

SHELTER SCOTLAND

WRITTEN SUBMISSION

Shelter Scotland welcomes the opportunity to submit evidence to the Infrastructure and Capital Investment Committee on the Housing (Scotland) Bill at Stage 1. Shelter Scotland supports the broad aims of this Bill: to *“enhance housing conditions, retain much needed social housing for the people of Scotland and safeguard social and private tenants”*¹.

Shelter Scotland has been involved in the consultations and advisory groups which have fed into this Bill and supports many of the intentions of the proposed legislation. However, we feel strongly that **all** legislative changes must help to ensure that the housing sector functions as effectively as possible so that everyone has access to a safe, secure and affordable home and the right to a fair, transparent service.

This evidence is in three parts:

- 1. A summary of Shelter Scotland’s key positions**
- 2. Shelter Scotland’s proposals for the Housing (Scotland) Bill**

This section covers Shelter Scotland’s proposals for additions to the draft Housing (Scotland) Bill. These proposals are in line with the overall aims of the bill and are opportunities to strengthen the bill.

- 3. Shelter Scotland’s response to the draft Housing (Scotland) Bill**

This section covers Shelter Scotland’s main points in relation to the draft Bill showing the areas which we support and where we have significant concerns.

1. Summary of Shelter Scotland’s key positions

Shelter Scotland proposals for the Housing (Scotland) Bill:

- **Unsuitable Accommodation Order:** Strengthen current legislation to make sure that households with children or expectant mothers have a right to challenge being placed in homeless temporary accommodation that is of a very poor

¹ Scottish Government press release (Nov 2013)
<http://news.scotland.gov.uk/News/Improving-housing-quality-67e.aspx>

standard of physical repair.

- **Homelessness referrals:** All referrals for settled accommodation for statutory homeless households from councils to registered social landlord (RSL) partners should be made through mandatory use of a 'Section 5' referral. This would make all housing allocations and partnerships transparent, comparable and measurable.
- **Carbon monoxide alarms (PRS):** Shelter Scotland would like to see carbon monoxide alarms become mandatory in all privately rented property in Scotland. This could be achieved by an amendment to the Repairing Standard in the Housing (Scotland) Act 2006.

Shelter Scotland's response to the draft Housing (Scotland) Bill:

- **Age and allocations:** The draft Bill includes an amendment to existing legislation which would remove the current prohibition on taking age into account when allocating social housing. We strongly oppose this unfair and discriminatory measure and want to see this removed from the Bill.
- **Right to buy:** Shelter Scotland supports the abolition of Right to Buy (RTB) in order to protect existing social rented housing stock. We would, however, like to see a commencement date sooner than the proposed three years.
- **Social housing:** There are many proposals in this section, some of which will make detailed but important changes and improvements to the management and allocation of social housing. Some of the proposals however, could have serious unintended consequences and Shelter Scotland feels these need to be considered in more detail or removed entirely:
 - **increased use of Short Scottish Secure Tenancies (SSSTs) for antisocial behaviour**
 - **a simplified eviction process after a criminal conviction**

2. Shelter Scotland's proposals for the Housing (Scotland) Bill

In addition to what is proposed in the draft Bill, Shelter Scotland believes that an opportunity has been missed to strengthen existing legislation, specifically around housing for homeless people and families to improve outcomes for

those experiencing the crisis of homelessness, and safety in privately rented homes.

Proposal 1: Strengthening the Unsuitable Accommodation Order

Strengthen current legislation to make sure that households with children or expectant mothers have a right to challenge being placed in homeless temporary accommodation that is of a very poor physical repair.

Shelter Scotland wants to see an amendment to existing legislation which would mean that families with children in sub-standard temporary accommodation have a legislative right to challenge the local authority which has provided it.

The Unsuitable Accommodation (Scotland) Order 2004 was introduced to restrict the use of bed and breakfast (B&B) as temporary accommodation (TA) for households with children and pregnant women. This Order has been very successful in eliminating the use of unsuitable **types** of accommodation for these households, with a reduction of 92% in the use of B&B over the past 10 years. However in a minority of cases, the temporary accommodation that is provided to these groups can still fall below an adequate physical standard of repair. Shelter Scotland regularly helps clients who come to us after being placed in TA which is in poor repair, damp and or with inadequate heating². This specific issue is not covered by existing legislation and although the Code of Guidance defines good practice around TA accommodation, this is not legislative and currently vulnerable families have no recourse to challenge the conditions they face.

Shelter Scotland wants to see an additional clause added to the Unsuitable Accommodation Order that explicitly covers poor physical repair.

² 'Temporary accommodation Standards: Campaign briefing' (Shelter Scotland, November 2013)
http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/temporary_accommodation_standards_campaign_briefing

- **A legislative amendment to the existing Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 to add a clause(s) relating specifically to minimum physical standards for families with children or pregnant women in temporary accommodation.**

This change to existing legislation would ensure that the standards of repairs in temporary accommodation are the same for those with a Scottish secure tenancy (SST) and those in the private rented sector (PRS) have, but would be explicitly to help households with children and pregnant women placed in temporary accommodation.

Proposal 2: Homeless referrals

All referrals for settled accommodation for statutory homeless households from councils to registered social landlord (RSL) partners should be made through mandatory use of a 'Section 5' referral. This would make all housing allocations transparent and measurable.

With local authorities increasingly working in partnership with RSLs to meet their duty to house homelessness households, we must ensure that the provision of that accommodation is fair, transparent and measurable and people understand how allocations are made.

Across all social housing, the allocation of housing to households classified as statutorily homeless households is 35%. Currently, local authorities have 54% of all social housing stock while RSLs have 46%. Yet, local authorities allocate 42% of their annual lets to homeless households whereas RSLs only allocate 27% on average. There is a wide range of practices across Scotland and different partnerships and protocols have been established. Given the increasingly significant role that RSLs are playing in housing homeless people, Section 5 of the Housing (Scotland) Act 2001³ introduced a formal process for the referral of homeless households by councils to RSLs. More than ten years after commencement, this legislation there is still mixed practice⁴ and little consistency.

³ <http://www.legislation.gov.uk/asp/2001/10/section/5>

⁴ Data from 2012/13 shows that, of homeless referrals housed by RSLs, 65% are described as section 5 referrals with 29% described as 'LA nominations' and 8% described as 'other', which are generally informal nomination arrangements⁴ RSL statistics from Scottish Housing Regulator: <http://www.scottishhousingregulator.gov.uk/publications/benchmarking-tables>.

Shelter Scotland has been monitoring the use of section 5 referrals and believes that in some areas RSLs are doing more work to respond to and prevent homelessness than these figures portray⁵ but this cannot be tracked because of the inconsistent use of Section 5 referrals. Although 65% of all homeless households accommodated by RSLs are housed using a Section 5 referral, the data shows that some RSLs/councils use Section 5 referrals in 100% of their allocations while some don't use section 5 referrals at all, meaning there is very little consistency for the individuals involved. In order to ensure that we are making best use of resources, we need to understand more about homeless allocations and have a standard process in place.

Shelter Scotland believes that the Housing (Scotland) Act 2001 should be amended to require a Section 5 referral to be used in all instances where a RSL let is sought to meet a statutory homelessness duty. Data from 2012/13 shows that, of homeless referrals housed by RSLs, 65% are described as 'Section 5 referrals' with 29% described as 'LA nominations' and 8% described as 'other', which are generally informal nomination arrangements⁶. We need to ensure greater transparency and make referrals easier to track and monitor which in turn, would improve partnership working.⁷

Proposal 3: Improving tenant safety in the Private Rented Sector

Mandatory carbon monoxide alarms for all private rented homes

Shelter Scotland would like to see carbon monoxide alarms become mandatory in all privately rented property in Scotland. This could be achieved by an amendment to the repairing standard in the Housing (Scotland) Act 2006.

Carbon monoxide (CO) gas is known as the 'silent killer' because it is invisible and has no smell. CO can be emitted by any faulty appliance which burns a carbon based fuel such as gas, petrol, oil, coal and wood, and as little as 2% in the air can kill within one to three minutes. Children, elderly people, pregnant women and people with respiratory problems are particularly at risk from carbon monoxide poisoning.

⁵ Shelter Scotland, 'RSLs and homelessness in Scotland', 2009, http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/rsls_and_homelessness_in_scotland

⁶ RSL statistics from the Scottish Housing Regulator: <http://www.scottishhousingregulator.gov.uk/publications/benchmarking-tables>

⁷ A briefing on this proposal to improve Section 5 referrals is available on the Shelter Scotland website http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/housing_scotland_bill_2013_policy_proposal_on_section_5_referrals

According to Department of Health figures for England and Wales, 50 people a year die from CO poisoning, and around 4,000 are taken to A&E⁸.

All private landlords in Scotland must provide a valid gas safety record and annual checks for the appliances in the property they rent out⁹, but there is currently no legal requirement for them to provide a carbon monoxide detector and alarm. From October 2013, building regulations in Scotland were changed to require CO alarms to be fitted whenever a *new or replacement* boiler, heater, fire or stove is fitted to residential property. Shelter Scotland would like to see carbon monoxide alarms become mandatory in *all* privately rented property in Scotland. This could be achieved by an amendment to the Repairing Standard in the Housing (Scotland) Act 2006.

Safety of electrical wiring installations

This Bill also presents an opportunity to protect tenants in the PRS from the dangers posed by unsafe electrical installations. Shelter Scotland fully backs the call from the Electrical Safety Council, as detailed in their written evidence, for mandatory five yearly checks by a registered electrician, of both fixed electrical installations in all privately rented property and any electrical appliances supplied with lets.

3. Shelter Scotland's position on the draft Housing (Scotland) Bill

Part 1: Right to Buy [Section 1 & 85(4)]

Shelter Scotland supports the abolition of the Right to Buy (RTB) in order to protect existing social rented housing stock. The Scottish Government estimates that removing the Right to Buy would retain 10,000 houses that might otherwise be sold in the period 2015 to 2020.

Given the current pressures on social housing, it is regrettable that the Scottish Government has set a 3 year delay before implementation. The process of legislating to end RTB will bring with it publicity and therefore plenty of opportunity for tenants who wish to purchase to exercise their right.

We argue that abolition should take effect immediately from the date of commencement which might be, for example, 6 months or a year after the Bill receives Royal Assent. There is a need to balance allowing people

⁸ Reliable data for deaths from CO poisoning in Scotland is not available since inquests for unexplained deaths are not routinely held, unlike in England where the coroners system investigates all unexplained and sudden deaths.

⁹ Under the The Gas Safety (Installation and Use) Regulations 1998

to take time to properly consider the option of buying, with the potential for less-than-scrupulous commercial companies having the opportunity to persuade people to “buy before it is too late”.

Part 2: Changes to social housing - allocation and management

This section of the Bill proposes a series of detailed changes to the allocation and management of social housing. These have been consulted on and discussed at the Scottish Government’s Affordable Rented Housing Advisory Group (ARHAG) of which Shelter Scotland is a member¹⁰.

Shelter Scotland agrees that more needs to be done to ensure that social landlords make best use of the limited supply of existing stock. While some of these proposals are welcome – enhancing tenants’ rights and technical amendments to clarify existing legislation, other proposals, especially around eviction processes, have potentially negative consequences as currently drafted. It is important that responses to anti-social behaviour are strong, consistent and *effective*. But we do not want to see detrimental changes to housing law and tenancy rights in response to concerns over anti-social behaviour which may not be effective and could cause serious problems for some vulnerable tenants.

There are three proposals that we do not support and believe should be removed from the Bill altogether:

Taking age into account when allocating social housing:

Bill proposal [section 5]: This proposal seeks to remove the prohibition on social landlords taking someone’s age into account when allocating housing.

Shelter Scotland position: This proposal would mean social landlords can take the age of an applicant into account when allocating housing. This goes against the principle that the need of the household should dictate any allocation. We feel this change is potentially discriminatory and there is already sufficient flexibility in the national framework and legislation to allow landlords to make sustainable, common sense allocations. We are not aware of any evidence to suggest that the current legislation is inhibiting good practice in allocations. **We want to see this proposal removed from the Bill entirely.** We strongly believe that:

¹⁰ <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/16342/management/ARHAG>

- The allocation of social housing must be determined by the needs and circumstances of the household and age in itself is not a need category.
- By removing this important safeguard there is a very real danger that vulnerable groups will be unfairly penalised and will not be allocated the homes they need and are entitled to. In particular, we feel that young people will be discriminated against as potentially less attractive tenants.
- Current legislation and guidance means that there is sufficient flexibility when allocating homes to ensure tenancies are suitable and sustainable in the long term, for example if there are accessibility requirements or if someone needed a specially adapted property.

Increased use of the SSST for antisocial behaviour

Bill proposal [Section 8]: This proposal would extend the circumstances when a social landlord can allocate or demote a secure Scottish tenancy (SST) to a short Scottish secure tenancy (SSST) where *“tenants (or any one of joint tenants) or a person residing or lodging with, or a subtenant of, the tenant”* has acted anti-socially in or near their home within the past 3 years.

Shelter Scotland position: Shelter Scotland believes that antisocial behaviour (ASB) which blights communities and causes misery and distress should be tackled quickly and *effectively*. We do not believe that this proposal will be effective and do not think that linking behaviour to tenancy rights is the correct approach. We need changes to practice to compliment the raft of existing legislation and partnerships to tackle ASB and its causes.

Specifically, **we want to see this proposal removed from the Bill entirely because:**

- We are concerned about what constitutes ‘anti-social behaviour’ in this provision and the low burden of proof that is required to result in someone losing their security of tenure and possibly their home.
- The 3 year time limit in this proposal would mean people could be penalised for actions a long time ago even if they have taken steps to turn their lives around. This means they could be over-zealously penalised for the previous bad behaviour of a joint tenant or family member.
- we are concerned about the inequity between existing and new tenants under this proposal. Existing tenants would have the right to review the demotion of their tenancy while new tenants granted a SSST would have no rights to challenge the decision to give them an unsecure tenancy.

Simplified eviction process after criminal conviction

Bill proposal [15]: This proposal effectively simplifies the eviction process once a tenant has a conviction for an offence punishable by imprisonment, or for using the property for illegal purposes within the previous 12 months. This proposal would mean the court does not have to consider whether it is 'reasonable' to evict: effectively an 'auto-eviction' in certain cases.

Shelter Scotland position: Shelter Scotland understands there may be frustrations for landlords when they have to go through a court process for an eviction order, when the tenant has already been convicted of a criminal offence. However, we have concerns about how this proposal could be used to penalise tenants who have sought to change their behaviour since an initial conviction, or who were convicted of a low level offence which did not impact or harm other tenants. **We believe this could have serious unintended consequences and would like this measure to be removed from the Bill.** Our specific concerns are:

- This measure will remove the test of 'reasonableness' that Sheriffs currently apply during eviction cases. This takes the power away from the courts to decide if in each case, a person losing their home is a 'reasonable' outcome. This is often where judgements can be made on whether the person has made efforts to change their behaviour or if there are mitigating circumstances. As a consequence we are extremely concerned that by removing this option, sheriffs will have no option but to make someone homeless when it is not reasonable to do so¹¹.
- We do not believe that this measure will be effective in tackling anti-social behaviour and may have a range of negative consequences including homelessness for vulnerable tenants who are effectively being punished twice – through a criminal conviction and then loss of their home.
- We also believe this could increase litigation in general and potentially court costs in challenges and appeals.

The remaining proposals in this section dealing with a range of allocation and social housing management tools are non-contentious and we broadly supports these. It will be crucial once the legislation is amended, that the right regulation and statutory guidance is put in place to ensure good, consistent practice by social landlords using these measures and to make sure there are no unintended consequences.

¹¹ While 'proportionality' can be considered under European Convention on Human Rights (ECHR) this does not cover reasonableness and there is no guarantee that every Sheriff will be willing to hear proportionality arguments.

Part 3: Private Rented Housing

Shelter Scotland believes that greater security is the key to ensuring that private tenancies provide stable and secure homes for Scotland's private renters¹². This is increasingly important as 12% of all households in Scotland now rent privately¹³, double the number ten years ago, and 26% of households renting privately in Scotland have children¹⁴.

Greater security of tenure would also empower tenants to be active consumers and use their rights effectively. A review group established by the Scottish Government is currently considering possible changes to the tenancy regime in the private rented sector¹⁵. The group, of which Shelter Scotland is a member, is submitting its recommendation for reform to the tenancy regime in the PRS to Ministers in early March 2014.

Establishing a Private Rented Sector Tribunal

This provision proposes taking civil housing disputes in the private rented sector – both eviction and non-eviction – out of the sheriff court, and into a dedicated private rented sector tribunal.

Shelter Scotland supports the creation of a private rented sector tribunal.¹⁶ We believe this will improve dispute resolution for private tenants and landlords, making dispute resolution more accessible, cheaper, less time-consuming and less intimidating for all parties. Decision-makers in a tribunal would also have a higher degree of specialisation, potentially giving a higher quality of decision.

Importantly, the tribunal should be free-to-access for vulnerable tenants and those on low incomes. It is also important that free legal advice and representation be made available for these groups through the Scottish Legal

¹² See our report, 'The case for greater security of tenure for private tenants in Scotland', September 2013,

http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/the_case_for_greater_security_for_private_tenants_in_scotland

¹³ Housing Statistics for Scotland, published 26th August 2013

¹⁴ Scottish Government, 'Scotland's People, Annual Report: 2011, Scottish Household Survey'

¹⁵ As set out in the Scottish Government's strategy for the private rented sector: 'A place to stay, a place to call home' published in May 2013

¹⁶ Shelter Scotland, Consultation response: Better dispute resolution in housing, April 2013
http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/consultation_response_better_dispute_resolution_in_housing

Aid Board, exploring the possibility of rolling out lay representation across the tribunal. This would ensure that everyone is able to navigate the dispute resolution process effectively. The panel should also be designed to encourage participation by tenants. We believe that a less adversarial approach to housing related disputes would encourage tenants to assert their legal rights.

Third party reporting to the Private Rented Housing Panel

The Bill contains a provision for local authorities to make applications to the Private Rented Housing Panel (PRHP) where a landlord has failed to meet the repairing standard.¹⁷

Shelter Scotland supports this proposal; currently the PRHP is not working as an effective mechanism for tenants to force improvements in private properties. However, it must be implemented in such a way as to not create conflict between tenant and landlord which put the tenancy at risk.

The proposal allows local authorities to address poor conditions in private rented housing, without the need for private tenants to take forward applications. Shelter Scotland regularly advises private tenants experiencing problems with poor repair in their homes. Many who are unwilling to apply to the PRHP because they fear it will have a detrimental effect on their relationship with their landlord, putting them at risk of losing their tenancy.

It is important that third party reporting to the PRHP does not in any way lead to a tenant fearing that their tenancy will be ended by their landlord. Tenants should be made fully aware of the implications of a third party application to the PRHP. To guarantee that private tenants' security of tenure is not affected, and to encourage more tenants to pursue their right to repair through the PRHP, the Scottish Government should act to increase security of tenure for private tenants.¹⁸

¹⁷ The full repairing standard is contained in s.13 Housing (Scotland) Act 2006

¹⁸ Shelter Scotland, 'The case for greater security of tenure for private tenants in Scotland', September 2013,

http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/the_case_for_greater_security_for_private_tenants_in_scotland

Part 4: The regulation of letting agents in Scotland

The Bill creates a requirement for letting agents to register as an agent, adhere to a statutory code of practice and sets up a dispute resolution process for landlords, agents and tenants.

Shelter Scotland supports this approach to regulating letting agents. We have long argued for regulation of this industry – alongside landlord and agent representative bodies.¹⁹ Regulation would benefit tenants, landlords and good letting agents. It is critical that any regulatory system has sufficient power to force positive changes in practice.

Regulation is important to drive elements of poor practice out of Scotland's lettings industry, including: the charging of unlawful upfront fees to tenants²⁰, the failure to register tenants' deposits and the failure to carry out important safety checks.

The code of practice must set a high standard for the conduct of all lettings professionals, driving poor practice out of the market. It should be clear about what constitutes a failure under the code of practice and, where tenants and landlords believe they have been treated unfairly, it should be clear what action they can take under the code of practice. Importantly it should also apply to all professionals in the lettings industry, ensuring consumers – both landlords and tenants – are clear about what standards and forms of redress apply.

The dispute resolution process must be easy to understand and access by both landlords and tenants. The cost should not be prohibitively expensive. Applications from vulnerable tenants or those on low incomes, should be free. This is particularly important where tenants or landlords have experienced a financial loss as a result of the actions of an agent – for example where unlawful pre-tenancy fees have been required

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¹⁹ Shelter Scotland, 'Regulating Letting Agents in Scotland', 2013, http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/regulating_letting_agents_in_scotland

²⁰ Shelter Scotland, 'The charging of Premiums in the private rented sector', 2011, http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/premiums_in_the_private_rented_sector