

Crisis response to Scottish Government consultation: Covid Recovery, A consultation on public health, public services and justice system reforms



5th November 2021

Crisis in Scotland

Crisis is the national charity for people facing homelessness. We know that homelessness is not inevitable, and we know that together, we can end it. Crisis is dedicated to ending homelessness by delivering life-changing services and campaigning for change.

Every year we work directly with thousands of people experiencing homelessness in 11 areas across England, Scotland and Wales. We provide vital help so that people can rebuild their lives and are supported out of homelessness for good. We offer one to one support, advice and courses according to individual needs. We use research to find out how best to improve our services, but also to find wider solutions to end homelessness.

Introduction

Crisis welcomes the opportunity to respond to this consultation on making permanent some of the emergency provisions put in place in response to the COVID-19 pandemic. The consultation document sets out proposals for specific legislative reforms which have the potential to support our recovery from Covid. This response focuses on Topic P18 regarding protection against eviction, but also makes the links with wider priorities as we recover from the pandemic.

Question 22: It is proposed that the provisions for Topic P18 (Tenancies: protection against eviction (discretionary grounds of eviction); and pre-action requirements for eviction proceedings on ground of rent arrears) as described will be made permanent. Which of the following best describes what you think about this?

- I think the provisions for Topic P18 should be extended beyond March 2022 and made permanent
- I think the provisions for Topic P18 should be extended beyond March 2022 and made permanent, but only to the extent that rent arrears should continue to be a discretionary eviction ground – with all other eviction grounds returning to their pre-pandemic status
- I think the provisions for Topic P18 should be extended beyond March 2022, but not made permanent
- I think the provisions for Topic P18 should be extended beyond March 2022, but not made permanent, but only to the extent that rent arrears should continue to be a discretionary eviction ground – with all other eviction grounds returning to their pre-pandemic status
- I do not think the provisions for Topic P18 should be extended or made permanent
- Unsure
- I have no view

If you have any comments on either the provisions for Topic P18, or the proposal for permanence, please write them below.

It is Crisis' view that the provisions for Topic P18 should be extended beyond March 2022 and made permanent. We welcomed the temporary provisions brought in during the pandemic to protect tenants from eviction, and believe that making these permanent will help to protect people from homelessness. Crisis also recommends that all the grounds for eviction from a Private Residential Tenancy should remain discretionary, rather than some grounds returning to being mandatory.

The Homelessness and Rough Sleeping Action Group (HARSAG), was reconvened in 2020 at the request of the Housing Minister in response to the pandemic. The group was asked to undertake a rapid review of existing plans and provide recommendations on post-pandemic recovery. HARSAG recommended:¹

- Immediate strong and permanent pre-action protocol for tenants in Private Rented Sector, including protection against eviction for tenants with agreed arrears repayment plans.
- Alongside pre-action protocols, ensure funded access to dedicated money advice, welfare advice and housing rights support.
- An extension of the tribunal's emergency discretionary powers over eviction in social and private rentals.
- Work towards both the social and private rented sectors no longer evicting into homelessness.

These recommendations were accepted in principle by the then Housing Minister in Summer 2020.²

Every year, many more households in Scotland become homeless from the PRS than have their homelessness resolved in that tenure. Equivalent flows into and out of social renting show the opposite trend. Eviction from the PRS for arrears, and PRS evictions recorded as "other action by landlord," accounted for 11% of homelessness applications in the year prior to the pandemic.³ This suggests the PRS has a larger role to play in ending homelessness.

The role of the PRS in providing a route out of homelessness

The evidence tells us the PRS in Scotland has much to offer, but also that it presents challenges and risks. For people who are homeless to be able to exercise meaningful choice about housing, without being placed at unreasonable risk of future homelessness or housing difficulty, we need to ensure it is a safe and secure option, and that existing legislative requirements are being properly enforced.

Crisis has promoted the responsible use of the PRS for those at risk of or experiencing homelessness for many years. We support schemes throughout the UK which seek to improve access to the PRS, sharing examples of good practice, delivering training and producing a range of toolkits and guides for housing practitioners. Underpinning this is the principle of choice for those experiencing homelessness. Those with lived experience have expressed to us that people in the greatest housing

¹ Homelessness and Rough Sleeping Action Group (2020) *Tackling homelessness in Scotland following the coronavirus pandemic- Recommendations from Homelessness and Rough Sleeping Action Group*. Available here: <https://www.gov.scot/publications/homelessness-and-rough-sleeping-action-group-final-report-tackling-coronavirus/>

² Scottish Housing News (15 July 2020) Scottish Government accepts HARSAG recommendations in principle. Available here: <https://www.scottishhousingnews.com/article/scottish-government-accepts-harsag-recommendations-in-principle>

³ Scottish Government (2020) *Homelessness in Scotland 2019 to 2020*. Available here: <https://www.gov.scot/publications/homelessness-scotland-equalities-breakdown-2019-20/>

need often have the fewest housing options, and that people with experience of homelessness should have the same options as other members of the public, whilst balancing this with safeguards to give people stability. They identified tenure as just one of eight factors which may influence people's decisions regarding housing choice, alongside things like location, size, accessibility and cost.

Scotland should move towards a greater role for the PRS as a settled housing option for those with experience of homelessness, and away from use of the PRS for temporary accommodation (through Private Sector Leasing, for example). **The best way to allow the PRS to play a role in ending homelessness is to have well-functioning local PRS access schemes**, which rely on good partnership working between local authorities, landlords and third sector intermediaries. **Alongside this, the PRS can play a greater role in providing a route out of homelessness if there are fewer risks with regard to the tenure's security, affordability, standards and enforcement of existing policy.**

Impacts of the pandemic on rent arrears and eviction

Crisis recently published the Homelessness Monitor Scotland,⁴ which includes findings on the impacts of the pandemic on those with experience of homelessness. The research found that restrictions on evictions from the rented sectors were seen by all local authority survey respondents to have been important in preventing or minimising homelessness in their area, with 90% seeing them as very important. In part precipitated by these temporary measures, the number of households presenting as homeless due to the loss of rental tenancies fell by 57% in 2020/21 compared to the previous year (from 4,651 to 1,999).⁵ The evictions ban may also explain the changed profile of statutory homelessness in the pandemic year, with greater reductions in statutory homelessness among family households and older age groups likely to reflect their greater likelihood of residing in rental accommodation and protection from eviction during the pandemic. Greater reductions in more pressured areas may similarly reflect the relative importance of the private rented sector as a generator of homelessness in these parts of Scotland.

Though renters in all tenures have been negatively affected by the pandemic, private tenants appear to have been hit particularly hard when it comes to reductions in income.⁶ Though surveys suggest most tenants have continued to pay rent as usual, there is evidence the pandemic has caused a rise in arrears:

- Citizens Advice Scotland report that during April-December 2020, greater numbers of private renters had sought advice than for the same period in 2019. Most had sought advice in

⁴ Watts, B., Bramley, G., Fitzpatrick, S., Pawson, H. & Young, G. (2021) The Homelessness Monitor: Scotland 2021, London: Crisis. Available from: <https://www.crisis.org.uk/ending-homelessness/homelessness-knowledge-hub/homelessness-monitor/scotland/the-homelessness-monitor-scotland-2021/>

⁵ Scottish Government (2021) *Homelessness in Scotland: 2020 to 2021*. Available here: <https://www.gov.scot/publications/homelessness-scotland-2020-2021/>

⁶ Just three weeks after the lockdown, results of an Opinion survey published in the Guardian suggested that a fifth of renters were needing to choose between paying for food and bills or paying rent (<https://www.theguardian.com/world/2020/apr/13/millions-having-to-choose-between-paying-landlord-or-eating-research-suggests-coronavirus>). Similar research by Shelter found that a fifth of private renters believed they were likely to lose their jobs within three months of the lockdown beginning, leaving many struggling to pay rent (https://england.shelter.org.uk/media/press_releases/articles/1.7_million_renters_expect_to_lose_their_job_in_the_next_three_months)

connection with rent and rent arrears, repairs and deposits but Citizens Advice Scotland also highlighted a “worrying increase” in cases involving landlord harassment and illegal eviction.⁷

- Research conducted by JRF⁸ earlier this year shows that 1.7 million renting households were worried about paying their rent during the three months to August 2021, and almost 1 million renting households were worried about being evicted. JRF found that one in twenty (5%) renters (GB-wide sample) said their landlord had contacted them to issue a formal eviction notice or to threaten eviction, rising to one in five (21%) renters who are currently in rent arrears
- Almost 20% of landlords responding to a survey conducted by Crisis in 2020 noted an increase in arrears. 36% said they agreed a temporary rent reduction and 21% a rent deferral. Some commented they also offered or agreed to a rent holiday, or wrote off arrears.⁹

Financial support for struggling tenants

LHA rates, a key cause of unaffordability in the PRS in many areas, were updated on 1 April to once more cover the lowest 30th percentile of the market. This makes a significant difference to many tenants on low incomes. But the increase will be unable to address shortfalls for larger households subject to the benefit cap, young people only entitled to the Shared Accommodation Rate, and those facing income reductions whose rent is within the 70% of the market not covered by LHA. LHA rates were subsequently frozen at their current rate for 2021-22. This will inevitably widen the gap between actual rents payable and the rent used to assess benefit entitlement, which is likely to increase the numbers of private renters struggling to pay their rent and falling into arrears.

In light of the shortfalls some tenants face, the Homelessness Monitor Scotland found that the Scottish Government’s boost to the 2020/21 Discretionary Housing Payment and Social Welfare Budgets were highly valued by local authorities, with almost all survey respondents (28 and 27 out of 29, respectively) describing these as important in minimising or preventing homelessness. The Tenant Hardship Grants will also help to protect private rented tenants who have accumulated arrears during the pandemic.

Nevertheless, the Homelessness Monitor Scotland evidence also shows there are concerns amongst local authorities that the temporary eviction protections may have delayed rather than removed the threat of an upsurge in homelessness. One key informant from local government said:

“We don’t know the people in PRS accommodation, and we don’t know the level of arrears that they’ve got... The response of Local Authorities to high levels of arrears isn’t going to be eviction, necessarily. A range of factors will be considered and it’s for services, ultimately, to decide what’s the best option, but there’s a level of, I suppose, control over that... There’s a level of predictability in there, but there’s not really the same level of predictability with the PRS side of things”

⁷ Citizens Advice Scotland (2021) Housing advice data; Comparison of April-December 2019 and April-December 2020 housing advice trends. Online: CAS. https://www.cas.org.uk/system/files/publications/cas_housing_data_q1-3.pdf

⁸ <https://www.jrf.org.uk/report/we-cant-allow-renters-be-locked-out-our-post-pandemic-recovery>

⁹ Crisis (August 2020 – unpublished) private landlord survey: Aberdeen, Aberdeenshire and Angus (total respondents: 1194).

There are also concerns that any labour market slump that further increases pressure on incomes could lead to a double hit on arrears, increasing the numbers of households in arrears and deepening rent arrears amongst those already in difficulty. An upsurge in evictions was certainly a central concern for LA survey respondents, all of whom expect to see an increase in homelessness demand precipitated by eviction from the PRS in the post-lockdown period.¹⁰

Prevention of homelessness from the PRS

Private tenants on low and/or unstable incomes, or who have other support needs, have tenure-specific needs for financial, welfare and debt advice. Unlike social tenants, whose landlords have expertise in, or strong links to, welfare advice and financial inclusion, and a strategic responsibility to prevent homelessness, Crisis' recent and previous surveys found private landlords had very low awareness of services tenants may need, not helped by the fact that many private landlords are small-scale and do not use a letting agency. The same surveys have also found that landlords themselves often want more access to advice and support, especially where tenancies are failing.¹¹ Many entirely depended on their letting agency, though research highlights that agencies as well as landlords can find it unclear where to signpost tenants or who to contact direct if a tenant was in difficulty in their local area.¹²

Section 11 is not well used as prevention tool. Crisis recommends concerted effort to improve the effectiveness of Section 11, using learning from the Registered Social Landlord sector. We should also work towards targeted, proactive approaches to prevention for groups with higher vulnerability to homelessness in the PRS.

Pre-action requirements (PARs) are another means by which tenants in arrears can receive advice and support to manage rent arrears before any eviction action is taken, thereby preventing homelessness and supporting them to remain in their home. The First-Tier Tribunal also has a key role to play in ensuring that landlords are following pre-action requirements and making all reasonable efforts to support tenants to remain in their homes.

For renters whose tenancies are unsustainable, other action is required to help those tenants find more suitable long-term tenancies quickly and easily, avoiding the risk of homelessness. Importantly, when someone does face eviction, this does not have to mean they experience the trauma and indignity of homelessness. The system Crisis is proposing, based on the recommendations of the Prevention Review Group,¹³ is one where local authorities have a duty to work with other public bodies and landlords, taking all reasonable steps to support someone who may be at risk of homelessness within the next six months. These legislative changes would go a long way to ensuring those who do face eviction are supported to either maintain existing tenancies or find alternative stable and suitable housing as quickly as possible.

¹⁰ Watts, B., Bramley, G., Fitzpatrick, S., Pawson, H. & Young, G. (2021) The Homelessness Monitor: Scotland 2021, London: Crisis. Available from: <https://www.crisis.org.uk/ending-homelessness/homelessness-knowledge-hub/homelessness-monitor/scotland/the-homelessness-monitor-scotland-2021/>

¹¹ Crisis (August 2020 – unpublished) private landlord survey: Aberdeen, Aberdeenshire and Angus (total respondents: 1194).

¹² Donohoe, T. and Young, G. (2019) Where to Turn: A review of housing support and advice for private tenants in Scotland. Online: Shelter. Available here: https://scotland.shelter.org.uk/_data/assets/pdf_file/0009/1773630/Where_To_Turn.pdf/_nocache

¹³ Prevention Review Group (2021) Preventing Homelessness in Scotland: Recommendations for legal duties to prevent homelessness. Available here: <https://www.crisis.org.uk/media/244558/preventing-homelessness-in-scotland.pdf>

Chapter 4, Criminal Justice

Question 25: It is proposed that the provisions for Topic J3 (Criminal justice: early release of prisoners) as described will be extended beyond March 2022. Which of the following best describes what you think about this?

The proposal is to continue to provide Scottish Ministers with the power to instruct that the group of prisoners who fall within criteria set out in regulations would be released from prison earlier than their scheduled release date.

Crisis has no view as to whether this power should continue to be provided to Scottish Ministers, but we would caution that any prisoners who are being considered for early release should be supported to ensure they have stable and suitable accommodation to move on to. As a principle, people leaving prison should have access to the same services and accommodation as people living in the community.

The Homelessness Prevention Review Group¹⁴ recommended that the Prisons and Young Offenders Institutions (Scotland) Rules 2011 are amended to ensure that prisoners are asked about their housing situation as soon as reasonably possible on going into prison; and if a prisoner is likely to need assistance to find housing for when they leave prison, a referral is made as soon as possible in the final six months of the sentence to the local authority identified by the prisoner for homelessness assistance.

In the meantime, the Sustainable Housing on Release for Everyone (SHORE) Standards¹⁵ should be followed, which recommend that, prior to release, partners work together to make sure that:

- As part of the individual's pathway, arrangements will be made to ensure appropriate accommodation, in keeping with the plan is provided on release;
- Where someone needs to make a homeless application these are made no later than 8 weeks prior to the earliest release date and accommodation and associated community support arrangements put in place 24 – 48 hours prior to liberation and communicated to the individual at this time;
- Arrangements are put in place for GP registration and first appointment where required;
- Advance benefit and welfare fund applications are made where possible. For Scottish Welfare Fund applications, decisions in principle should be considered where possible to allow applicants to plan ahead; and SPS, Social landlords, Throughcare services and other partners liaise with each other to ensure the journey back into the community is as seamless as possible through a single plan which includes accessing accommodation and support.

Chapter 5, Covid Recovery

¹⁴ Homelessness Prevention Review Group (2021) Preventing Homelessness in Scotland - Recommendations for legal duties to prevent homelessness: A report from the Prevention Review Group Available here: <https://www.crisis.org.uk/ending-homelessness/scotland-prevention-review-group/>

¹⁵ Shore Standards. Available here: <https://www.sps.gov.uk/Corporate/Publications/Publication-5363.aspx>

Question 34: To support the key three themes for Covid recovery as described, do you have any proposals for legislation which goes beyond or is different to the consultation proposals in Chapters 2 to 4?

Just as health services and other frontline services responded rapidly to the onset of the COVID-19 pandemic, the Scottish policy community also responded with a proliferation of civil society groups established to consider policy proposals for both the emergency response and for the longer term recovery. Crisis was heavily involved in several housing and homelessness policy groups, namely:

- the **Everyone Home Collective** and the 'route maps' that emerged;¹⁶
- the reconvened **Homelessness and Rough Sleeping Action Group (HARSAG)**;¹⁷
- the **Social Renewal Advisory Board** and its **Housing Policy Circle**.¹⁸

The outputs of these groups have already formed the basis of Scotland's post-pandemic housing and homelessness policy, with recommendations reflected in Housing to 2040 and the renewed Ending Homelessness Together Action Plan. But the policy ambition set out in those documents, while we were still in the grips of the first, second and third waves of this public health emergency, should not be forgotten. Reports such as the one produced by the Social Renewal Advisory Board stand as a marker of our vision when things were at their hardest and it is vital that the ambitious, yet pragmatic recommendations arrived at during the first months of the pandemic continue to form the basis of our approach to recovery.

Specifically, Crisis strongly welcomes the Scottish Government's commitment to introduce legislation to extend and strengthen homelessness prevention duties, making this a shared public responsibility and ensuring the homelessness statutory framework is geared towards prevention. We look forward to Scottish Ministers introducing legislation that reflects the principles and proposals of the Prevention Review Group, in the second year of this parliament.

In addition to this, there is opportunity for the Rented Sector Strategy and subsequent Housing Bill to consider introducing other changes to support tenants to sustain their tenancies and keep their homes. In particular, this should consider the affordability of housing costs, especially for young people on low incomes who are in receipt of Local Housing Allowance but face the Shared Accommodation Rate; whether the current grounds for eviction from the Private Residential Tenancy (PRT) strike the appropriate balance between tenants' and landlords' needs; and whether a longer minimum term should be introduced into the PRT to guarantee a timeframe during which the property should be available to the tenant without risk of eviction.

¹⁶ Everyone Home Collective route maps: <https://www.everyonehome.scot/>

¹⁷ Homelessness and Rough Sleeping Action Group 2020: <https://www.gov.scot/publications/homelessness-and-rough-sleeping-action-group-final-report-tackling-coronavirus/>

¹⁸ Social Renewal Advisory Board, Housing Policy Circle final report: <https://www.gov.scot/publications/not-now-social-renewal-advisory-board-report-january-2021/documents/>