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An t-Ionad Fiosrachaidh

## Housing (Scotland) Bill

### Introduction

This paper provides information and suggested lines of questioning to assist Members of the Committee in scrutinising the homelessness prevention provisions of the Housing (Scotland) Bill with the Minister for Housing.

The Minister for Housing will be joined by the following Scottish Government Officials:

- Catriona MacKean, Deputy Director of Better Homes,
- Pamela McBride, Homelessness Prevention Team Leader,
- Naeem Bhatti, Head of Fuel Poverty and Housing Standards Unit, and
- Craig McGuffie, Legal Services, Scottish Government.

### Overview of the Bill

[The Housing \(Scotland\) Bill](#) deals mainly with rented, particularly private rented, accommodation and homelessness prevention. In the [Policy Memorandum](#), the Scottish Government states that:

“The Bill is ambitious in responding to the need to improve the housing outcomes in Scotland for people who live mainly in rented accommodation or face homelessness. At the same time, it continues to safeguard the proportionate use of a landlord’s property for rental purposes, seeking to deliver a fair balance between protection for tenants and the rights of landlords.

The Bill contains a package of reforms which will help ensure people have a safe, secure, and affordable place to live. It also helps to deliver the Scottish Government’s ‘New Deal for Tenants’ and some aspects of ‘Housing to 2040’, while contributing to the ambition to end homelessness in Scotland.”

The [SPICe briefing on the Bill](#) contains a detailed overview of the Bill's provisions. The following provides an overview of the main provisions relevant to the Committee's consideration.

## **The Bill's provisions**

The homelessness prevention provisions in the Bill stem from the work of the [Prevention Review Group \(PRG\)](#) convened by Crisis and chaired by Professor Suzanne Fitzpatrick, Director of Institute for Social Policy, Housing, Equalities Research (I-SPHERE), at Heriot-Watt University. The PRG were asked by the Scottish Government to develop recommendations for legal duties on Scottish local authorities and wider public bodies to prevent homelessness, and how these might be best implemented.

The PRG noted that, despite existing homelessness prevention activity, it was not consistent or always effective and there was an imbalance in the legislation. The existing legislation was more focussed on what councils should do when someone is homeless, rather than requirements around preventing homelessness. Intervention at later stage is more complicated, costly and detrimental to the wellbeing of those involved.

The PRG report made many specific recommendations. The Scottish Government and COSLA consulted on proposed changes to legislation. In March 2024, the Scottish Government introduced the [Housing \(Scotland\) Bill](#) to Parliament.

## **Specific proposals in the Bill**

### **'Ask and Act' duty**

Section 41 of the Bill would give certain **relevant bodies responsibility to 'ask' a person about their housing situation when they are carrying out their normal business and to 'act' if the person is homeless or at risk of homelessness.**

The relevant bodies proposed in the Bill are:

- Health Boards and Special Health Boards
- Integrated Joint Boards
- Local Authorities
- The Police Service of Scotland
- Registered Social Landlords (RSLs)
- Scottish Ministers in so far as they have functions relating to prisons and young offenders institutions and the persons detained in them

**How the relevant body should act will be specific to the individual's circumstances.** It might include, for example, providing debt advice or family mediation – or helping the individual access this via another service.

The relevant body can make a referral to the local council who have existing legal duties to assess and help homeless people (or those threatened with homelessness). **However, the intention is that a referral to a local authority should not be the default action.**

The Policy Memorandum to the Bill notes:

*“The relevant bodies will use their existing powers to focus on early intervention and prevention by proactively taking steps to mitigate a risk of homelessness, and only referring to a local authority for assistance where it is not possible for them to do so. This upstream intervention and shared responsibility will ensure that fewer people reach the point of housing crisis or become homeless.”*

## **Definition of threatened with homelessness and ‘reasonable steps’**

Currently councils must assist a person who is threatened with homelessness up to two months before homelessness appears imminent (under provisions in the Housing (Scotland) Act 1987).

The Bill proposes to **extend the definition of homelessness from two to six months** in order that meaningful prevention activity can happen and a wider range of support can be considered.

Where there is a threat of homelessness, councils must take reasonable steps to ensure that existing accommodation remains available, or where that is not possible/appropriate, that alternative accommodation is available.

Councils must also provide advice and assistance to remove or lessen the threat of homelessness. **The reasonable steps councils should consider will be set out in secondary legislation and will draw from the recommendations made by the PRG.**

The PRG said that ‘reasonable steps’ should include housing options information, advice and advocacy; advocacy support; welfare and debt advice; referral to other relevant agencies; support for landlords and tenants in the private rented sector; family mediation services; support for people experiencing domestic abuse; and supply of furniture or similar goods.

## **Assessment of housing support services**

All councils have a legal duty to carry out an assessment of homelessness in their area and to set out their approach to the prevention and alleviation of homelessness as part of the Local Housing Strategy. **The Bill proposes that as part of this, an assessment should be carried out on the housing support needs for people to retain their accommodation.** The aim is help inform service development,

including the ability to plan services and work with other agencies to meet the needs of households at risk of homelessness.

## **Domestic abuse**

The Bill also contains a few proposals **specifically aimed at supporting victims of domestic abuse** who might be more likely to be at risk of homelessness.

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

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

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

Section 45 of the Bill would require social landlords to develop and **implement a domestic abuse policy setting out how they will support their tenants who are at risk of homelessness as a result of domestic abuse**.

## **Fuel Poverty**

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

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

“...to strengthen the fuel poverty governance under the 2019 Act, ensuring that consultation and preparation requirements are streamlined and improved; and that the operating costs for the statutory independent SFPAP are

sufficient to allow its operations and scrutiny function to be carried out effectively. **There is no change to the current policy or direction.**"

## **Evidence to date**

The Committee, along with the Local Government, Housing and Planning Committee launched a joint [call for views](#) on the on 19 April 2024, closing on 24 May. The Committees received over 300 submissions. [A summary of the analysis of the call for views has been published online.](#)

The homelessness prevention provisions in the Bill were generally welcomed. However, there were many comments about a lack of clarity and detail on some issues and the resourcing of implementation of the new duties (particularly in relation to the “Ask and Act duty”). There were also comments to suggest that other action, such as increasing the supply of affordable homes was needed to tackle homelessness.

Crisis’s evidence on the Bill notes that the Homelessness Prevent Review Group made some specific recommendations to strengthen the role of health and social care in supporting people who are homeless or at risk of homelessness who have relevant needs that have not been included in the Bill. These included (see further detail in [page 24 and 25 of the HPRG report](#)):

- For the Health and Social Care Partnership (or Integrated Joint Board, or whatever replaces these in the future) to co-operate with the local authority to plan to meet relevant needs identified through a homeless assessment to mitigate future risk of homelessness
- To create a mechanism for co-ordinating support for people with complex needs requiring multiple services, to avoid gaps or duplication in provision.

Similarly, the domestic abuse provisions were also welcomed. Some evidence referred to existing legislation and strategy, particularly the Domestic Abuse Protection (Scotland) Act 2021 which also needed to be implemented.

The Social Justice and Social Security Committee has taken oral evidence on the Bill from stakeholders [during its evidence sessions on Thursday 13 June and Thursday 20 June 2024.](#)

## **Developments since the Committee’s evidence sessions**

On the [afternoon of Thursday 20 June 2024, the Minister for Housing made a statement](#) on the Scottish Government’s response to Scotland’s housing emergency.

In relation to the proposed homelessness prevention duties the Minister stated:

“We have heard concerns from local authorities about the impact of introducing homelessness prevention duties at a time when councils are experiencing other pressures. We will therefore seek views on the implementation of the new duties and will consider taking a phased approach to their introduction.”

On Friday 21 June 2024, a range of equality impact assessments were published. Of relevance to this Committee were:

- [Housing \(Scotland\) Bill: equality impact assessment results](#) -
- [Homelessness prevention duties: equality impact assessment results](#) -
- [Social landlords - pre-action requirement where domestic abuse is a factor in rent arrears: equality impact assessment results](#) -

Further impact assessments will be published in the coming weeks.

The Housing (Scotland) Bill: equality impact assessment results noted that:

“... the Bill is anticipated to have a positive impact on all equality groups.

This EQIA has highlighted there may be greater positive impacts on some of people with protected characteristics. For example, in the case of the homelessness prevention measures, some people will be at greater risk of homelessness such as young people which may include but not be limited to LGBTI youth. Whilst recognising the data available does not provide a complete picture of the needs of those with protected characteristics, this assessment has considered the needs of these groups as fully as possible.

In all cases the impacts have been found to be neutral or none, or positive; and no negative impacts have been identified.”

## **Suggested themes for questions**

The following provides suggested themes for questions for the Minister.

### **General**

1. Given there is a housing emergency, why is the Scottish Government pursuing legislation on homelessness prevention at this stage that might not be implemented for a few years. Should there be a greater focus on making the existing system work and increasing housing supply to respond to the current housing emergency?
2. Crisis’s response to the call for evidence said that it would be helpful for the Scottish Government to set out a vision statement to outline the outcomes from the prevention agenda and how it envisages the duties working in practice. This would help a shared understanding and enable better scrutiny. Do you agree there is a need for this and is this something you will be doing?

## **‘Ask and Act’ duty**

The Bill provides a framework for homelessness prevention duties with further details to be provided in regulation and guidance.

3. Some witnesses have told the Committee there is a lack of clarity about what the ‘Ask and Act’ duty might mean in practice. Could the Bill be more specific, particularly about what the ‘Act’ duty for relevant bodies might mean in practice, which might help a consistent approach to implementation?
4. ALACHO said that there was a fear that the ‘Act’ part of the duty would just result in a default homelessness referral back to councils. How can you avoid this in practice?
5. Witnesses have noted other relevant bodies that will be crucial to making the ‘Ask and Act’ duties work such as the Home Office, DWP, Social Security Scotland and third sector organisations. How can other relevant bodies, that are not listed in the Bill, be encouraged to play a role in the new prevention framework.
6. Why were all the recommendations made by the Homelessness Prevention Review Group to strengthen the role of health and social care services input into homelessness prevention not provided for in the Bill?

## **Preventing homelessness earlier and reasonable steps**

7. The Bill provides for an extension to the definition of threatened with homelessness. However, the Committee heard that the current two-month definition does not always lead to appropriate support being provided and that there is an implementation gap in legislation. What difference will extending this timescale make to individuals at risk of homelessness?
8. The Committee has heard some concern about how the threat of homelessness might be identified and where the burden of proof might lie. For example, Aff the Streets said that it might be difficult for young people in a family breakdown situation and ultimately investigations might make the situation worse. How can this duty work in practice, particularly to support young people?
9. The Committee has heard some comment about a lack of detail in this section of the Bill, for example, as to when a council would have discharged its duty to a person threatened with homelessness. Should the Bill be clearer on this?

## **Accountability and monitoring**

10. Some witnesses have said there is a lack of detail on the accountability and monitoring framework for the Bill. Can you provide further detail on how you envisage this working in practice?

## Resourcing and implementation issues

11. What will be the Scottish Government's process for developing further details on the Bill's provisions, particularly on the 'Ask and Act' provisions, and what are your plans for discussing implementation dates with stakeholders?
12. One of the main concerns that the Committee has heard about is the resourcing of the proposals to ensure successful implementation and the lack of clarity in the Financial Memorandum. ALACHO said that "it does not build confidence and certainty in terms of people's ability to develop and design services". Shelter said that it was "not credible". How would you respond to those concerns?
13. The Committee has heard that implementation of the duties will require training, for example in trauma informed practice, as well as a culture change across all relevant bodies. How can the appropriate culture change be embodied across relevant bodies?
14. The Committee has heard from people with lived experience of homelessness, some of whom said that they felt they were passed between different organisations and had to explain their situation multiple times. The need for better data sharing between agencies was noted. How do you envisage appropriate data sharing to facilitate the new duties and are there likely to be any conflicts with existing data protection legislation?

## Domestic abuse

15. Although some respondents to the call for views supported the domestic abuse provisions, they stated that the existing legislation and strategy, in particular the Domestic Abuse (Protection) Scotland Act 2021 and the 'Improving Housing Outcomes for Women and Children Experiencing Domestic Abuse' report, must be implemented to make a difference too. How are you ensuring that the domestic abuse provisions in the Bill can be as effective as possible by taking a joined up approach between existing legislation and policy?
16. The Bill provides that social landlords will have to consider whether domestic abuse is a factor in rent arrears cases as part of social landlords' pre-action requirements. Some witnesses have said that there is a gap in that these requirements will not also apply to private landlords. Why does this provision not extend to private landlords to ensure tenants in both sectors have the same rights?

## Equalities and rural issues

17. Why was the equality impact assessment to the Bill only published late last week and how do you respond to concerns that the Bill does not adequately recognise equalities issues. Would you agree with Homeless Network Scotland who said that "We need to up our game on this and ensure that we



look through an equalities-competent lens at prevention duties into the overall Bill...”?

18. The Committee has heard about the unique characteristics of homelessness in rural areas and some concern that the Bill does not recognise this. In what ways will the Bill’s proposals support the prevention of homelessness in rural areas?

**Kate Berry, SPICe Research**  
**24 June 2024**

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