenants from their home without following the correct legal process.

Our advisers have seen an increase in the numbers of illegal evictions and harassment of tenants forcing them to leave their home. This issue came up during the Covid period too and we would ask that the Scottish Government continue to proactively work closely with Police Scotland to ensure that illegal eviction cases are always treated as a criminal matter.

Social sector evictions

When the bill was progressing through the Scottish Parliament we called for the level of rent arrears to be increased for which an eviction could be pursued. Our evidence showed that for social tenants we are supporting, who are struggling to keep their home due to rent arrears, their rent arrears were all over the £2,250 level legislated in the Act.

We argued that to support more people to keep their homes, it was important to recognise this evidence and if the legislation was to successfully protect more people from eviction, then it needed to be amended.

Our Law Service have reported that of the 84 social sector eviction cases which they have worked on from January to October 2022 (prior to the Cost of Living Bill being introduced), the average amount of rent arrears was £5,701.

Since the Cost of Living (Tenant Protection) (Scotland) Act 2022 came into force, our Scottish Housing Law Service have not observed the new legislation having any impact on Court proceedings throughout Scotland. We have not observed any discussion of or reliance on the Act in the Courts we regularly attend.

In terms of the social sector, we do not expect the Act to impact our case work going forward. This is because the exemption under Schedule 2, Section 1(5)(b)(i) will apply to the majority, if not all of our clients. In general, rent arrears in the social sector are in excess of £2,250 by the time the case reaches Court.

We have been required to regularly dispel confusion among our clients on the protections afforded by the Act. There is a widespread misconception that an 'eviction ban' is operating, which prevents all evictions from taking place at present.

Furthermore, we have serious concerns for the long-term implications of the figure of £2,250 being considered to be 'substantial rent arrears' in the social sector after this emergency legislation ends. We believe it could create a perverse incentive for social sector evictions to be granted for far lower levels of rent arrears than they were previously granted, putting more households at risk of homelessness.

Rights awareness

Shelter Scotland advisers report that tenants are unclear of their rights in relation to the Cost of Living Act. Tenants are often misunderstanding the emergency legislation to mean they aren't at risk of eviction, and this may not be the case due to the exemptions within the Act. This lack of clarity caused in part by the Scottish Government's messaging around the Cost of Living Act is causing confusion.

As we highlighted in [our briefings on the Act](#), a large-scale rights awareness raising programme is required to ensure all tenants are aware of their rights in relation to the emergency legislation, and the support that is available to them.

We strongly recommend that the Scottish Government writes to all private and social tenants to make them aware of this emergency legislation and the resulting changes to their rights, as it did with the emergency legislation changes during the coronavirus pandemic.

As an indication of the increased need for advice since the middle of September this year, there has been an increased interest in the advice pages on our website, with people seeking to find out what their rights are in the current crisis. Nearly 16,000 people have accessed our site looking for this information between 16 September and early December, making clear the need for clear information on housing rights to be provided. We would ask that additional information should urgently be provided by the Scottish Government, and all local authorities for social and private tenants.

Tenant Hardship Grant Fund

Shelter Scotland welcomed the extension of criteria to the Tenant Grant Fund which was announced alongside the emergency measures in the Cost of Living Act. The extension meant that this financial support would be available to all tenants with any rent arrears, not just Covid-related arrears.

[Statistics published in early January](#) show that some local authorities have already spent all their Grant funding, meaning the extended criteria will have no impact unless additional funding is also made available. This does not appear to be forthcoming, with no mention of the Tenant Grant Fund running into 2023/24 in the recently announced Scottish Budget. We've also only this month had sight of the [updated guidance for local authorities](#).

Our advisers have not been signposting tenants to the Tenant Grant Fund, as they have not received any communication from local authorities on whether the new extended criteria applies yet, or if the fund is open for applications again. There has been no information available on the council's websites.

There should be clear communication on what support is available across the country, so that where there are funds available, tenants that are at risk of losing their home are aware of the financial support available.

There should also be adequate monitoring mechanisms put in place to enable accountability on how the money is being spent and how many people have been able to keep their home as a result.

Additional changes and protections required

We understand that more private landlords will likely be struggling to keep their rented properties due to the rising mortgage rates, leading to increased evictions and homelessness as the new Act allows landlords to evict a tenant if they need to sell up due to financial hardship.

We would argue that if a private landlord is needing to sell up, they should as a required first option sell their properties to a social housing provider where that is appropriate. Tenants should be offered the opportunity to remain in their home as it is sold and turned into a social tenancy, ensuring fewer tenants are thrust into the homelessness system which is already creaking under the strain in many areas. This should be considered alongside our call for a Scottish Government national acquisition programme to purchase homes on the open market for use in the social rented sector.