



Housing (Scotland) Bill: call for evidence

CIH Scotland response to the Local Government, Housing and Planning Committee

07 June 2024

General comments

CIH Scotland is the professional body for housing with around 1,900 members in Scotland working across tenures to create a housing system that works for everyone. We have been working extensively with our members throughout the process of the Bill's development to ensure that their experience and expertise is reflected, hosting a series of roundtables and carrying out an online survey in summer 2023.

When the Bill was introduced at the end of March 2024 with some of the proposals developed more fully, we reached out to our members again. This response takes into account the discussions we have had to date with our members and wider stakeholders including 40 responses to our recent online surveys and 88 members attending two roundtable discussions in May and June.

Committee questions

Q1. To what extent do you agree that the measures in the Bill meet the Scottish Government's stated policy objectives?

Disagree

Q2. What are your main reasons for your views on Q1? (please note we have asked more detailed questions on the Bill later in this survey)

The Scottish Government has stated that it has ambitions to end homelessness in Scotland, align standards between tenures and better protect the rights of tenants. While we agree with the vision and the principles, we feel that the Bill falls short of these ambitions and has the potential to contribute to rather than address the current housing emergency which is resulting in record numbers of homeless cases, increasing use of unsuitable temporary accommodation and significant increases in private rents despite the emergency rent caps that were put in place across Scotland.

With respect to the rent control measures proposed in the Bill, there is a lack of joined-up thinking about the potential consequences for the market, and therefore the tenants who live in the PRS. We do agree that affordability issues in the PRS need to be addressed, but evidence from the emergency rent cap legislation suggests that the measures had little impact on rents (the average increase across Scotland was [14.3 per cent in 2022/23](#) despite the three per cent cap) and may be causing landlords to leave the market, further increasing pressure on already stretched homelessness services.

In a recent report we [published in March 2024](#), 68 per cent of local authorities told us there had been an increase in private landlords leaving the market in their area and 48 per cent were concerned about potential increases in homelessness. Industry experts

have also warned about the impact of rent control measures on investment in the build to let market.

There is no clear vision for the PRS, or for what might replace it if landlords decide to leave in significant numbers. This is extremely concerning given the current pressures on the homelessness system and significant cuts to the affordable housing supply budget.

Our members are generally supportive of the proposals to introduce a homelessness prevention duty, and the potential for this to build partnerships on a more formal basis. The message that homelessness is not just a housing issue is welcome. However, the lack of detail about how the “ask and act” duty might work in practice is concerning and there is a danger that this simply becomes a referral route into local authority homelessness services that are already underfunded.

We have significant concerns about the levels of resources that will be required to effectively implement the measures set out in the Bill. Without adequate resources for implementation, the Bill will not make a positive difference. Indeed, if rent control measures lead to loss of residential supply, the Bill could worsen the current housing emergency.

Q3. Do you support the proposals in Part 1 of the Bill allowing rent control areas to be designated?

As set out above, we have serious concerns about the potential for rent controls to shrink the market if landlords decide to leave, and institutional investment is stalled or withdrawn. We do not feel that adequate consideration has been given to mitigations. 90 per cent of respondents to our online survey stated that there will be unintended consequences arising from the rent control proposals. More detailed comments are summarised below.

If rent control measures are to be introduced, there are some technical points to be considered.

- **Data collection** - the Rent Pressure Zone (RPZ) regulations that are already in place are unusable due to the burden of evidence required to support an application. The Bill makes provision for local authorities to request rent information from landlords. This should help to build evidence over time, but local authorities need resources to be able to gather and maintain a robust data set and it is unclear how this will be resourced.
- **Data quality** - the Financial Memorandum suggests that data would be gathered cyclically in line with five-year reporting requirements and comprise of initial scoping exercise carried out by all local authorities with a more detailed exercise (including requesting data from individual landlords) only being carried out by those intending to apply a rent control area. This approach would not provide robust, real-time data which is what it needed to make informed decisions about significant policy changes such as imposing a rent cap. More frequently updated data will provide a better evidence base but would have resource implications.
- **Data enforcement** - the proposed £1,000 fine for landlords failing to provide information or providing false information is unlikely to act as a strong enough deterrent. Local authorities may not have adequate resources to proactively check and verify the data being provided.



- **Rent cap formula** - the Bill suggests moving away from the RPZ cap of CPI + x % to a more flexible system that would allow a range to be applied or a formula that is not set out in the Bill. This could cause further uncertainty in the market if it is not guaranteed that landlords could at the very least increase rents in line with inflation and their increasing costs.
- **Rent cap enforcement** - the proposed system still relies on tenants to challenge rent increases and we know that this is not always possible for a number of reasons. Tenants may not be aware of their rights, or they may not feel able to exercise them. They may not have the skills or time to navigate the tribunal system, or they may be concerned about the landlord taking action against them. The PRS needs proactive enforcement of standards to improve conditions for tenants, but local authorities lack the resources needed to put this in place in a meaningful way.
- **Exemptions** - the Bill allows for exemptions to be set if a rent control area is designated. However, we feel that mid market rent (MMR) homes that are delivered as part of the Scottish Government's Affordable Housing Supply Programme (AHSP) should specifically be exempt from all rent control measures and this should be specified in the Bill, not left to regulations. These MMR homes are built to provide homes below the market rate for households on lower incomes but who will struggle to access social housing because of a lack of supply. They require less Government subsidy but work on tight margins and need clarity for long-term business plans to stack up.

Q4. Do you have any further comments to make on Part 1 of the Bill dealing with rent for private tenants?

No

Q5. What are your views on Part 2 of the Bill that deals with evictions?

We agree that eviction action should always be the last resort, and that every effort should be made to support tenants to address issues before an eviction is carried out. This already happens in the social rented sector in the vast majority of cases and the introduction of pre-action requirements in the PRS is a good step forward.

However, the lack of detail in the Bill about how a duty to consider circumstances would work in practice or the timescales that could be involved is concerning. Some examples of the types of situation that could be considered are provided and seem extremely wide ranging. It is unclear how decisions could be made effectively and consistently when considering personal circumstances.

It is also unclear how the tribunal and court systems will be resourced to deal with potential increases in the number of tenants requesting a delay to eviction procedures, each of which will involve unique and personal circumstances. Additional costs to landlords (such as legal costs and increased bad debt provision) could also be passed on to future tenants through increased rents.

Q6. Do you support the proposals in Part 3 of the Bill to strengthen the rights of tenants to keep pets and make changes to let property?

Our members generally support the proposals to allow tenants the right to request pets and to personalise their homes. Making a house a home can help tenants' wellbeing and can improve tenancy sustainment.



However, the rights will need to be underpinned with clear guidance setting out rights and responsibilities for both parties. Considerations will need to include:

- Definitions of what is “reasonable” both in terms of personalisation and pets.
- Whether additional deposits can be required and whether these would be outwith the existing limit of two month’s rent in the PRS.
- Any requirements for the tenant to reinstate the property.
- Who would be responsible for policing and enforcing the behaviour of pets outside of the home.

The social rented sector will have good practice to share in terms of pet policies.

Q7. Do you have any further comments to make on Part 3 of the Bill dealing with keeping pets and making changes to let property?

When developing guidance on the types of changes that private tenants could be permitted to make to their homes, consideration should be given to including simple energy efficiency measures that could improve the comfort of the home ahead of new minimum energy efficiency standards being introduced. Simple measures like draft proofing could be installed to help reduce energy use.

Q8. What are your views on Part 4 of the Bill that deals with how joint private residential tenancies can be ended?

We support the proposal.

Q9. Overall, do you support the Bill’s proposals in Part 5 of the Bill that deal with homelessness prevention?

We fully support the principle of preventing homelessness wherever possible, this is the best outcome for individuals and evidence shows that investing in prevention leads to longer term savings for housing and homelessness services, health and social care and the criminal justice system.

As stated above, the message that homelessness is not just a housing issue and requires input from partners is welcome.

However, the lack of detail in the Bill makes it difficult to comment on whether these principles will be achieved in practice. **The prevention duty also seeks to address the issue of homelessness without consideration of lack of affordable housing supply being one of the core drivers. The Bill, in isolation, will not end homelessness and needs to be considered in the context of wider pressures on the housing sector and beyond such as lack of access to healthcare and support services.**

Our members have raised some concerns with the proposals which are outlined below.

Q10. What are your views on the ‘ask and act duty’ for relevant bodies in relation to preventing homelessness in Part 5 of the Bill?

Our members have raised some concerns about how the “ask and act” duty will work in practice:



- **Skills, knowledge and training** – it is not clear how much resource will be available to train staff of relevant bodies to ensure that they are asking the right questions in an informed way and in order to be able to make the right decisions or referrals for individuals.
- **Lack of detail** – it is not clear what actions other bodies will be expected to take, or what capacity they will have to carry out additional prevention work.
- **Referrals** – there is a risk that if other bodies are not able or equipped to carry out prevention work, that the duty will just become a referral pathway into homelessness services without any additional resources to deal with increasing demand.
- **Data sharing** – effective data sharing protocols will need to be established to ensure good outcomes for individuals, especially where multiple agencies are involved. Experience has shown that GDPR can hamper these efforts with some organisations being more risk averse than others and interpreting legislation in different ways. Clear guidance will be needed to support implementation.
- **Partnerships** – effective partnership working will be crucial to success. This could be developed through a “test and learn” approach building on existing successful relationships such as those developed through Rapid Rehousing Transition Plans (RRTPs). Local authorities may want to develop protocols, service level agreements or formal agreements between services to manage how people are being referred into homelessness services.
- **Relevant bodies** – higher education providers play a significant role in creating housing demand in some areas and should be required to work much more closely with local authorities in planning for and addressing current and future housing need. These organisations also have potential to provide support and work to prevent homelessness among current student populations and should be considered for inclusion within the Bill.
- **Resources** – evidence to support the Financial Memorandum was collated over a short period of time giving partners limited scope to input. Tackling the existing backlog of homelessness cases and moving away from crisis intervention toward prevention will require long-term dedicated funding, allowing changes to service delivery to be embedded effectively. RRTPs have shown that prevention work can be successful but [our research](#) has highlighted the challenges associated with short-term funding including difficulty recruiting and retaining staff, inability to plan and scale up projects, and difficulty in commissioning services. RRTP work must continue while the prevention duty is being developed and needs dedicated funding beyond this financial year.

Q11. What are your views on the requirement on councils to act sooner to prevent homelessness by taking reasonable steps in Part 5 of the Bill?

We agree with the principle and the intention of early intervention, but our members have expressed some concerns with the ability of local authorities to provide assistance over prolonged periods of time without adequate resources. Much clearer information is needed on what actions would be expected to be taken by the local authority, how cases would be resolved or at what point a case would move from prevention work to a formal homeless application.

Q12. What are your views on the provisions in Part 5 of the Bill that relate to domestic abuse?

The proposal to require a domestic abuse policy for all social landlords is welcome. Work undertaken by CIH Scotland and Scottish Women's Aid (SWA) in 2023 highlighted that despite domestic abuse being the principal cause of homelessness for women, most social landlords do not have appropriate policies in place to support victims/survivors and prevent homelessness. Our review found that only nine out of the 41 policies assessed comprehensively met the standards set by the SWA/CIH good practice guidance published in 2019.

Many social landlords placed considerable emphasis on victims reporting their experiences - an attitude which puts women and children at risk, as the time of reporting or immediately after reporting is incredibly dangerous. Policies also failed to use the Scottish Government definition of domestic abuse and did not recognise domestic abuse as gender-based violence. Furthermore, landlords were not holding perpetrators of domestic abuse to account, with only six mentioning actions that should be taken against tenants who are perpetrators. As such, we welcome the provisions to include a statutory requirement for all social landlords to have a domestic abuse policy and it is clear that social landlords need guidance, support and resources to be able to implement effective change and prevent homelessness resulting from domestic abuse.

However, this legislation needs to be matched with the following to support victims of domestic abuse living in the social sector and PRS:

- Clear statutory guidance that mirrors the detail of the CIH/SWA 2019 good practice guidance for social landlords in developing a domestic abuse policy.
- The development of a national training resource on domestic abuse and housing for landlords.
- The roll out of a national leaving fund to support victims who want to leave perpetrators but cannot afford to.
- Resources and clarity over the financial memorandum to meet the costs of the above.

As noted above, CIH strongly welcomes the proposals in the Bill on domestic abuse and we believe they can play a critical role in supporting victims/survivors. However, we remain frustrated that legislation passed in March 2021 has still not been enacted. This legislation, when enacted, will give social landlords the power to evict perpetrators of domestic abuse from a joint tenancy and support the victims to stay in the property, if that is their choice. Legislation is critical in improving housing outcomes for victims/survivors but the failure to enact the measures more than three years later undermines our collective efforts. We hope that Parliament, if it passes these provisions, can work with the Scottish Government to agree a speedy implementation of the law to the benefit of victims/survivors across Scotland.

Q13. What are your views on the provisions in the Part 5 of the Bill relating to mobile homes pitch fees uprating?

No comments.

Q14. What are your views on the provisions in Part 6 of the Bill relating to fuel poverty?

We welcome the changes which are intended to improve reporting and remove budgetary limitations from the Fuel Poverty Advisory Group.



Q15. Do you have any additional comments on the other measures the Bill deals with or any other general comments?

We agree with the principle of using unclaimed tenancy deposits to support private tenants. Some ideas put forward by our members include:

- Establishing a national tenancy deposit guarantee scheme.
- Training, advice and information for landlords.
- Advice and information for tenants.
- Support for tenants taking cases to the Tribunal.
- Creation of a hardship fund to support tenants through short term crisis and prevent homelessness.

However, we also think more could be done to ensure that deposits are returned to tenants. It is not clear why deposits are paid to landlords or letting agents in the first instance rather than directly into an approved deposit scheme. If the tenant was to pay their deposit into the scheme directly, this would eliminate the issue of a minority of deposits not being lodged and mean that deposit schemes would have more direct contact with tenants, increasing the likelihood that undisputed amounts could be paid back.

We also think that the Committee could consider how deposits are held during disputes and the impact this can have on a tenant's ability to move home. Currently, if a deposit is disputed by the landlord - say the landlord would like to claim £200 of a £1,000 deposit - the full amount is withheld until the dispute is settled which makes it difficult if the tenant needs a deposit up front for their next home. It is not clear why the undisputed amount is not returned to the tenant immediately.

Would you be interested and available to give evidence to either the Local Government, Housing and Planning Committee or the Social Justice and Social Security Committee?

Yes.

About CIH

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple - to provide housing professionals and their organisations with the advice, support, and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world. Further information is available at: www.cih.org.

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