

Dear Ariane

I refer to your letter to the council's Chief Executive, dated 28 June 2024, advising that the Scottish Parliament's Local Government, Housing and Planning Committee is currently considering the terms of an inquiry into the housing emergency.

You have requested information on the basis on which the council declared a housing emergency and the measures that the council are considering to respond to it, and I enclose for information a copy of a report considered by the Council Executive committee on 28 May 2024 and the motion which resulted in the housing emergency declaration.

In response to the declaration of a housing emergency in West Lothian, council officers are developing a draft Housing Emergency Action Plan which sets out the key areas of work to be undertaken by the council and its partners to mitigate the housing emergency within West Lothian.

The draft Housing Emergency Action Plan has yet to be presented for approval to the relevant council committee. Due to summer recess and the governance procedures to be followed to ensure appropriate scrutiny by elected members, the Plan is not scheduled to be considered for approval until early October.

Subject to approval by committee, I shall forward a copy of the Plan following and will also arrange for information to be provided to you at that time on the council's void and unlettable properties and the measures being implemented to get these properties back into use.

Yours sincerely

Julie Whitelaw
Head of Housing, Customer and Building Services

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

HOUSING (SCOTLAND) BILL

REPORT BY INTERIM HEAD OF HOUSING, CUSTOMER AND BUILDING SERVICES

A. PURPOSE OF REPORT

The purpose of the report is to advise Council Executive of the introduction of the Housing (Scotland) Bill by the Scottish Government to the Scottish Parliament on 26th March 2024. The report provides an overview of the proposed changes to the law in relation to housing, the anticipated outcomes, impacts on service delivery in West Lothian and associated risks.

B. RECOMMENDATION

It is recommended that Council Executive consider the following recommendations:

1. Notes the content, timescales and impacts as assessed by officers of the new Housing (Scotland) Bill;
2. Considers and provides comment on the content and impacts of the Housing (Scotland) Bill consultation as set out in the report

C. SUMMARY OF IMPLICATIONS

I	Council Values	<ul style="list-style-type: none"> • Caring and Compassionate • Open, Honest and Accountable • Collaborate, Inclusive and Adaptive
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III	Implications for Scheme of Delegations to Officers	None
IV	Impact on performance and performance Indicators	None
V	Relevance to Single Outcome Agreement	We live in resilient, cohesive and safe communities
VI	Resources - (Financial, Staffing and Property)	To be determined - If proposals are implemented as presented this will result in increased resource implications and

accommodation costs arising from increased homeless presentations. There may be resource and revenue implications if councils are required to monitor and enforce compliance with standards for other sectors.

VII	Consideration at PDSP	Housing Services PDSP 25 th April 2024
VIII	Other consultations	Finance and Property Services, Legal Services

D. TERMS OF REPORT

D.1 BACKGROUND

The Scottish Government introduced the Housing (Scotland) Bill (the Bill) to deliver its rented sector strategy, A New Deal for Tenants, and some policy ideas for housing as set out in Housing to 2040, while also seeking to deliver on its ambition to end homelessness.

Rent controls and new duties form the key planks of the Bill. The Bill also includes measures to support social housing tenants experiencing or at risk of domestic abuse. This includes changes to update the definition of domestic abuse in the Housing (Scotland) Act 1987 to bring it in line with the most up to date understanding.

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The Bill has 7 parts:

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- Duties on local authorities to assess rent conditions in their area, at least once every five years
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D.4 SPECIFIC IMPACTS

Several of these proposals will have little to no impact on current operational activity. However, there are key areas of change which will have significant impact on the council's ability to meet statutory duty, operate in a compliant manner and deliver the desired outcome. The issues of note have been highlighted as:

Rent controls

The Bill sets out the intention to require all Local Authorities to carry out an assessment of rents in their locality and to make recommendations to the Scottish Government

about whether to impose rent control areas in all, or in part, of their local area. It is intended that the controls would be in the form of a restriction on the amount by which landlords could increase their rent either through a rent cap based on a fixed percentage or a formula which could be used to calculate the increase.

It is important to note that there has been the ability to apply for Rent Pressure Zones for a number of years, however this has only been achieved by one organisation due to the lack of any mandatory disclosure of rent landlords charge, and the resource intensive work required to canvass and survey every resident in the area to obtain the evidence required. Presently, there is no requirement to disclose property details/size and rent being charged as part of the landlord registration process and the Bill does not introduce these powers. The only manner of determining what is reasonable rent, is to understand the range of rent levels within local markets, arrive at a median per property type, and introduce cap/collar arrangements based on that averaging exercise. The new proposals do not rectify the current issues around gaps in market intelligence which enables a determination of reasonability.

The Bill proposes that long term rent controls would help to keep homes affordable going forward by creating a fairer and better regulated private rented sector. The addition of rent control within the Bill is aimed at protecting tenants from unaffordable rent rises and from pricing them out the privately rented market. However, there is concern in the sector that this introduction of rent controls is potentially damaging as it may see a decline in investment in the private rented market as landlords and investors may see this as being a less attractive option.

Local Authorities will be expected to consult with landlords in their area at least once every 5 years. Data will then be required to be collated and analysed in order to make a reasonable assessment and recommendation based on the intelligence gathered. Local authorities will be responsible for carrying out mandatory assessments in their areas, ensuring that local circumstances are considered, to reflect the geographical variations that can exist in conditions relating to rents across Scotland. The assessments will be carried out on a cyclical basis, to ensure there is ongoing consideration of the need for rent control. The outcome of these Local Authority assessments will inform Scottish Ministers' decisions on whether it is justified and proportionate to designate rent control areas.

Evictions

Section 25 applies to recovery of possession of Scottish secure tenancies and short Scottish Secure tenancies, and inserts Section 16A and 36A into the Housing (Scotland) Act 2001. When granting an order for recovery of possession, the court must consider if it would be reasonable to delay the right to recover possession of the tenancy. The court will therefore be required to consider if an absence of delay would have a detrimental effect on the tenant's household. This does not apply in cases if the court is satisfied that the only grounds established in the order for recovery of possession relate to grounds relating to criminal offenses, abandonment of the tenancy, anti-social behaviour/harassment or transfer of tenancy.

When issuing notice, West Lothian Council primarily use Ground 1, Rent Lawfully due from the tenant has not been paid. This Ground is covered by the Bill. Therefore, if a Sheriff considers it reasonable for delay to be granted on recovery, this may impact operational timescales and further extend periods where no rent is being paid. Operational processes relating to action taken after decree for eviction is granted will be revised to capture required changes. In practice, the council typically does not evict throughout December, pausing evictions until the new year. The period for use of decree will remain the same, and the Bill makes no amendment to time for decree to be extracted. Therefore, there is likely to be minimal impact on the operational activity of the council.

Pets

West Lothian Council operates a pet policy which is embedded in service delivery and recognises the benefits of responsible pet ownership to tenants and applicants for housing. This policy is currently being revised and will be compliant with the duties of the Bill, which further embeds the rights of tenants to keep a pet, and adds a mandatory timeframe of 28 days for the landlord to consider the request.

Homeless Prevention

‘Ask and Act’

The Bill introduces an ‘ask and act’ duty on social landlords and bodies, such as health boards and the police, to ask about a person’s housing situation and act to avoid them becoming homeless wherever possible.

It also reforms provision for people threatened with homelessness up to six months ahead, and refer them for appropriate help or act themselves. The objective is to intervene at the earliest possible point and prevent homelessness from occurring.

There is concern across local authorities that this will increase enquiries and referrals to unprecedented levels, and will increase homeless presentations significantly. The basis for this concern is that referrals from other agencies and partners already constitute a large proportion of homeless enquiries as they reduce their customer facing business and decrease eligibility for support services and this has already had an impact on homeless services. When combined with the level of unmet need in communities, mental health issues and early hospital/prison discharges, the indications are that this merely creates a new referral pathway to councils, from organisations with no training or knowledge of assessing homelessness and who will ‘ask’ about the housing situation of an individual. The ‘act’ duty stemming from these referrals will fall to the local authority who bear the statutory duty to act and potentially accommodate those coming in this route.

Domestic Abuse

The addition of Pre-Action Requirements concerning Domestic Abuse applies where a social landlord considers that a tenant has experienced or is experiencing domestic abuse and that this explains or partly explains why the rent lawfully due from the tenant has not been paid. In addition, the landlord must provide the tenant with details of such other support that may be available to the tenant in relation to domestic abuse as the landlord considers appropriate in the circumstances. In this context, “domestic abuse” means abusive behaviour within the meaning of section 2 of the Domestic Abuse (Protection) (Scotland) Act 2021.

Section 45 inserts new Chapter 4 into Part 2 (tenants of social landlords) of the 2001 Act. Chapter 4 comprises section 56A. This section provides that each local authority landlord and registered social landlord must prepare a “domestic abuse policy” on how it will exercise its functions in relation to the needs of tenants who the landlord has reason to believe have experienced, are experiencing or are at risk of domestic abuse, with a view to preventing homelessness.

Operationally, the council has a clear track record of consistent and fair management of tenants experiencing domestic abuse, with provisions laid out in our Allocations Policy, along with consistent and fair practical management of recovery action in rent arrears cases with absent joint tenants. The creation of a Domestic Abuse Policy will result in current practice being formalised.

The addition is welcome. However, the existing Pre-Action Requirements have not been amended since commencement in 2012 under the Housing (Scotland) Act 2010. Given the introduction of Universal Credit and increasing cost of living has resulted in

a recovery climate that is very different to 2012, failure to review the Pre-Action Requirements in their entirety as part of the Bill is a missed opportunity for modernisation of the recovery process.

Section 5 of the Bill relating to domestic abuse is primarily in relation to the introduction of a legislative prevention duty where domestic abuse is the key driver in rent arrears which may lead to eviction. Where a tenant is evicted on grounds of non-payment of rent arrears this will ordinarily result in an intentionally homeless decision. The change introduces a duty to consider if domestic abuse and in particular, controlling behaviour or financial abuse has been a factor in the accrual of rent arrears. There is room for potential conflict in the extension of the definition of Threatened with Homelessness, where there is a potential conflict of duty with the statutory processes for recovery of tenancies, and extended periods in terms of completing pre-action requirements to exhaust all steps to resolve rent arrears with tenants. Combined with the extension of the threatened period to 6 months, this has the potential to create conflicting agendas and duties for Housing Operations and Housing Need staff simply following statutory processes.

Extract decrees for recovery of heritable property, as granted by the Sheriff Court, are valid for a period of 6 months. This places further duties on the local authority to prevent homelessness in cases where we have sought to recover heritable property. In these cases, it is highly unlikely that homelessness can be prevented as the process to recover requires extensive assessment of the circumstances of the household, ensuring recovery is reasonable.

D.5 GENERAL IMPACT AND RISK

The Bill is an opportunity to address the obvious need for fundamental change in the Scottish housing sector. There are clear signs of systematic failure across many local authorities struggling to meet homeless demand and deliver services in a manner that ensures compliance with statutory duties. However, this Bill does not address these challenges, and is not cognisant of the causes of extreme pressures on the current system, and fails to deliver what is required on several key grounds:

Timing – the layering on of additional homeless prevention duties comes at a point in time where local authorities across the central belt are failing to meet existing duties and this will lead to the embedding of non-compliance, increasing breaches, and creating additional legal challenge/costs and sustained pressure for those reporting breaches. All the local authorities in breach have consistently warned of this risk and the devastating impact this will have on their ability to deliver services.

Introducing rent controls at a time of increased mortgage costs for landlords, and a cost of living crisis may have the impact of driving more private landlords from the Scottish Housing system, increasing demand and strain on local authorities with a duty to accommodate those leaving private lets.

Resources – existing changes to duty such as the removal of local connection in 2022, and the extension of the Unacceptable Accommodation Order in 2020 were introduced despite local authority warnings of potential impacts, and came with no additional funding or resources to meet the additional strain this placed on service budgets and staff. These new duties will also be instituted with no additional funding. When combined with the announcement by the Scottish Government in March 2024 of the almost £200 million cut in the affordable housing budget, investment is at its' lowest level in over 10 years.

Sector backing – the Chartered Institute of Housing in Scotland announced a national housing emergency at their annual conference in March 2024. The national Director

said: *“The Housing Bill, if appropriately funded, could be an opportunity to drive positive systemic change, with welcome new proposals for victims of domestic abuse and those at risk of homelessness. Although we have real concerns about the impact a rent control policy will have on the supply of privately rented homes.*

“However, no matter how welcome any policies are, any legislation will take years to come into effect and with Scotland in the midst of a housing emergency we are concerned that this Bill doesn’t address the structural changes required in our housing system today.”

The Scottish Housing Regulator has recently upgraded its risk assessment of the ability for social housing providers to meet their statutory duties, and has warned of imminent spread of systematic and sustained failure within the system. This warning was echoed in the SOLACE/ALACHO/Cosla report in July 2023 of their assessment of the housing emergency in Scotland, and the measures required to address this.

Shelter Scotland criticised the new Bill, also stating it fails to address the systematic issues driving Scotland’s housing emergency. Shelter Scotland director, Alison Watson, said: *“There is a growing consensus that Scotland is in the grip of a housing emergency. Already four local authorities have declared housing emergencies, with more expected to follow in the coming weeks. “What we need is urgent action to drive up the supply of social homes, investment in local services and to stop councils breaking existing homelessness laws. Instead, we have a housing bill that does none of that and risks diverting frontline staff from the task in hand. By proposing new additional duties on councils already failing to deliver existing laws, we run the risk of making the situation worse.”*

D.6 SCOTTISH HOUSING EMERGENCY

The Scottish Government declared a national housing emergency on 15th May 2024, and cited UK government budget cuts, Brexit and the effects of a decade of austerity as the cause of the housing position in Scotland. Making a declaration formally recognises the housing crisis and issues in Scotland, however to date the Scottish Government have not announced any new measures which automatically stem from the declaration, and there has been no related announcements of any practical actions, plans or funding to ease the emergency being experienced by councils.

E Conclusion

The new Housing (Scotland) Bill introduces the prospect of new legislation designed to keep people in their homes and to help prevent homelessness. Whilst some gaps in current provision around domestic abuse and tenant rights have been addressed in the proposals within the Bill, the new provisions are unfunded and do not address the strategic and structural changes required to deliver the wholesale change required in the Scottish housing sector.

The Bill is progressing at a time of significant non-compliance with existing homeless duties, and deep cuts to housing supply budgets, and is in contrast to the views and experiences of housing professionals, leading public sector bodies and local authority social housing providers.

F BACKGROUND REFERENCES

Housing (Scotland) Bill <https://www.parliament.scot/bills-and-laws/bills/housing-scotland-bill-session-6/introduced>

SOLACE Report – Housing in Scotland - <https://solace.org.uk/housing-in-scotland/>

Appendices/Attachments:

1 – Letter from Paul McLennan, Minister for Housing

Contact Person: Sarah Kelly, Housing Need Service Manager 01506 281877

Email: sarah.kelly@westlothian.gov.uk

Julie Whitelaw

Interim Head of Housing, Customer and Building Services

28th May 2024

T: 0300 244 4000

E: scottish.ministers@gov.scot

27th March 2024

Housing (Scotland) Bill

Dear Colleague

I am writing to you to highlight the introduction of the Housing (Scotland) Bill to the Scottish Parliament on 26th March 2024.

The homelessness prevention provisions, if passed, will introduce a duty on relevant bodies, which are listed in the Bill, to 'ask and act'. In practice this will mean staff asking people they come into contact with through the exercise of their current functions about their housing situation and acting within their existing powers to prevent homelessness where a risk is evident. This may include referring the household to a local authority housing department, however in line with the ambition to ensure prevention of homelessness is a shared responsibility, referrals should not be the default action.

We know that people who become homeless can often be in contact with different services and organisations before they reach that point. We want to ensure that chances to prevent homelessness at the earliest opportunity are not missed. Ask and act will enable that to happen.

Ask and act forms the cornerstone of a wider set of reforms to homelessness legislation which have the potential to make a real difference to the lives of people in Scotland and which will take us closer to our ambition of ending homelessness.

The Bill also includes change to local authorities duties owed to people who are threatened with homelessness, requiring them to take action to up to six months before homelessness appears imminent rather than the current two months. The changes will also require local authorities to take reasonable steps, the specifics of which we intend to set out in regulations.

Further to this, the Bill includes measures to support social housing tenants experiencing or at risk of domestic abuse. This includes changes to update the definition of domestic abuse in the Housing (Scotland) Act 1987 to bring it in line with the most up to date understanding of domestic abuse and requiring all local authorities and social landlords to develop, publish and implement a domestic abuse policy which outlines how they will support their tenants. We will also modify the existing pre-action requirements in the Housing (Scotland) Act 2001 to require social landlords to comply with a new domestic abuse financial control related pre-action requirement in appropriate cases, before eviction action on rent arrears grounds can be taken in court.

My officials will be in touch with you in the coming months to share the details of opportunities and events geared at helping develop the guidance and training needed to support the delivery of effective and sustained positive change via the duties. We are also keen to explore organisational readiness with a view to co-developing the implementation timeline in a way which takes account of the challenging environment the duties will be introduced into.

I would be grateful if you could share this information with any networks or partners that you think will have an interest in the changes set out above.

If you have any comments or questions in the meantime please contact the Scottish Government Homelessness Unit Homelessness_External_Mail@gov.scot

A link to the Bill can be found [here](#)

Yours sincerely,

PAUL MCLENNAN
Minister for Housing

WEST LOTHIAN COUNCIL LABOUR GROUP

Meeting of Council Executive – Tuesday 28 May 2024 Agenda Item 10 – Housing (Scotland) Bill Motion

Council Executive notes recommendations B1 & 2.

It is the case that Local Authorities across Scotland are experiencing significant pressures in meeting demand for social housing.

To date Argyll and Bute Council, City of Edinburgh Council, Glasgow City Council and Fife Council have all declared a housing emergency. In July 2023, SOLACE, ALACHO and COSLA made a call for an emergency response to the emerging housing supply pressures. They have published a report, 'Housing in Scotland: Current Context and Preparing for the Future' which details their assessment of the housing emergency in Scotland and the steps needed to address it.

The Scottish Housing Regulator has also recently upgraded its risk assessment of the ability for social housing providers to meet their statutory duties, and has warned of imminent spread of systematic and sustained failure within the system.

During a Labour led debate at the Scottish Parliament on 15 May 2024, the Scottish Government eventually declared a national housing emergency. This follows on from the Scottish National Party having previously voted against a Labour motion declaring a housing emergency in November 2023.

The imbalance between supply and demand for permanent social rented accommodation continues to be a key challenge in West Lothian. There remains a high number of people applying to the council for permanent housing through the council's allocations policy, as well as accommodation required for homeless applicants to enable the council to discharge its statutory homeless duty. As of April 2024, the service holds a total of 11,269 applications for council housing, with an average of over 350 new applications each month. The service has a current live caseload of 1392 homeless cases. Throughout 2023/24 an average of 177 clients per night were accommodated in B&B/hotels at an average cost of £84 per night.

Council notes with great concern the extreme pressures on housing and homelessness in West Lothian and the additional resource implications and accommodation costs likely to arise from the implementation of the proposals contained within the Housing (Scotland) Bill introduced to the Scottish Parliament on 26 March 2024.

Council also notes with concern that:

- Despite the issue of a national housing emergency having been proposed by the Scottish Labour Party in November 2023 that it is only now that the Scottish Government have decided to acknowledge this position, and that there is no information from the Scottish Government on the specific actions to be undertaken to address this position;

- Despite the approval by Council Executive on 7 November 2023 of a suite of measures to avoid costs related to the provision of accommodation for people presenting as homeless and increase in the number of properties available for let to homeless applicants, the number of households assessed as homeless and waiting for a tenancy and the number of families with children in temporary accommodation remains high;
- West Lothian continues to face difficulties in meeting its statutory duties in regard to homelessness;
- West Lothian did not receive any of the additional £2million revenue funding for temporary accommodation announced by the Scottish Government prior to December 2023;
- The level of Scottish Government revenue grant funding provided to support the delivery of the council's Rapid Rehousing Transition Plan (RRTP) is only £280,000 in 2024/25, a reduction from the £297,000 provided in 2023/24; and
- The significant overall reduction in the national Affordable Housing Programme made by the Scottish Government, which will have a detrimental impact on the Council's own new build affordable housing programme and that of the other registered social landlords within West Lothian.

The Council therefore agrees to:

1. Note the Scottish Government's declaration of the national housing emergency, but in recognition of the specific challenges facing the council and local registered social landlords declare a Housing Emergency in West Lothian;
2. Instructs the Chief Executive to write to the Scottish Government Minister for Housing, Paul McLennan MSP, to:
 - Advise of the declaration of the Housing Emergency in West Lothian.
 - Request an urgent meeting with the Minister, whereby the Council is represented by the Executive Councillor for Housing Services and appropriate senior officers.
 - Request that the Scottish Government increases the revenue grant funding made available to the council in 2024/25 to £297,000 in support of the council's RRTP.
 - Request that the Scottish Government to reverse its decision to cut the affordable housing programme budget by 26%.
3. Instructs the Head of Housing, Customer and Building Services to provide a report to a subsequent meeting of the Housing Services PDSP on the outcome of the meeting with the Minister for Housing and the requests on the council's RRTP funding and the affordable housing programme funding.

Councillor George Paul
Executive Councillor for Housing Services

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

HOUSING (SCOTLAND) BILL

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The Bill sets out the intention to require all Local Authorities to carry out an assessment of rents in their locality and to make recommendations to the Scottish Government

about whether to impose rent control areas in all, or in part, of their local area. It is intended that the controls would be in the form of a restriction on the amount by which landlords could increase their rent either through a rent cap based on a fixed percentage or a formula which could be used to calculate the increase.

It is important to note that there has been the ability to apply for Rent Pressure Zones for a number of years, however this has only been achieved by one organisation due to the lack of any mandatory disclosure of rent landlords charge, and the resource intensive work required to canvass and survey every resident in the area to obtain the evidence required. Presently, there is no requirement to disclose property details/size and rent being charged as part of the landlord registration process and the Bill does not introduce these powers. The only manner of determining what is reasonable rent, is to understand the range of rent levels within local markets, arrive at a median per property type, and introduce cap/collar arrangements based on that averaging exercise. The new proposals do not rectify the current issues around gaps in market intelligence which enables a determination of reasonability.

The Bill proposes that long term rent controls would help to keep homes affordable going forward by creating a fairer and better regulated private rented sector. The addition of rent control within the Bill is aimed at protecting tenants from unaffordable rent rises and from pricing them out the privately rented market. However, there is concern in the sector that this introduction of rent controls is potentially damaging as it may see a decline in investment in the private rented market as landlords and investors may see this as being a less attractive option.

Local Authorities will be expected to consult with landlords in their area at least once every 5 years. Data will then be required to be collated and analysed in order to make a reasonable assessment and recommendation based on the intelligence gathered. Local authorities will be responsible for carrying out mandatory assessments in their areas, ensuring that local circumstances are considered, to reflect the geographical variations that can exist in conditions relating to rents across Scotland. The assessments will be carried out on a cyclical basis, to ensure there is ongoing consideration of the need for rent control. The outcome of these Local Authority assessments will inform Scottish Ministers' decisions on whether it is justified and proportionate to designate rent control areas.

Evictions

Section 25 applies to recovery of possession of Scottish secure tenancies and short Scottish Secure tenancies, and inserts Section 16A and 36A into the Housing (Scotland) Act 2001. When granting an order for recovery of possession, the court must consider if it would be reasonable to delay the right to recover possession of the tenancy. The court will therefore be required to consider if an absence of delay would have a detrimental effect on the tenant's household. This does not apply in cases if the court is satisfied that the only grounds established in the order for recovery of possession relate to grounds relating to criminal offenses, abandonment of the tenancy, anti-social behaviour/harassment or transfer of tenancy.

When issuing notice, West Lothian Council primarily use Ground 1, Rent Lawfully due from the tenant has not been paid. This Ground is covered by the Bill. Therefore, if a Sheriff considers it reasonable for delay to be granted on recovery, this may impact operational timescales and further extend periods where no rent is being paid. Operational processes relating to action taken after decree for eviction is granted will be revised to capture required changes. In practice, the council typically does not evict throughout December, pausing evictions until the new year. The period for use of decree will remain the same, and the Bill makes no amendment to time for decree to be extracted. Therefore, there is likely to be minimal impact on the operational activity of the council.

Pets

West Lothian Council operates a pet policy which is embedded in service delivery and recognises the benefits of responsible pet ownership to tenants and applicants for housing. This policy is currently being revised and will be compliant with the duties of the Bill, which further embeds the rights of tenants to keep a pet, and adds a mandatory timeframe of 28 days for the landlord to consider the request.

Homeless Prevention

‘Ask and Act’

The Bill introduces an ‘ask and act’ duty on social landlords and bodies, such as health boards and the police, to ask about a person’s housing situation and act to avoid them becoming homeless wherever possible.

It also reforms provision for people threatened with homelessness up to six months ahead, and refer them for appropriate help or act themselves. The objective is to intervene at the earliest possible point and prevent homelessness from occurring.

There is concern across local authorities that this will increase enquiries and referrals to unprecedented levels, and will increase homeless presentations significantly. The basis for this concern is that referrals from other agencies and partners already constitute a large proportion of homeless enquiries as they reduce their customer facing business and decrease eligibility for support services and this has already had an impact on homeless services. When combined with the level of unmet need in communities, mental health issues and early hospital/prison discharges, the indications are that this merely creates a new referral pathway to councils, from organisations with no training or knowledge of assessing homelessness and who will ‘ask’ about the housing situation of an individual. The ‘act’ duty stemming from these referrals will fall to the local authority who bear the statutory duty to act and potentially accommodate those coming in this route.

Domestic Abuse

The addition of Pre-Action Requirements concerning Domestic Abuse applies where a social landlord considers that a tenant has experienced or is experiencing domestic abuse and that this explains or partly explains why the rent lawfully due from the tenant has not been paid. In addition, the landlord must provide the tenant with details of such other support that may be available to the tenant in relation to domestic abuse as the landlord considers appropriate in the circumstances. In this context, “domestic abuse” means abusive behaviour within the meaning of section 2 of the Domestic Abuse (Protection) (Scotland) Act 2021.

Section 45 inserts new Chapter 4 into Part 2 (tenants of social landlords) of the 2001 Act. Chapter 4 comprises section 56A. This section provides that each local authority landlord and registered social landlord must prepare a “domestic abuse policy” on how it will exercise its functions in relation to the needs of tenants who the landlord has reason to believe have experienced, are experiencing or are at risk of domestic abuse, with a view to preventing homelessness.

Operationally, the council has a clear track record of consistent and fair management of tenants experiencing domestic abuse, with provisions laid out in our Allocations Policy, along with consistent and fair practical management of recovery action in rent arrears cases with absent joint tenants. The creation of a Domestic Abuse Policy will result in current practice being formalised.

The addition is welcome. However, the existing Pre-Action Requirements have not been amended since commencement in 2012 under the Housing (Scotland) Act 2010. Given the introduction of Universal Credit and increasing cost of living has resulted in

a recovery climate that is very different to 2012, failure to review the Pre-Action Requirements in their entirety as part of the Bill is a missed opportunity for modernisation of the recovery process.

Section 5 of the Bill relating to domestic abuse is primarily in relation to the introduction of a legislative prevention duty where domestic abuse is the key driver in rent arrears which may lead to eviction. Where a tenant is evicted on grounds of non-payment of rent arrears this will ordinarily result in an intentionally homeless decision. The change introduces a duty to consider if domestic abuse and in particular, controlling behaviour or financial abuse has been a factor in the accrual of rent arrears. There is room for potential conflict in the extension of the definition of Threatened with Homelessness, where there is a potential conflict of duty with the statutory processes for recovery of tenancies, and extended periods in terms of completing pre-action requirements to exhaust all steps to resolve rent arrears with tenants. Combined with the extension of the threatened period to 6 months, this has the potential to create conflicting agendas and duties for Housing Operations and Housing Need staff simply following statutory processes.

Extract decrees for recovery of heritable property, as granted by the Sheriff Court, are valid for a period of 6 months. This places further duties on the local authority to prevent homelessness in cases where we have sought to recover heritable property. In these cases, it is highly unlikely that homelessness can be prevented as the process to recover requires extensive assessment of the circumstances of the household, ensuring recovery is reasonable.

D.5 GENERAL IMPACT AND RISK

The Bill is an opportunity to address the obvious need for fundamental change in the Scottish housing sector. There are clear signs of systematic failure across many local authorities struggling to meet homeless demand and deliver services in a manner that ensures compliance with statutory duties. However, this Bill does not address these challenges, and is not cognisant of the causes of extreme pressures on the current system, and fails to deliver what is required on several key grounds:

Timing – the layering on of additional homeless prevention duties comes at a point in time where local authorities across the central belt are failing to meet existing duties and this will lead to the embedding of non-compliance, increasing breaches, and creating additional legal challenge/costs and sustained pressure for those reporting breaches. All the local authorities in breach have consistently warned of this risk and the devastating impact this will have on their ability to deliver services.

Introducing rent controls at a time of increased mortgage costs for landlords, and a cost of living crisis may have the impact of driving more private landlords from the Scottish Housing system, increasing demand and strain on local authorities with a duty to accommodate those leaving private lets.

Resources – existing changes to duty such as the removal of local connection in 2022, and the extension of the Unacceptable Accommodation Order in 2020 were introduced despite local authority warnings of potential impacts, and came with no additional funding or resources to meet the additional strain this placed on service budgets and staff. These new duties will also be instituted with no additional funding. When combined with the announcement by the Scottish Government in March 2024 of the almost £200 million cut in the affordable housing budget, investment is at its' lowest level in over 10 years.

Sector backing – the Chartered Institute of Housing in Scotland announced a national housing emergency at their annual conference in March 2024. The national Director

said: *“The Housing Bill, if appropriately funded, could be an opportunity to drive positive systemic change, with welcome new proposals for victims of domestic abuse and those at risk of homelessness. Although we have real concerns about the impact a rent control policy will have on the supply of privately rented homes.*

“However, no matter how welcome any policies are, any legislation will take years to come into effect and with Scotland in the midst of a housing emergency we are concerned that this Bill doesn’t address the structural changes required in our housing system today.”

The Scottish Housing Regulator has recently upgraded its risk assessment of the ability for social housing providers to meet their statutory duties, and has warned of imminent spread of systematic and sustained failure within the system. This warning was echoed in the SOLACE/ALACHO/Cosla report in July 2023 of their assessment of the housing emergency in Scotland, and the measures required to address this.

Shelter Scotland criticised the new Bill, also stating it fails to address the systematic issues driving Scotland’s housing emergency. Shelter Scotland director, Alison Watson, said: *“There is a growing consensus that Scotland is in the grip of a housing emergency. Already four local authorities have declared housing emergencies, with more expected to follow in the coming weeks. “What we need is urgent action to drive up the supply of social homes, investment in local services and to stop councils breaking existing homelessness laws. Instead, we have a housing bill that does none of that and risks diverting frontline staff from the task in hand. By proposing new additional duties on councils already failing to deliver existing laws, we run the risk of making the situation worse.”*

D.6 SCOTTISH HOUSING EMERGENCY

The Scottish Government declared a national housing emergency on 15th May 2024, and cited UK government budget cuts, Brexit and the effects of a decade of austerity as the cause of the housing position in Scotland. Making a declaration formally recognises the housing crisis and issues in Scotland, however to date the Scottish Government have not announced any new measures which automatically stem from the declaration, and there has been no related announcements of any practical actions, plans or funding to ease the emergency being experienced by councils.

E Conclusion

The new Housing (Scotland) Bill introduces the prospect of new legislation designed to keep people in their homes and to help prevent homelessness. Whilst some gaps in current provision around domestic abuse and tenant rights have been addressed in the proposals within the Bill, the new provisions are unfunded and do not address the strategic and structural changes required to deliver the wholesale change required in the Scottish housing sector.

The Bill is progressing at a time of significant non-compliance with existing homeless duties, and deep cuts to housing supply budgets, and is in contrast to the views and experiences of housing professionals, leading public sector bodies and local authority social housing providers.

F BACKGROUND REFERENCES

Housing (Scotland) Bill <https://www.parliament.scot/bills-and-laws/bills/housing-scotland-bill-session-6/introduced>

SOLACE Report – Housing in Scotland - <https://solace.org.uk/housing-in-scotland/>

Appendices/Attachments:

1 – Letter from Paul McLennan, Minister for Housing

Contact Person: Sarah Kelly, Housing Need Service Manager 01506 281877

Email: sarah.kelly@westlothian.gov.uk

Julie Whitelaw

Interim Head of Housing, Customer and Building Services

28th May 2024

T: 0300 244 4000

E: scottish.ministers@gov.scot

27th March 2024

Housing (Scotland) Bill

Dear Colleague

I am writing to you to highlight the introduction of the Housing (Scotland) Bill to the Scottish Parliament on 26th March 2024.

The homelessness prevention provisions, if passed, will introduce a duty on relevant bodies, which are listed in the Bill, to 'ask and act'. In practice this will mean staff asking people they come into contact with through the exercise of their current functions about their housing situation and acting within their existing powers to prevent homelessness where a risk is evident. This may include referring the household to a local authority housing department, however in line with the ambition to ensure prevention of homelessness is a shared responsibility, referrals should not be the default action.

We know that people who become homeless can often be in contact with different services and organisations before they reach that point. We want to ensure that chances to prevent homelessness at the earliest opportunity are not missed. Ask and act will enable that to happen.

Ask and act forms the cornerstone of a wider set of reforms to homelessness legislation which have the potential to make a real difference to the lives of people in Scotland and which will take us closer to our ambition of ending homelessness.

The Bill also includes change to local authorities duties owed to people who are threatened with homelessness, requiring them to take action to up to six months before homelessness appears imminent rather than the current two months. The changes will also require local authorities to take reasonable steps, the specifics of which we intend to set out in regulations.

Further to this, the Bill includes measures to support social housing tenants experiencing or at risk of domestic abuse. This includes changes to update the definition of domestic abuse in the Housing (Scotland) Act 1987 to bring it in line with the most up to date understanding of domestic abuse and requiring all local authorities and social landlords to develop, publish and implement a domestic abuse policy which outlines how they will support their tenants. We will also modify the existing pre-action requirements in the Housing (Scotland) Act 2001 to require social landlords to comply with a new domestic abuse financial control related pre-action requirement in appropriate cases, before eviction action on rent arrears grounds can be taken in court.

My officials will be in touch with you in the coming months to share the details of opportunities and events geared at helping develop the guidance and training needed to support the delivery of effective and sustained positive change via the duties. We are also keen to explore organisational readiness with a view to co-developing the implementation timeline in a way which takes account of the challenging environment the duties will be introduced into.

I would be grateful if you could share this information with any networks or partners that you think will have an interest in the changes set out above.

If you have any comments or questions in the meantime please contact the Scottish Government Homelessness Unit Homelessness_External_Mail@gov.scot

A link to the Bill can be found [here](#)

Yours sincerely,

PAUL MCLENNAN
Minister for Housing

WEST LOTHIAN COUNCIL LABOUR GROUP

Meeting of Council Executive – Tuesday 28 May 2024 Agenda Item 10 – Housing (Scotland) Bill Motion

Council Executive notes recommendations B1 & 2.

It is the case that Local Authorities across Scotland are experiencing significant pressures in meeting demand for social housing.

To date Argyll and Bute Council, City of Edinburgh Council, Glasgow City Council and Fife Council have all declared a housing emergency. In July 2023, SOLACE, ALACHO and COSLA made a call for an emergency response to the emerging housing supply pressures. They have published a report, 'Housing in Scotland: Current Context and Preparing for the Future' which details their assessment of the housing emergency in Scotland and the steps needed to address it.

The Scottish Housing Regulator has also recently upgraded its risk assessment of the ability for social housing providers to meet their statutory duties, and has warned of imminent spread of systematic and sustained failure within the system.

During a Labour led debate at the Scottish Parliament on 15 May 2024, the Scottish Government eventually declared a national housing emergency. This follows on from the Scottish National Party having previously voted against a Labour motion declaring a housing emergency in November 2023.

The imbalance between supply and demand for permanent social rented accommodation continues to be a key challenge in West Lothian. There remains a high number of people applying to the council for permanent housing through the council's allocations policy, as well as accommodation required for homeless applicants to enable the council to discharge its statutory homeless duty. As of April 2024, the service holds a total of 11,269 applications for council housing, with an average of over 350 new applications each month. The service has a current live caseload of 1392 homeless cases. Throughout 2023/24 an average of 177 clients per night were accommodated in B&B/hotels at an average cost of £84 per night.

Council notes with great concern the extreme pressures on housing and homelessness in West Lothian and the additional resource implications and accommodation costs likely to arise from the implementation of the proposals contained within the Housing (Scotland) Bill introduced to the Scottish Parliament on 26 March 2024.

Council also notes with concern that:

- Despite the issue of a national housing emergency having been proposed by the Scottish Labour Party in November 2023 that it is only now that the Scottish Government have decided to acknowledge this position, and that there is no information from the Scottish Government on the specific actions to be undertaken to address this position;

- Despite the approval by Council Executive on 7 November 2023 of a suite of measures to avoid costs related to the provision of accommodation for people presenting as homeless and increase in the number of properties available for let to homeless applicants, the number of households assessed as homeless and waiting for a tenancy and the number of families with children in temporary accommodation remains high;
- West Lothian continues to face difficulties in meeting its statutory duties in regard to homelessness;
- West Lothian did not receive any of the additional £2million revenue funding for temporary accommodation announced by the Scottish Government prior to December 2023;
- The level of Scottish Government revenue grant funding provided to support the delivery of the council's Rapid Rehousing Transition Plan (RRTP) is only £280,000 in 2024/25, a reduction from the £297,000 provided in 2023/24; and
- The significant overall reduction in the national Affordable Housing Programme made by the Scottish Government, which will have a detrimental impact on the Council's own new build affordable housing programme and that of the other registered social landlords within West Lothian.

The Council therefore agrees to:

1. Note the Scottish Government's declaration of the national housing emergency, but in recognition of the specific challenges facing the council and local registered social landlords declare a Housing Emergency in West Lothian;
2. Instructs the Chief Executive to write to the Scottish Government Minister for Housing, Paul McLennan MSP, to:
 - Advise of the declaration of the Housing Emergency in West Lothian.
 - Request an urgent meeting with the Minister, whereby the Council is represented by the Executive Councillor for Housing Services and appropriate senior officers.
 - Request that the Scottish Government increases the revenue grant funding made available to the council in 2024/25 to £297,000 in support of the council's RRTP.
 - Request that the Scottish Government to reverse its decision to cut the affordable housing programme budget by 26%.
3. Instructs the Head of Housing, Customer and Building Services to provide a report to a subsequent meeting of the Housing Services PDSP on the outcome of the meeting with the Minister for Housing and the requests on the council's RRTP funding and the affordable housing programme funding.

Councillor George Paul
Executive Councillor for Housing Services