

A New Deal for Tenants: Rented Sector Reform - Current Proposals

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Introduction

[Housing to 2040 our first national strategy and route map](#) aims to deliver our ambition for everyone to have a safe, good quality and affordable home that meets their needs in the place they want to be. This will be supported by making changes to improve the way the rented sectors operate.

Our [A New Deal for Tenants: Draft Rented Sector Strategy](#), published in December 2021 sought views on a number of proposals for changes to improve the way the rented sectors in Scotland work. An [analysis of consultation responses](#) was published in August 2022.

Following this consultation a number of these proposals are being progressed further. Some are for the private rented sector (PRS) only, some only for the social rented sector (SRS) and some for both sectors. This paper gives further information on the following proposals being considered and which sector they would affect:

- i. Rent control (PRS)
- ii. Ending a joint tenancy (PRS)
- iii. Greater flexibility to personalise a home (PRS)
- iv. Greater flexibility to keep a pet (PRS & SRS)
- v. Unclaimed tenancy deposits (PRS)
- vi. Greater protections during the eviction process (PRS & SRS)
- vii. Changes to social housing pre-action requirements to reflect the potential impact of domestic abuse (SRS)

This paper provides some helpful background for tenants and landlords who wish to respond to the Scottish Government's [Landlord and Tenant Engagement questionnaire on rented sector reform](#), which is asking for views on some of the details of the proposals being looked at. The questionnaire is open for responses from Friday 29th September until Friday 27th October.

Rent Control

The issue

We are aware that rent levels, as set by the market in the private rented sector, can be unaffordable for some tenants in some areas, with rent increases sometimes substantially above the rate of inflation, leading to people struggling to find suitable rented homes. Some of the evidence for this was set out in our draft strategy for the rented sector, [A New Deal for Tenants](#) and, in response to this, the Scottish Government has committed to introduce long-term rent controls in Scotland.

There are already [protections around rent increases](#) for tenants who have a private residential tenancy. Landlords must give their tenants at least three months' notice of any proposed rent increase (using a specific legal notice, which explains the tenant's rights), and rent for these tenancies cannot be increased more than once in a 12 month period.

At the moment, there are also extra temporary emergency protections in place to cap rent increases within tenancies, in response to the ongoing impacts of the current cost of living crisis (there is more information on our website about the [temporary rent cap for landlords](#) and [the rent cap and emergency measures for tenants](#)).

The Private Housing (Tenancies) (Scotland) Act 2016, which sets out how private residential tenancies work, allows tenants to apply to a rent officer if they think that a proposed rent increase is unreasonable (while the emergency rules are in place this part is not in operation). A rent officer will set a rent based on a range of information about the property, including comparing the local market rent for similar properties to decide what a reasonable rent for the property is.

As part of our consultation on the draft strategy, we asked questions about our vision for proposed long term rent controls, and the principles which would underpin them. These included a proposal for a national system of rent controls with an appropriate mechanism to allow local authorities to introduce local measures.

Different tenancy types in the private rented sector

1. There are several different types of tenancy which may exist in the private rented sector in Scotland.
2. On 1 December 2017, the [private residential tenancy](#), was introduced in Scotland and all new private rented sector tenancies which started on or after this date will be private residential tenancies.
3. A private residential tenancy is open-ended and will last until the tenant wishes to leave the let property or the landlord evicts the tenant. Eviction can occur where the landlord issues a notice to leave under one (or more) of 18 grounds for eviction and the tenant leaves voluntarily on the date specified in the notice. Alternatively, where the tenant doesn't leave on the date specified in the eviction

notice date the tenancy the tenancy would come to an end under the terms of an eviction order granted by the First-tier Tribunal.

4. There are other types of tenancy which existed before 1 December 2017. These tenancies can continue until the tenant or the landlord brings them to an end. There are still some of these tenancies in operation in Scotland, although the number is reducing over time.
5. There are 3 main types of tenancy which were in place before 1 December 2017:
 - **short assured tenancies** (these started after 2 January 1989, but before 1 December 2017 and are tenancies under the Housing (Scotland) Act 1988)
 - **assured tenancies** (these started after 2 January 1989, but before 1 December 2017 and are tenancies under the Housing (Scotland) Act 1988)
 - **regulated tenancies** (these started before 2 January 1989, and are tenancies under the Rent (Scotland) Act 1984)
6. [Information about the different types of tenancies in the private rented sector](#) in Scotland, and the differences between them, is available on the Scottish Government's website.

Overview of proposed approach to rent controls

7. The Scottish Government considers that local circumstances in relation to housing should be taken into account in deciding where rent control should apply, and local authorities are best placed to support this. We propose that local authorities would be required to carry out an assessment of conditions in relation to rent in their area and make a recommendation about whether Scottish Ministers should impose rent controls in all or part of their area. The expectation would be that local authorities would assess their whole area and, dependent on the outcome, look in more detail at specific areas where concerns are identified. There would be a mandatory requirement to re-assess rent conditions on a regular basis.
8. Scottish Ministers would be the final decision maker about whether to impose rent control, taking account of the outcome of the assessment process. The introduction of a rent control area will be made through regulations which would be subject to Parliamentary approval. There would be a statutory requirement to consult the local authority and representatives of landlords and tenants before a rent control area can be introduced.
9. It is proposed that any rent control area would be in place for a fixed time period, with re-designation based on further assessment showing a continued need for rent control.
10. In any area where rent controls are introduced, there would be a restriction on the amount by which rents can be increased in that area. This would be via the

imposition of a rent cap based on a fixed percentage or a formula by which the increase could be calculated.

11. The existing protections for tenants around rents are focussed on rent increases which take place during a tenancy, and only protect tenants while they are in an existing tenancy. Tenants who are moving from one tenancy to another may face a high increase in rent, even if they are moving to a similar property in the same area.
12. It is proposed that rent controls would apply to increases in rent that take place both during a tenancy and where the rent is set for a new tenant. This could help to stabilise rents in areas where market rents are increasing particularly quickly.
13. At the moment, tenants with a private residential tenancy cannot have their rent increased more than once in a 12 month period. We are proposing that, in most cases, a landlord would not be able to increase their tenant's rent until at least 12 months after the tenancy started. This would provide tenants with certainty about their rent in the first twelve months of their tenancy.
14. However, we are also proposing that rent increases in areas where rent controls are in place would be limited to one increase per property in any 12 month period, even if the tenant changes within that time. If the let property in a new tenancy is substantially the same as the let property in the preceding tenancy, the rent for that property could only be increased once in any 12 month period regardless of how many different tenancies are entered into in that period. Increasing the rent for a property once every 12 months may result in the rent being increased early in a tenancy depending on when the earliest date of increase arises.

Safeguards for landlords

15. Both landlords and tenants have rights in the property. So, in designing new laws we need to take account of both and find the right balance. Given that rent control will restrict what a landlord can charge for their property, the Scottish Government is considering what measures might be included to safeguard landlords interests as part of these proposals.
16. The proposed system of rent control would cap how much rents can increase by. We are considering whether it would be appropriate, in certain circumstances, to allow an increase in rent that is in excess of the rent cap. If increases above the cap were to be allowed, then the specific circumstances when this would be allowed and the process by which any such increases would be agreed could be set out in the Bill, or in Regulations.
17. The Scottish Government wants to see landlords offering high quality properties to tenants, and one circumstance where it may be reasonable for a rent to increase above the cap would be to reflect the cost of certain improvements to the quality of a property, which will benefit current and future tenants.
18. We are aware that some landlords choose not to increase rents during the course of a tenancy, and instead prefer to increase rents between tenancies. If rent

controls apply both within and between tenancies, landlords may move to increasing rent during tenancies, where they would not have done before. We are considering the best way to take account of this concern as part of our proposals.

Supporting Tenants

19. The Scottish Government is considering what could be included in the design of the rent control system to support compliance with any rent cap. This could include requirements on the information that landlords must provide to tenants, routes for tenants to check whether a rent cap is in place and options for tenants who think that their landlord may be proposing a rent increase which is above the rent cap.

Exemptions from rent control

20. There are some new tenancies where it may be difficult to determine what the previous tenant's rent was or there may be circumstances where there is no previous tenancy to compare. This would make the rent cap and other controls on the frequency of rent increases difficult to apply as the level and timing of the previous rent increase may not be known. The proposal is to exempt certain "new to market" tenancies from rent controls when they are first entered into, enabling the rent for that tenancy to be set at open market level. Rent controls would then apply to the tenancy and any future tenancy of that property while the rent control area is in effect.

21. The proposal is to class the following types of tenancy as being "new to market" and therefore exempt from rent control:

- i. The first tenancy of a property which has not been let as a principal home before.
- ii. The first tenancy of a property following it being purchased with vacant possession by the current landlord.
- iii. The first tenancy of a property which has been empty for a prolonged period.
- iv. The first private residential tenancy of a property where the previous tenancy was a regulated tenancy under the Rent (Scotland) Act 1984.

22. The Scottish Ministers would also propose to retain a power to specify types of tenancy, types of property or other circumstances where the rent cap should be dis-applied.

23. The questionnaire alongside this paper is seeking views on some of the details of these proposals.

Ending a joint tenancy

The issue

If there is more than one person named on a tenancy agreement as the Tenant, the tenancy will be a joint tenancy. This means that each person is responsible on their own individually - as well as equally along with all of the others - for all of the payments and other things the tenant is required to do under the tenancy.

All types of households can be joint tenants from students, friends, siblings, partners and married couples.

The Private Housing (Tenancies)(Scotland)Act 2016 changed the way that a joint tenancy could be ended so that all joint tenants must agree to give notice. This approach aimed to ensure that no joint tenant could be inadvertently made homeless.

Unfortunately, this means that a person can be 'trapped' in a tenancy by other joint tenants, regardless of the circumstances, if agreement cannot be reached. Even if a joint tenant moves out of the let property, they are still responsible, along with other joint tenants, for rent and other obligations if the tenancy has not ended for all tenants.

This can be difficult for any joint tenant needing to leave a tenancy but can be particularly problematic for those experiencing domestic abuse.

Overview of proposed change

24. We are exploring the introduction of a new approach to deal with circumstances where it is not possible for joint tenants to agree to end a joint tenancy. This process would enable one, or more, joint tenants to end the tenancy without the agreement of all but only after providing reasonable notice to other joint tenants.
25. Where there is no agreement between the joint tenants to allow one of them to leave the tenancy, the tenant who wishes to go would be required to give a fixed amount of notice to all other joint tenants of their intention to end the tenancy for all.
26. The period of time between the departing tenant giving this notice to the other tenants and the final notice to leave being given to the landlord would be set out in law. This period of time would give the other joint tenants time to consider their own circumstances and to come to an agreement with the exiting tenant – through finding someone to replace the tenant leaving, assessing whether they are able to continue to afford to remain in the property either on the same tenancy agreement or under a new tenancy (subject to the landlords agreement) or find alternative accommodation. Alternatively, if all tenants agree they could also provide the landlord with notice to end the tenancy earlier (but no earlier than the statutory 28 day notice period unless agreement is reached with the landlord).

27. We are considering a notice period of 2 months' (56 days) which the departing tenant(s) must give to the other joint tenants. At the end of the 2 month period, if no agreement has been reached, the tenant who wants to leave, could then serve the required final notice to leave (28 days) to the landlord. This would then end the tenancy for all tenants. The remaining tenants would be encouraged to speak with the landlord about their options as soon as possible after receiving the initial 2 month notice.
28. The questionnaire alongside this paper, seeks views on the proposed length of notice a joint tenant wishing to leave should give other joint tenants and whether it should be shorter or longer than the 2 months proposed.

Greater flexibility to personalise a home

The issue

As we set out in our New Deal consultation, private rented tenants, especially those living in rented accommodation for a long period of time, would like more opportunity to personalise it so it feels more like their home, in the way that both owner occupiers and social rented tenants are already able to.

[Research by CaCHE¹](#) gives some insights into how living in the private rented sector affects wellbeing and the negative impact of constraints on decorating or furnishing.

The Scottish Government is committed to strengthening tenants' rights to allow for greater personalisation. This would:

- Seek to improve the renting experience for private tenants by giving them more control over personalising their home, supporting better mental health and wellbeing;
- more closely align the rights of private tenants with other tenures while continuing to take account of the differing legal frameworks; and
- seek to appropriately balance the strengthened rights for tenants with sufficient protections for landlords.

Overview of proposed change

29. We are developing measures that would change the tenancy framework under the Private Housing (Tenancies)(Scotland) Act 2016 Act (2016 Act) so that all private tenants with a private residential tenancy (tenancies that began on or after 1 December 2017) would be able to make certain minor modifications without consent (e.g. putting up pictures and posters), and would have the right to request certain other modifications (e.g. painting walls) that a landlord could not unreasonably refuse.

30. This approach would result in the following categories of changes that private tenants with a PRT could make to personalise their home:

Category 1: No approval from landlord required - private tenants would be allowed to make certain minor modifications to the let property without prior agreement from their landlord. For example, putting pictures and posters on walls.

Category 2: Right to request and landlord cannot unreasonably refuse – private tenants would have a new right to request to make certain larger changes to the let property and for their request to not to be unreasonably refused, where they had lived in the let property for a set period of time. For example, painting the walls inside the property a different colour. In agreeing to a change, a

¹ UK Collaborative Centre for Housing Evidence

landlord would be able to set conditions for approval but only where it is reasonable for them to do so.

31. Tenants would be able to ask for more substantial modifications to the properties fixtures and fittings, but these would continue to be at the discretion of the landlord as is currently the case. This means the landlord could refuse modifications that did not fall into either category 1 or 2 above without any test of reasonableness.
32. The types of modification that would fall into each of the two categories are under consideration, but we are proposing to set them out in regulations. Before these regulations could be made, the Scottish Government would consult with tenants, landlords and other interested stakeholders.
33. We are also looking at setting out examples of the reasonable grounds for refusal and reasonable conditions for approval in regulations and guidance to give practical support to tenants and landlords. For example:

Reasonable reasons for refusal could include the following:

- i. The modification would result in non-compliance with any other Act or law – for example the repairing standard.
- ii. The modification would jeopardise the safety of tenants, dependents or other permitted occupiers.
- iii. Listed building consent under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 would be required for the modification (it may be unlikely this would ever arise with the proposed Category 2 Modifications, but this would likely be retained in the legislation for clarity).
- iv. A valid notice to leave the tenancy has been served on the tenant prior to a modification request.
- v. The modification would require modifications to other premises or common areas.

Reasonable conditions for approval for larger 'category 2' modification requests could include the following:

- i. Reinstatement of the property at the end of the tenancy or a requirement to leave the property in good decorative order.
- ii. The payment of an additional amount of deposit within certain limits where no reinstatement back to the original condition is required at the end of the tenancy.
- iii. The modification to be made by a suitably qualified person where applicable.

Making use of right to request a modification and not be unreasonably refused

34. Tenants would need to make a request for a modification that can't be unreasonably refused in writing. The request would need to set out the information that must be included within a request for an alteration. We are

considering setting this information out in law. Where it is a joint tenancy, all joint tenants would need to agree to the change and make the request jointly.

35. Landlords would need to respond to the written request within a specific timescale, for example 30 working days of receiving the request. We think the response should include:
 - i. Any specific conditions for approval, for example an increase in deposit and the reason for this condition, or
 - ii. Where a landlord refuses the request, the reasons for the refusal.
36. If a landlord does not respond to the tenant within the set timescale, this would be treated as having refused consent.
37. We are looking at whether, if the tenant receives a response from the landlord which contains a refusal or a condition for approval that they think is unreasonable, there should be a route of appeal on the decision.
38. Damage caused to the let property by a modification would be dealt with in the same way as it is now. Landlords would be able to make a claim on any tenancy deposit taken. Any disputes around return of the deposit would be managed by the relevant approved tenancy deposit scheme under current free adjudication processes.
39. Any changes would be supported by guidance for tenants and landlords to ensure that people are informed, and that the measures are correctly applied.
40. We are seeking views in the questionnaire on the proposal, how long a landlord should have to respond to a request and the length of time a tenant must have lived in the let property before they can make a request for a modification that cannot be unreasonably refused.

Greater flexibility to keep a Pet

The issue

As we set out in our New Deal for tenants, the Scottish Government recognises the health and wellbeing benefits that come with keeping pets, with pets being an important part of the family for many. Tenants in the social sector can already keep a pet with the written permission of their landlord, as can some private tenants, however, the Scottish Government wishes to provide a statutory provision to enable all tenants where possible to be able to benefit from the experience of pet ownership.

We want to give tenants in both the private and social rented sectors greater rights to have a pet. This would:

- improve the renting experience for private and social housing tenants by giving them more control over having a pet supporting physical and mental health and wellbeing;
- more closely align the rights of private and social housing tenants creating greater equality of outcome between tenures; and
- seek to appropriately balance the strengthened rights for tenants with appropriate protections for landlords.

Overview of proposed change

41. We are looking at changes that would introduce the right to request to keep a pet and to not be unreasonably refused for tenants with:

- a private residential tenancy under the 2016 Act (those whose tenancy began on or after 1 December 2017); and
- for social rented sector tenants with a Scottish Secure Tenancy or a Short Scottish Secure Tenancy under the Housing (Scotland) Act 2001.

42. We would be clear about what types of animals would be considered pets.

43. Private and social tenants would need to make a written request to their landlord to keep a pet. Landlords would only be able to refuse a request where it was reasonable to do so and would be required to give reasons for any refusal of permission. Landlords would also be able set out conditions for any approval but only where the conditions are reasonable.

44. Should this measure be implemented, we would also set out in guidance and in regulations examples of the reasonable reasons for refusal and reasonable conditions for approval to give practical support to tenants and landlords. For example:

Reasonable reasons for refusal could include the following:

- iv. The property is unsuitable for the type and number of pets requested.
- v. The animal is listed in the Schedule to The Dangerous Wild Animals Act 1976.
- vi. The animal(s) are being kept for commercial purposes.

Reasonable conditions for approval could include the following:

- vii. The payment of an additional amount of deposit within certain limits where it is reasonable to do so (this would apply to the private sector only as social sector tenants do not pay a deposit for their tenancy).
- viii. The tenant must take all reasonable steps to supervise and keep pets under control and ensure they do not cause a nuisance to neighbours.

Making use of right to request a pet and to not be unreasonably refused in the private rented sector

45. Private tenants would need to set out in their written request a range of information to enable the landlord to consider the request. For example, the type and number of pets being requested, whether the animal, such as a rabbit, would be in an enclosure or move around the property freely. We are considering setting out the information required in law. Where it is a joint tenancy, all joint tenants would need to agree to any request to keep a pet.
46. Private landlords would need to respond to the written request within a specific timescale, for example 30 working days of receiving the request. We think the response should include:
- i. Any specific conditions for approval, for example an increase in deposit and the reason for this condition, or
 - ii. Where they refuse the request, the reasons for the refusal.
47. If a private landlord does not respond to the tenant within the set timescale, this would be treated as having refused consent.
48. Damage caused to the let property by a pet would be dealt with in the same way as it is now. Private landlords would be able to make a claim on any tenancy deposit taken. Any disputes around return of the deposit would be managed by the relevant approved tenancy deposit scheme under current free adjudication processes.
49. We are looking at whether, if the tenant receives a response from the landlord which contains a refusal or a condition for approval that they think is unreasonable, if there should be a route of appeal on the decision.
50. The questionnaire seeks views on a right to request a pet and not be unreasonably refused and how long a private landlord should have to respond to a request.

Making use of right to request a pet and to not be unreasonably refused in the social rented sector

51. Many social housing landlords will already have a pets policy in place which will set out the type of pets that can be kept, any restrictions on keeping a pet and the process for applying for permission.
52. As currently, tenants would need to apply to their landlord in writing and obtain permission from their landlord before keeping a pet.
53. In line with current practice for other sorts of permissions within the social sector landlords would need to respond to the written request within a specified timescale, for example 1 month. The response would include any conditions for approval and where the request is being refused, the reasons for refusal.
54. If the social landlord does not respond to the tenant within the set timescale, this would be treated as having being approved (again in line with current practice for other types of permissions in the sector).
55. Any damage caused to the property by a pet would be dealt with in the same way as it is now.
56. If the tenant receives a response from the landlord which contains a refusal or a condition for approval that they think is unreasonable, the tenant would be able to appeal the decision through the landlords formal complaints process.

Unclaimed tenancy deposits

The issue

When a tenant moves into a private rented property, most landlords or letting agents will ask for a deposit. This is a sum of money which acts as a guarantee against damage to the property, unpaid bills, or rent at the end of the tenancy.

A landlord or letting agent must protect any tenancy deposit taken within one of three approved tenancy deposit schemes until the end of the tenancy.

When a tenancy ends a landlord or letting agent is required to arrange the return of the deposit minus any reasonable deductions. The landlord or letting agent should do this as soon as they can after the tenancy ends.

Monitoring of the three approved tenancy deposit schemes has highlighted the previously unforeseen issue of unclaimed deposits. This is where the landlord has started the return of the deposit, but the tenant does not respond and cannot be contacted. Despite work by each of the scheme to return unclaimed deposits, there is now around £4 million of unclaimed tenant deposit funds between the three approved deposit schemes.

We want to reduce the likelihood that a deposit will be unclaimed by the tenant in future and put outstanding unclaimed funds to use to the benefit of tenants living in the private rented sector.

Overview of proposed change

57. We are considering making changes to regulations so that tenancy deposit schemes are required to request alternative contact details from the tenant when a tenancy deposit is lodged. This is intended to help make sure that a former tenant can be contacted to return a deposit at the end of a tenancy.

58. Alongside collecting alternative contact details, we also propose providing more information to tenants about unclaimed tenancy deposits to raise awareness of the issue and to be clear about what would happen if they don't reclaim their deposit.

59. A legal definition of an unclaimed deposits would be needed. Following previous consultation, we are considering the following definition:

- A deposit held by one of the relevant schemes is unclaimed where it has not been claimed for a period of 5 years from the date the landlord applies for the deposit to be repaid; and reasonable efforts have been made to return the deposit to the former tenant.

60. Unclaimed tenancy deposits funds would be able to be transferred to Scottish Government after a set amount of time. We want former tenants to be able to reclaim their deposit wherever possible. We are therefore looking at enabling

former tenants whose unclaimed deposits had been transferred to the Scottish Government, to still be able to reclaim their deposit as follows:

- i. Former tenants whose deposit was lodged with one of the approved schemes before the changes currently being looked at are made would be able to reclaim their deposit for 10 years from the point at which it became an unclaimed deposit;
- ii. Former tenants whose deposit was lodged with one of the approved schemes after the changes currently being looked at are made would be able to reclaim their deposit for 5 years from the point at which it became an unclaimed deposit;

61. Even after these deadlines had passed, former tenants would still be able to reclaim their deposit where they could demonstrate reasonable excuse as to why they did not do so at an earlier date.

62. Former tenants who are looking to reclaim their deposit would do so through the relevant approved tenancy deposit scheme.

63. The unclaimed funds once available would only be able to be used for certain purposes to the benefit of private rented sector tenants as set out in law. For example:

- a. advice, information and assistance to private tenants;
- b. funding to persons or bodies that can assist private rented sector tenants to address barriers to the sector and support access to private rented housing;
- c. activities that support private tenant participation and the representation of tenants' interests at a local and national level;
- d. assisting private tenants to exercise their rights; and
- e. the prevention of homelessness from the private rented sector.

64. The Scottish Government, or their delegated administrator, would be required to publish a report on the use of these funds within 3 years of them being transferred out of the schemes.

65. Approved tenancy deposit schemes would need to include additional information on unclaimed deposits as part of their monitoring returns to the Scottish Ministers.

66. This additional information would support the ongoing monitoring of unclaimed deposits and decisions to release unclaimed funds for use.

67. The questionnaire seeks views on the areas proposed for making use of unclaimed funds.

Greater protections during the eviction process

The issue

Eviction can happen for a number of reasons, for example a change of use of the property, change in status of the landlord or tenant or due to tenant conduct. We know that there are certain circumstances and times of year where being evicted can be particularly problematic.

Our New Deal consultation asked for views on introducing a specific requirement on both the First-tier Tribunal for Scotland (Housing and Property Chamber) and the Scottish Courts, that where an eviction order/decreed is granted, they should consider whether a delay to the enforcement of that eviction order/decreed is needed during the winter period.

Overview of proposed change

68. The original focus of this measure was to apply to the winter period only, however following consultation and feedback from stakeholders we are exploring a more general approach which would see the Court/Tribunal considering a delay regardless of the time of year.

69. This would ensure that the Tribunal or Court consider whether a delay to the enforcement of an individual eviction should occur due to the circumstances of the case. This would:

- where appropriate, allow for consideration to be given to any seasonal pressures e.g. winter period, and give those being evicted additional time to find alternative accommodation and access necessary support;
- reduce, as far as possible, the negative impact of eviction at a time of greater stress resulting from additional seasonal pressures during times like the winter period; and
- ensure that all the circumstances of a case are considered and that the rights of tenants to be protected during an eviction are appropriately balanced against the rights of landlords to recover the let property.

70. If progressed, we propose this measure would apply to all private and social rented sector tenancies i.e. those under The Rent (Scotland) Act 1984, The Housing (Scotland) Act 1988, The Housing (Scotland) Act 2001 and The Private Housing (Tenancies) (Scotland) Act 2016.

71. To support implementation we would set out in legislation factors that the Tribunal and Court would consider in deciding if it is reasonable to delay enforcement, for example:

- Whether any seasonal pressures apply including but not limited to winter, or other relevant circumstances;

- Whether enforcement taking place during a particular period would cause financial hardship or a negative impact on the health or long term disability of a tenant or a member of the tenant's household;
- In the private sector, whether a delay to enforcement would detrimentally affect the landlords' health or long term disability or cause financial hardship;

72. There are certain types of an eviction where we think a delay to enforcement would rarely be reasonable, we are therefore exploring exempting certain repossession grounds from any new requirement to consider a delay including antisocial conduct, criminal convictions, and vacant/abandoned properties.

73. The Tribunal/Court's current discretion, would not be restricted in any way and it would still be within the Tribunal/Court's discretion to delay the enforcement of any eviction order where it was reasonable to do so in the circumstances. It just would not be mandatory for them to do so for those exempt from the measures.

74. In the social rented sector, landlords must make use of an eviction decree for rent arrears, or an eviction decree for grounds including rent arrears, within a maximum period of 6 months of it being extracted by the Court, (or where an appeal is lodged after the date of extract of the decree, a maximum period of 6 months from the date the court disposes of the appeal). If they do not the legal process has to restart. We do not want any delay to enforcement to negatively impact on a social landlords ability to recover a property by making them go over this time limit. So we would make clear any delay to enforcement due to the circumstances of the case, should not count towards the 6 month time limit.

75. The questionnaire seeks views on the proposal for the Court/Tribunal considering a delay regardless of the time of year.

Changes to social housing pre-action requirements to reflect the potential impact of domestic abuse

The issue

The Pre-action requirements are a number of steps social landlords must take in all rent arrears cases before commencing legal action to recover possession of a property.

They are aimed at providing further protection for tenants facing eviction for rent arrears by: creating greater consistency in practice between landlords; making sure landlords and tenants explore other ways of resolving arrears; and ensuring that eviction for rent arrears is a last resort

Pre-action requirements do not currently require specific consideration of rent arrears caused by domestic abuse.

[The Improving Housing Outcomes for Women and Children Experiencing Domestic Abuse report](#) explains that financial abuse is a significant element of coercive control in domestic abuse. Research suggests that 89% of women experience financial abuse as part of domestic abuse. It involves a perpetrator using or misusing money to limit and control their partner. It can leave a woman with personal debt including rent arrears, which she may not know about.

Families in which there is domestic abuse are four times more likely to lose their homes because of rent arrears than the general population of tenants.

We want to strengthen the protection for domestic abuse victims and their children to remain in the home, or to be rehoused, if that is their wish and ensure rent arrears accrued as a result of domestic abuse are not a barrier to accessing social housing.

Overview of proposed change

76. We are considering a new pre-action requirement to ensure social landlords have fully considered all forms of domestic abuse, including coercive control, and the impact it can have before commencing legal action to recover possession of a property.

77. Domestic abuse would be defined by reference to the definition in the Domestic Abuse (Protection) (Scotland) Act 2021 which defines abusive behaviour as behaviour likely to cause the person the behaviour is directed against to suffer physical or psychological harm. This definition covers financial abuse.

78. Where a social landlord has reason to believe that a tenant has experienced domestic abuse, and that domestic abuse is a factor in the reason why the tenant failed to pay rent or has accumulated arrears in the tenants name, the landlord would be required to fully consider further actions that could assist the individual.

79. If progressed, this would include for example, the social landlord considering their own domestic abuse policy and any further specialist services that the individual could be referred on to for support when assessing the further actions the social landlord could take in respect of the individual.
80. To support implementation, we expect that information about how to assess whether someone is experiencing arrears caused by domestic abuse would be set out in guidance.
81. As is currently the case, landlords would be required to confirm to the court that they had met all of the pre-action requirements where the grounds for possession include rent arrears. This would include the new domestic abuse related pre-action requirement.
82. The questionnaire seeks views on the proposal.



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