

# Final Business and Regulatory Impact Assessment

## Evictions Regulations 2012

### 1. Title of Proposal

Final Business and Regulatory Impact Assessment for the following regulations to strengthen the protection for tenants within the social rented sector in Scotland against eviction for rent arrears:

- The Scottish Secure Tenancies (Proceedings for Possession) (Pre-Action Requirements) Order 2012;
- The Scottish Secure Tenancies (Proceedings for Possession) (Form of Notice) Regulations 2012;
- The Scottish Secure Tenancies (Proceedings for Possession) (Form of Confirmation of Compliance with Pre-Action Requirements) (Regulations) 2012;
- The Scottish Secure Tenancies (Repossession Orders) (Maximum Period) Order 2012.

### 2. Purpose and intended effect

#### 2.1 Background

Following public consultation in March 2010 around whether tenants in the social rented sector facing eviction for rent arrears needed extra protection, the Scottish Government introduced changes to legislation in the Housing (Scotland) Act 2010 to strengthen the protection for tenants in the social rented sector facing eviction for rent arrears.

Our consultation paper '**Eviction of Tenants in the Social Rented Sector: Protection of Tenants with Rent Arrears**' contained a partial Regulatory Impact Assessment. Consultation responses around the partial Regulatory Impact Assessment were analysed to identify possible costs and benefits of each of the options identified for strengthening the protection for tenants against evictions for rent arrears and inform further development of the Business and Regulatory Impact Assessment.

#### 2.2 Objective

- To strengthen the protection for tenants in the social rented sector facing eviction for rent arrears;
- To balance the needs of landlords who have a duty to protect public finances and prevent homelessness along with the needs of tenants.

This is consistent with the Scottish Government policy that eviction for rent arrears should only happen as a last resort.

#### 2.3 Rationale for Government intervention

The Scottish Government has already put in place extra protection for homeowners faced with repossession through the Home Owner and Debtor Protection (Scotland) Act 2010. In their final report in June 2009, the Repossessions Group for homeowners expressed concern that evictions of tenants in the social rented sector should not be considered less significant than those of homeowners. In addition, the changing economic and financial environment has the potential to impact negatively on the level of rent arrears and the number of evictions across Scotland.

We held an event for stakeholders on social rented sector evictions in November 2009 to gain a shared understanding of the problems in Scotland around social housing evictions and to take a shared view on what we might to achieve our desirable goal of reducing the number of social housing evictions.

Analysis of the data available around evictions in the social rented sector in Scotland and discussion with stakeholders highlighted the fact that rent arrears are a major cause of evictions in Scotland. There is also wide variation in practice around rent arrears and evictions across Scotland in areas such as: -

- The rate of evictions and abandoned dwellings;
- The level of rent arrears;
- The balance between eviction of tenants and abandonment of tenancies;
- The level of court actions; and
- The proportion of cases taken to court leading to an eviction.

These variations in performance cannot be fully explained by background economic and social factors alone. Variation in housing management practice is believed to be a significant factor. Since our focus on evictions began in late 2009, the number of evictions in Scotland has now fallen to a total of 1,822 across social landlords, however the level of variation in practice across landlords continues to be an issue.

In addition to the above, the UK Government has now introduced a range of welfare reforms within the Welfare Reform Bill which will impact financially on tenants in the social rented sector and potentially increase the number of tenants falling into rent arrears, the level of rent arrears and the number of tenants facing possible eviction. It is therefore even more important that greater consistency and rigour around pre-eviction processes and procedures is put in place in Scotland to safeguard tenants.

The legislative changes around evictions introduced in the Housing (Scotland) Act 2010 support achievement of the following national outcomes in the National Performance Framework:

- We have tackled the significant inequalities in Scottish society;
- We have improved the life chances for children, young people and families at risk;
- Our children have the best start in life and are ready to succeed.

### **3. Consultation**

#### **3.1 Within Government**

The Housing Transitions and Support Team; Housing Options and Services Unit; Social Housing and Strategy Unit; Courts and Legal Services Reform; Solicitors; Communities Analytical Services and the Scottish Housing Regulator were consulted prior to drafting the consultation paper and have continued to be consulted at appropriate stages as changes to the legislation around evictions has been developed.

#### **3.2 Public Consultation**

A public consultation exercise to identify whether tenants in the social rented sector facing eviction for rent arrears needed extra protection was held between 30 March 2010 and 28 May 2010. A total of 93 responses were received to the consultation, 88 from groups or representative organisations and 5 from individual members of the public.

Responses to the consultation supported the Government's view that more needed to be done to strengthen the protection for tenants in the social rented sector facing eviction for rent arrears.

A Partial Regulatory Impact Assessment associated with the options identified for strengthening the protection of tenants was set out in the consultation paper. Many respondents felt it was difficult to assess the likely impact of the proposals for legislative change until further detail was available.

Whilst some respondents also suggested that there may be resource implications for landlords (particularly smaller organisations), others suggested that any additional costs may be offset to some extent if less resources need to be channelled into eviction related work. An analysis of consultation responses is available within the report '**Eviction of Tenants in the Social Rented Sector: Protection of Tenants with Rent Arrears an Analysis of Consultation responses**'. <http://www.scotland.gov.uk/Publications/2010/07/16111101/0>

Following our public consultation, we worked with landlords, representative organisations and the Scottish Court Service to develop the primary legislation required to introduce pre-action requirements and changes to the period a decree for repossession issued by the Sheriff Court is to have effect. These legislative changes to strengthen the protection of tenants were subsequently introduced in the Housing (Scotland) Act 2010.

### **3.3 Further Consultation**

A short term working group of key stakeholders including landlord and tenant representative organisations, the Scottish Court Service and the Scottish Housing Regulator was established in January 2010. Meetings of the Evictions Working Group were held in January 2010, March 2011 and January 2012 to help plan the public consultation and consider drafts of the regulations and statutory guidance required to bring pre-action requirements and changes to repossession orders into force. Comments on the proposed primary and secondary legislation and its regulatory impact were sought and taken on board at all stages during this extensive consultation period. Membership of the working group included:

- Shelter;
- Scottish Housing Regulator;
- ALACHO (Association of Local Authority Chief Housing Officers);
- T C Young solicitors;
- Legal Service Agency;
- Scottish Court Service;
- SFHA (Scottish Federation of Housing Associations);
- Regional Tenant Network Representatives.

### **3.4 Business**

27 Registered social landlords and 20 local authorities responded directly to our consultation '**Eviction of Tenants in the Social Rented Sector: Protection of Tenants with Rent Arrears**'. Responses were also received from the Scottish Federation of Housing Association (SFHA) and the Convention of Scottish Local Authorities (COSLA). Details of these responses are available on the Scottish Government website.

The Evictions Working Group was established in January 2010 to ensure the range of interests including Registered Social Landlords, Local Authorities, tenants and the Scottish Court Service were fully considered in policy development around evictions in the social rented sector.

In addition, to consulting with our Evictions Group members, we actively sought views and held face-to face meetings with 7 Registered Social Landlords, 3 Local Authorities and the Scottish Court Service at key stages during policy development, particularly in the development of secondary legislation and statutory guidance in order to balance the needs of tenants whilst not placing undue burdens on landlords or the Scottish Court Service.

Responses from all stages of the consultation have fed into the final 4 sets of regulations listed below, along with the statutory guidance prepared to bring the legislative changes to evictions introduced in the Housing (Scotland) Act 2010 into force:

- The Scottish Secure Tenancies (Proceedings for Possession) (Pre-Action Requirements) Order 2012;
- The Scottish Secure Tenancies (Proceedings for Possession) (Form of Notice) Regulations 2012;
- The Scottish Secure Tenancies (Proceedings for Possession) (Form of Confirmation of Compliance with Pre-Action Requirements) (Regulations) 2012;
- The Scottish Secure Tenancies (Repossession Orders) (Maximum Period) Order 2012.

## **4. Options**

### **4.1 Overview of Options**

The partial Regulatory Impact Assessment within our public consultation paper '**Eviction of Tenants in the Social Rented Sector: Protection of Tenants with Rent Arrears**'

<http://www.scotland.gov.uk/Publications/2010/03/29163921/0>

published March 2010 set out 5 options for strengthening the protection of tenants in the social rented sector facing eviction for rent arrears along with the costs and benefits for each option. The options were:

- Identify and share good practice in the sector about preventing rent arrears;
- Include outcomes landlords should be achieving to support their tenants in the Social Housing Charter;
- Introduce a non-legislative pre-action protocol for rent arrears cases;
- Introduce a legislative pre-action requirement for rent arrears cases; and
- Amend legislation to allow tenants to retain their existing tenancy if a way forward is agreed with the landlord following court decree for eviction.

### **4.2 Summary of Options Being Taken Forward Following Consultation**

A considerable majority of respondents to our evictions consultation agreed that there was a need to do more to reduce the number of tenants evicted from the social rented sector because of rent arrears. A number of respondents noted the considerable and negative impact of eviction, with social and financial costs that cannot be ignored. Some even suggested that the cost of eviction and subsequent homelessness assistance can be as much as, or significantly more than, the rent arrears landlords are attempting to recover.

Following full consideration of consultation responses (including comments received around the partial Regulatory Impact Assessment), where both the pre-action requirements and pre-action protocol received majority support, Scottish Ministers decided on balance, to introduce legislative pre-action requirements within the Housing (Scotland) Act 2010 rather than a non-legislative pre-action protocol. Scottish Ministers also decided following full consideration of consultation responses, including comments received on the partial Regulatory Impact Assessment introduce legislative change to repossession orders within the Housing (Scotland) Act 2010 to allow tenants to retain their existing tenancy if a way forward is agreed with the landlord following court decree for eviction.

Statutory guidance has been prepared to assist in bringing pre-action requirements and changes to repossession orders into force. In addition to outlining the process to be followed around evictions for rent arrears, the statutory guidance also picks up on existing good practice across the social rented sector which some consultation respondents felt was required.

The proposal to include outcomes landlords should be achieving to support their tenants in the Social Housing Charter is now being taken forward separately as part of development of the Social Housing Charter.

#### **4.3 Benefits of Pre-action Requirements and Changes to Repossession Orders**

The introduction of pre-action requirements and changes to repossession orders for rent arrears cases in the Housing (Scotland) Act 2010 will significantly strengthen the protection for tenants with rent arrears in the social rented sector to ensure that tenants are well protected in the current economic climate and for years ahead.

Pre-action requirements will ensure that all landlords in the social rented sector are required to take a number of steps in every rent arrears case before the case can be taken to court for eviction action. Pre-action requirements offer greater protection for social sector tenants in Scotland that they currently have, and goes beyond the pre-action protocol in England which has no substantive legal effect. Pre-action requirements will also help to ensure every possible action is taken to avoid eviction, reduce avoidable homelessness applications and assist in meeting the national 2012 Homelessness target.

There are currently a high number of costly court actions initiated by social landlords in Scotland that do not result in eviction. In 2010-11, 14,601 cases were taken to court for eviction action. A decree for repossession was subsequently only obtained in 5,056 cases (35% of the cases taken to court) and eviction only occurred in 1,822 cases (12% of the cases taken to court). Pre-action requirements will improve the consistency and rigour of the evictions process and prevent landlords from issuing a Notice of Proceedings at an early stage when a tenant falls into arrears because of the length of time court action can take.

Pre-action requirements will also place emphasis on resolving the payment of the rent arrears and make sure tenants have been offered the appropriate information, guidance and support on managing arrears before court action can be initiated. The Scottish Council for the Single Homeless estimates an average cost to a Local Authority of a single person made homeless through eviction as around £23,000 (including the cost of temporary accommodation, uncollected rent and court costs).

In 2010-11, 1,822 tenants either abandoned their property or were evicted following a decree for repossession being granted. It isn't possible to accurately estimate the precise number of episodes of homelessness that will be avoided by the new legislation however, or their duration, because of the wide range of other factors out with the control of the Scottish Government (such as the impact of welfare reforms) that will affect overall numbers at risk of eviction.

Changes to legislation around repossession orders introduced in the Housing (Scotland) Act 2010 will remove the current disincentive for landlords to keep tenants in their existing tenancy. Currently arrears which remain post decree must be treated as former tenant arrears and as such are more difficult for landlords to recover. This will no longer be the case when the legislative changes around repossession orders come into force.

Consultation respondents also indicated that changes to the period the decree for repossession is to have effect may also prevent homelessness and ultimately be a less expensive option for the landlord.

#### 4.4 Costs

The evictions Orders detailed below, take account of responses to our evictions public consultation, the good practice already in place across some landlords in the social rented sector around the steps taken before eviction action is taken and where appropriate, the general approach taken for pre-action requirements for homeowners in the Applications by Creditors (Pre-Action Requirements) (Scotland) Order 2010:

- The Scottish Secure Tenancies (Proceedings for Possession) (Pre-Action Requirements) Order 2012;
- The Scottish Secure Tenancies (Proceedings for Possession) (Form of Notice) Regulations 2012;
- The Scottish Secure Tenancies (Proceedings for Possession) (Form of Confirmation of Compliance with Pre-Action Requirements) (Regulations) 2012;
- The Scottish Secure Tenancies (Repossession Orders) (Maximum Period) Order 2012.

Extensive efforts have been made during the consultation period to take on board comments from landlords and the Scottish Court Service and ensure no additional unnecessary burdens are imposed.

The Scottish Federation of Housing Associations and the Association of Local Authority Chief Housing Officers have indicated that it is very difficult to fully assess the impact of pre-action requirements individual landlords. Most local authorities and Registered Social Landlords already have some sort of pre-court action checklist for eviction cases in place, however, each landlord also has its own specific processes and procedures in place around rent arrears, therefore the impact of pre-action requirements will vary from landlord to landlord.

The Supplementary Financial Memorandum prepared by the Scottish Government to accompany the Housing (Scotland) Bill following Stage 2 consideration sets out the expected costs associated with pre-action requirements for local authorities, registered social landlords and the Scottish Court Service. A copy is attached at **Annex A**.

The Scottish Secure Tenancies (Proceedings for Possession) (Form of Notice) Regulations 2012 and the Scottish Secure Tenancies (Proceedings for Possession (Form of Confirmation of Compliance with Pre-action Requirements) Regulations have been developed to support the introduction of pre-action requirements. The cost of reviewing and re-organising current processes to introduce pre-action requirements has already been taken into account within the Supplementary Financial Memorandum at **Annex A**.

Whilst there will be some immediate costs for social landlords from the new pre-action requirement regulations, landlords will also benefit financially, as soon as the regulations are brought into force from:

- a reduction in the number of Notice of Proceedings issued;
- a reduction in the number of cases going to court;
- a reduced requirement to house evicted tenants in temporary accommodation; and
- an anticipated increase in rental income flowing from pre-action requirement activity.

Additional costs will arise for the Scottish Court Service as a result of pre-action requirements, however, we anticipate that these costs to the Scottish Court Service will be more than offset by the cost savings.

The Scottish Secure Tenancies (Proceedings for Possession) (Pre-Action Requirements) Order 2012 will not impose any new costs that were not previously envisaged, and the latest Scottish Government eviction statistics continues to indicate that costs will not exceed those previously estimated.

No additional costs for landlords or the Scottish Courts Service is anticipated from the Scottish Secure Tenancies (Repossession Orders) (Maximum Period) Order 2012 as indicated at paragraph 4.3 above.

Representatives of social landlords and the advice sector were consulted about the package of evictions SSIs, which will not impose any new costs on them not previously envisaged.

## **5. Scottish Firms Impact Test**

To follow-up on the responses received from landlords around the Partial Business and Regulatory Impact Assessment in our public consultation paper and to better understand the impact draft regulations around pre-action requirements and changes to repossession orders would have on landlords a questionnaire was devised and discussed with 10 social landlords (local authorities and registered social landlords of varying size and geographic distribution).

Following these interviews, draft regulations were further refined in order to ensure these were workable and not overly burdensome on landlords. A significant number of issues around the administration and complexity of Housing Benefit claims in particular, were identified during interviews. For example:

- Difficulty in obtaining information around Housing Benefit entitlement;
- Multitude of complexities around Housing Benefit claims and the individual circumstances of the tenants with rent arrears;
- Difficulties experienced around tenants providing the evidence and verification required to support Housing Benefit claims;
- Need for landlords to have some discretion around the likely outcome of the Housing Benefit claim.

Extensive efforts have been made within the Pre-action Requirements Order and the accompanying statutory guidance to keep costs to a minimum by providing landlords with a range of options for satisfying the pre action requirement around Housing Benefit in view of the difficulties they identified.

### **5.1 Competition Assessment**

We have fully considered the questions posed in the Office of Fair Trading (OFT) competition assessment test and conclude that There should be no competitive advantage to any particular individual or group as a result of this Order. It will apply equally to all social housing landlords.

### **5.2 Test run of business forms**

The Scottish Secure Tenancies Notice of Proceedings form has been revised as the primary legislation at section 155 of the Housing (Scotland) Act 2010 requires landlords to specify the steps taken by them to which they consider constitute compliance with pre-action requirements within the Notice of Proceedings form. Local authorities and registered social landlords were consulted around the content of the draft form as part of the consultation at section 3.3 and 3.4 above. In addition, members of the Scottish Rent Forum have tested a draft version of the form with 'mock cases' to identify any issues or changes required.

Feedback from testing has been used to identify changes required to the draft Notice of Proceedings form and supporting statutory guidance to ensure that the purpose of the revised form is clear to landlords and to ensure brief, factual information is provided for the tenant thereby ensuring the form is meaningful for the tenant whilst keeping the cost of completion of the revised form for landlords to a minimum.

The revised draft of the Notice of Proceedings Form and accompanying statutory guidance has subsequently been further tested by landlords to ensure it is 'fit for purpose'.

## **6. Legal Aid Impact Test**

Justice Department have been consulted around our proposals and have advised that as no new criminal penalties are introduced by these regulations they do not anticipate that there will be an impact on the Legal Aid Fund.

## **7. Enforcement, sanctions and monitoring**

The Scottish Social Housing Charter sets the standards and outcomes that all social landlords should aim to achieve for their tenants and other customers when performing housing activities. The Charter will provide the basis for the new Scottish Housing Regulator to monitor, assess and report on the performance of social landlords, and if necessary, take action where landlords fail or risk failing to meet any Charter standards or outcomes. The Charter includes an outcome on tenancy sustainment, which will be among those that the Regulator will assess. It will do so in part, through the support tenants are given to help them remain in their home if their tenancy is at risk

In addition, if a social landlord makes an application to the court for possession of a tenancy under section 14(2A) of the Housing Scotland Act 2001 they will be required to complete an averment for the court to certify completion of the pre-action requirements. If the landlord's averment is challenged in court, the landlord will be required to provide evidence to the court of compliance with pre-action requirements and also demonstrate that all reasonable attempts to resolve the position have failed, before the Sheriff will grant an order for recovery of possession.

If landlords do not comply with the pre-action requirements, an order for recovery of possession will not be granted, and the courts will have the power to award legal costs against the landlord or make any other order that they judge appropriate.

The Scottish Government will carefully monitor how the new legislation and regulations are working through regular dialogue with the Scottish Court Service, the Scottish Housing Regulator, Shelter and others.

## **8. Implementation and delivery plan**

Guidance to support landlords in meeting the pre-action requirements and changes to repossession orders is being prepared and will be published in advance of pre-action requirements and changes to repossession orders coming into force. Landlords will have a statutory duty to consider this guidance in section 14A(8) of the Housing (Scotland) Act 2001.

The Sheriff Court Rules Council are revising the court rules as they consider appropriate, to coincide with commencement. This will include an amended extract of decree form for cases where the grounds for possession include rent arrears.

After the regulations for pre-action requirements and changes to repossession orders have been made in the Scottish Parliament, a period of 3 months is planned before the regulations come into force, (as requested by landlords and the Scottish Court Service). This is to allow for the necessary changes to be made to IT systems and forms awareness training for staff to be carried out.

Landlords in the social rented sector will be required to have complied with pre-action requirements for any case for recovery of possession of a social rented sector tenancy where the grounds for possession include rent arrears from 1 August 2012. Any Notice of Proceedings form served on a tenant from 1 August 2012 onwards must also include details for the tenant of how the landlord believes they have complied with pre-action requirements.

Changes to repossession orders will also take effect for all social rented sector cases where the grounds for recovery include rent arrears from 1 August 2012.



## 8.1 Post-implementation review

The Scottish Government currently collects data from social landlords around eviction, for example, the number of cases taken to court for repossession action, decrees granted and the number of evictions carried out. We will consult with key stakeholders around any improvements needed to data collection to assist in evaluating how the evictions legislation and all the accompanying regulations are working in practice.

We will obtain feedback from our evictions stakeholder group post implementation around how the regulations and guidance are operating in practice and will consider whether any changes are necessary to the legislation or associated guidance in light of the findings.

In addition, independent research will be commissioned at an appropriate future stage, to evaluate how the new legislation around evictions within the Housing (Scotland) Act 2010 and all the accompanying legislation is working in practice. This will involve a mixture of quantitative research, such as analysing social landlord and court data on trends in the number of applications for repossession sought by social landlords and the number of decrees granted and qualitative research involving interviews and dialogue with landlords, the Scottish Court Service and advice agencies to evaluate the impact on tenants, landlords, advice agencies and the courts. The independent research will be published and the Scottish Government will consider whether any changes are necessary to the legislation or associated guidance in light of its findings.

## 9. Summary costs and benefits

The Scottish Government considers that the introduction of the:

- The Scottish Secure Tenancies (Proceedings for Possession) (Pre-Action Requirements) Order 2012;
- The Scottish Secure Tenancies (Proceedings for Possession) (Form of Notice) Regulations 2012;
- The Scottish Secure Tenancies (Proceedings for Possession) (Form of Confirmation of Compliance with Pre-Action Requirements) (Regulations) 2012; and
- The Scottish Secure Tenancies (Repossession Orders) (Maximum Period) Order 2012.

are supported by key stakeholders, and will significantly enhance protection for individuals faced with eviction. This is particularly important given the impact of the welfare reforms around housing benefit and other DWP benefits proposed by the UK Government.

Pre-action requirements will minimise the number of cases taken to court in future for eviction for rent arrears thereby reducing burdens on the courts.

Most local authorities and registered social landlords already have their own specific processes in place around eviction and rent arrears therefore the impact of pre-action requirements will vary from social landlord to social landlord.

Whilst there will be some immediate costs for landlords from the introduction of pre-action requirements as detailed in the supplementary Financial Memorandum prepared to accompany the Housing (Scotland) Bill following Stage 2 consideration (**Annex A refers**), landlords will also benefit financially, as soon as the regulations are introduced from:

- a reduction in the number of Notice of Proceedings issued to tenants;
- a reduction in the number of cases going to court;
- a reduced requirement to house evicted tenants in more expensive temporary accommodation; and
- an anticipated increase in rental income flowing from pre-action requirement activity

The immediate costs for landlords are therefore expected to be offset by the anticipated savings. The Scottish Council for Single Homeless estimates an average cost to a Local Authority of a single person made homeless through eviction as around £23,000 (including the cost of temporary accommodation, uncollected rent and court costs).

**Declaration and publication**

I have read the impact assessment and am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**

**Date:**

**ALEX NEIL**, Cabinet Secretary for Infrastructure and Capital Investment

**Scottish Government Contact point:** Pauline Brice, Social Housing Division, 0131 244 5515

# HOUSING (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

## SUPPLEMENTARY FINANCIAL MEMORANDUM

### INTRODUCTION

1. This supplementary Financial Memorandum has been prepared by the Scottish Government to accompany the Housing (Scotland) Bill following Stage 2 consideration of the Bill. It has been produced in accordance with Rule 9.7.8B of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Explanatory Notes and other accompanying documents published to accompany the Bill (As Introduced) (SP Bill 36A-EN).

2. The purpose of this Supplementary Financial Memorandum is to set out the expected costs associated with the new provisions included in the Bill following Stage 2 amendments. The majority of the amendments are technical and do not significantly affect the assumptions in the original Financial Memorandum. This document therefore only addresses two of the Stage 2 amendments: in section 142C of the Bill and in section 143B of the Bill.

### PRE-ACTION REQUIREMENTS

3. Section 142C of the Bill was added by amendment at Stage 2. The purpose of this amendment is to prevent social housing landlords from issuing a Notice of Proceedings for recovery of possession of a Scottish Secure Tenancy, where such proceedings include the ground that rent lawfully due from the landlord has not been paid, unless the landlord has complied with the pre-action requirements in the new section 14A of the Housing (Scotland) Act 2001. The landlord must confirm to the court, before recovery proceedings commence, that the pre-action requirements have been complied with.

### COSTS ON THE SCOTTISH ADMINISTRATION

4. Additional costs will arise for the Scottish Courts Service as a result of section 142C. However, we anticipate that these costs to the Scottish Courts Service will be more than offset by the cost savings.

#### Scottish Courts Service Costs

5. The Scottish Courts Service has advised that the administrative cost to them in checking that the landlord has complied with the pre-action requirements would be negligible.

6. The pre-action requirements may however lead to additional discussion in court where the confirmation that pre-action requirements have been complied with is disputed. The decision to challenge whether pre-action requirements have been complied with is one for individual solicitors so it is difficult to quantify the likely number of challenges and an exact costing. However, the Scottish Government has provided its best estimate based on discussions with the Scottish Courts Service.

7. Currently around 20,000 social housing cases are referred to the Sheriff court each year for eviction action. Of these cases a maximum of 10% (2,000 cases) are defended in court.

8. The additional cost, arising from possible additional brief discussion in court as a result of this Stage 2 amendment is £18.00 per case (made up of the cost of salaries of a sheriff, clerk and court officer).

9. It is difficult to know how many disputes there will be around compliance with pre-action requirements. However, advice has been provided by the Scottish Court Service to help arrive at our best estimate. The Scottish Government’s best estimate is that there will be disputes in 5% of the total number of cases referred to court (1,000 of the total 20,000 cases), then the cost to the Scottish Courts Service would be a recurring cost of **£18,000** per annum from when the relevant provisions around pre-action requirements come into force. This cost could be higher at around £36,000 per annum, if all cases defended in court were disputed (currently a maximum of 10% at 2,000 cases are defended), or lower at around £7,200 if only 2% of cases (or 400) are disputed.

**Table 1 - Annual costs to the Scottish Courts Service of disputes around compliance with pre-action requirements**

<b>Low</b>	<b>Medium</b>	<b>High</b>	<b>Best estimate</b>
<b>£7,200</b>	<b>£18,000</b>	<b>£36,000</b>	<b>£18,000</b>

10. There may also be a need for a small number of cases to be continued in court after the first hearing in order for the landlord to provide evidence to the court, to the satisfaction of the sheriff, that pre-action requirements have been complied with. An additional cost for the Scottish Courts Service will therefore arise here (additional legal costs to local authorities and RSLs are covered in paragraphs 16 to 20 and 27 to 30 below).

11. A minimal number of cases are, however, expected to require continuation to a further hearing as landlords already provide the courts with a good deal of information in eviction cases in order to satisfy the requirements of the ‘reasonableness test’ at section 16(3) of the Housing (Scotland) Act 2001. The Scottish Government’s best estimate is that a maximum of 5% of the total number of cases referred to court will require continuation to a further hearing this means that the cost to the Scottish Courts Service at £35 per case will be **£35,000**. This cost could be higher if 10% of cases require continuation up to a maximum of £70,000 or as low as £14,000 if only 2% require continuation to a further hearing.

**Table 2 - Annual costs to the Scottish Courts Service of continuation of arrears cases**

Low	Medium	High	Best estimate
£14,000	£38,000	£70,000	£35,000

12. Total estimated annual costs to the Scottish Courts Service from when the provisions come into force are therefore **£53,000**. These costs are however expected to be more than offset by the savings which will be achieved from the reduction in the number of cases social landlords take to court each year (paragraph 13 below refers).

### **Scottish Court Service Savings**

13. Pre-action requirements are, however, also intended to ensure that all social landlords have complied with a number of steps before taking a case to court for eviction action. The costs identified above, are therefore also likely to more than offset by a reduction in the number of cases being taken to court overall. Based on a conservative estimate of the reduction in the number of cases being taken to court by one local authority which has changed its processes to focus on early intervention, the Scottish Government’s best estimate is that pre-action requirements could result in a reduction of 20% of the number of cases taken to court each year at a cost of approximately £125.00 per case. This results in a **potential saving to the Scottish Courts Service of £500,000 per annum** from when the provisions around pre-action requirements come into force. These savings could potentially be less at £250,000 if 10% less cases are taken to court or higher at £750,000 if 30% less cases are taken to court each year.

**Table 3- Estimated annual savings to the Scottish Courts Service once pre-action requirements are introduced**

Low	Medium	High	Best estimate
£250,000	£500,000	£750,000	£500,000

### **COSTS ON LOCAL AUTHORITIES**

14. Whilst there will be financial implications for local authorities from the new regulations, these are also expected to be offset by the anticipated savings. Local authorities will also benefit from a reduced requirement to house evicted tenants in temporary accommodation and an anticipated increase in rental income flowing from pre-action requirement activity.

15. Most local authorities already have some sort of pre-court action checklist for eviction cases in place, however each local authority also has its own specific processes and procedures in place around eviction and rent arrears, therefore the impact of pre-action requirements will vary from local authority to local authority.

16. Local authorities have, however, identified three specific areas where additional costs may occur: -

- reviewing and re-organising current processes (including creating/adapting leaflets/letters) and training staff;

- possible continuation of cases in the Sheriff Court where the landlord cannot provide the evidence to the court, to the satisfaction of the sheriff, that they have carried out the pre-action requirements; and
- more tenants seeking advice and assistance as a result of the obligation placed on RSLs to encourage tenants to contact the local authority.

17. The cost of reviewing and re-organising current processes will vary from local authority to local authority. Anecdotal evidence from local authorities suggests the cost, per authority, will vary from **nil to around £1,000** depending on the processes each local authority already has in place. Any costs incurred for reviewing and re-organising current processes and training staff will be a one-off cost immediately on the pre-action requirements coming into force. The costs across local authorities will depend on the existing arrangements in place, a low estimate might see 10% of 32 local authorities incurring such costs, 50% of local authorities would be a medium estimate and 100% would be the maximum cost should all local authorities incur the full cost.

**Table 4 - Costs to local authorities of reviewing and revising current processes and training staff**

Low	Medium	High	Best estimate
£4,000	£16,000	£32,000	£16,000

18. The impact on local authorities of dealing with possible legal challenges around whether pre-action requirements have been complied with will also vary from local authority to local authority depending on the robustness of their existing processes and procedures around providing evidence to the Sheriff Court.

19. Landlords already provide the courts with a good deal of information in eviction cases in order to satisfy the requirements of the ‘reasonableness test’ at section 16(3) of the Housing (Scotland) Act 2001. This should minimise the potential for challenge around compliance with pre-action requirements that might lead to a continuation in the Sheriff Court.

20. Given the activity already in place, and advice from the Scottish Courts Service, the Scottish Government’s best estimate of the number of cases which could require a continuation in the Sheriff Court is 5% of the 13,323 local authority eviction cases taken to court across Scotland per annum = 666 cases. The additional costs to the local authority would be an estimated £300 per case for legal costs. Therefore total costs would be **an estimated £199,800**. However the cost could be more, up to a maximum of £399,690 per annum if 10% of cases require continuation in court and substantially less at around £79,938 if 2% of cases require continuation.

**Table 5 - Costs to local authorities of legal costs for continuation with pre-action requirements**

Low	Medium	High	Best estimate
£80,000	£200,000	£400,000	£200,000

21. The requirements may result in more tenants seeking advice and assistance from local authorities as a result of the obligation placed on RSLs to encourage tenants to contact the local authority. However, it isn't possible at this stage to estimate the number of tenants who would take up the opportunity or the costs, as the advice and assistance that may be offered will depend on the circumstances of each tenant.

22. There will however be savings from reducing the number of Notice of Proceedings issued by local authorities each year. Pre-action requirements will require social landlords to comply with a number of steps before issuing a Notice of Proceedings to the tenant. If the landlord has not complied with the pre-action requirements, the Notice of Proceedings cannot be issued. The Scottish Government considers a conservative estimate to be that this change will reduce the number of Notice of Proceedings for rent arrears issued by around 10-20%, from the current level of 57,000 per annum. The estimated cost per Notice of Proceedings is £25 (including staff and postage costs). The range of potential savings based on 10%, 15% and 20% reduction in the number of Notices of Proceedings issued is as follows:

**Table 6 – Estimated annual savings to local authorities from a reduction in the issue of Notice of Proceedings**

Low	Medium	High	Best estimate
£143,000	£214,000	£285,000	£214,000

## **COSTS ON REGISTERED SOCIAL LANDLORDS**

23. Whilst there will be some immediate costs for Registered Social Landlords (RSLs) from the new regulations, RSLs will also benefit from a reduced requirement to house evicted tenants in temporary accommodation and an anticipated increase in rental income flowing from pre-action requirement activity.

24. Most RSLs already have some sort of pre-court action checklist for eviction cases in place; however each RSL also has its own specific processes and procedures in place around eviction and rent arrears, therefore the impact of pre-action requirements will vary from RSL to RSL.

25. RSLs have however identified two specific areas where additional costs may occur: -

- reviewing and re-organising current processes (including creating/adapting leaflets/letters) and training staff; and
- possible continuation of cases in the Sheriff Court where the landlord cannot provide the evidence to the court, to the satisfaction of the sheriff, that they have carried out the pre-action requirements.

26. Anecdotal evidence suggests the cost will vary from **nil to around £1,000** depending on the processes each RSL already has in place. Costs for RSLs may however be significantly lower as many RSLs are smaller in size than local authorities (more than 80% of RSLs each manage less than 2,000 stock). Any costs incurred for reviewing and re-organising current processes and training staff will be a one-off cost immediately pre-action requirements come into force. The costs across RSLs will depend on the size of the organisation and the existing arrangements in place, a low estimate might see 10% of 210 RSLs incurring such costs, 25% would be a medium estimate and 50% would be the maximum cost should half of RSLs incur the full cost.

**Table 7 - Costs to RSLs of reviewing and revising current processes and training staff**

<b>Low</b>	<b>Medium</b>	<b>High</b>	<b>Best estimate</b>
<b>£21,000</b>	<b>£3,000</b>	<b>£105,000</b>	<b>£3,000</b>

27. The impact on RSLs of dealing with possible legal challenges around whether pre-action requirements have been complied with will vary from RSL to RSL, depending on how robust their existing processes and procedures are for providing evidence to the Sheriff Court.

28. As with local authorities, RSLs are already providing the courts with a good deal of information in eviction cases in order to satisfy the requirements of the ‘reasonableness test’ at section 16(3) of the Housing (Scotland) Act 2001 therefore the potential for challenge around compliance with pre-action requirements requiring a continuation in the Sheriff Court should be minimised.

29. Given the activity already in place, and advice from the Scottish Courts Service, the Scottish Government’s best estimate of the number of cases which could require a continuation in the Sheriff Court is 5% of the 6,385 local authority eviction cases taken to court per annum, that is 320 continuation cases. The additional costs to the RSL would be an estimated £300 per case for legal costs. Therefore total costs would be **an estimated £96,000**. However, the cost could be more, up to a maximum of £191,700 per annum if 10% of cases require recall to the court and substantially less at around £38,400 if 2% of cases require recall.

**Table 8 - Additional costs to Registered Social Landlords for continuation of arrears cases**

<b>Low</b>	<b>Medium</b>	<b>High</b>	<b>Best estimate</b>
<b>£38,000</b>	<b>£96,000</b>	<b>£192,000</b>	<b>£96,000</b>

30. There will however be savings from reducing the number of Notice of Proceedings issued by RSLs each year. Pre-action requirements will require social landlords to comply with a number of steps before issuing a Notice of Proceedings to the tenant. If the landlord has not complied with the pre-action requirements, the Notice of Proceedings cannot be issued. Glasgow Housing Association saw a reduction in the number of Notice of Proceedings issued from over 600 per month in March 2008 to around 50 per month in November 2009 saving £90,000. RSLs’ current practice will differ, however, and the Scottish Government anticipates that the requirement will reduce the number of Notice of Proceedings for rent arrears issued by between 10-20% from the current 22,000 per annum. The estimated cost per Notice of Proceedings is £25 (including staff and postage costs). The range of potential savings based on 10%, 15% and 20% reduction in the number of Notices of Proceedings issued is as follows:



**Table 9 – Estimated annual savings to RSLs from a reduction in the issue of Notice of Proceedings**

<b>Low</b> £55,000	<b>Medium</b> £83,000	<b>High</b> £110,000	<b>Best estimate</b> £83,000
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## **LEGAL AID**

31. The Scottish Legal Aid Board has advised that pre-action requirements will not increase the number of tenants eligible for legal aid and no additional legal aid will be payable for advising tenants on their rights to challenge pre-action requirements. Where a tenant is eligible for legal aid, their legal representative already considers a range of things they may wish to challenge. Pre-action requirements will simply be another possible area to consider and will not add to the legal aid costs already incurred.

Table 10

## Summary table of additional costs/ savings : pre-action requirements

	Paragraph reference	Additional Costs/savings (£m)
<b>Scottish Administration</b>		
Costs to Scottish Courts Service of disputes around compliance with pre-action requirements and continuation of arrears	9 – 12 and Tables 1 and 2	0.053
Annual savings to Scottish Courts Service arising from pre-action requirements	13 and Table 3	0.500
<b>Local Authorities</b>		
Costs of reviewing and re-organising individual local authority processes for handling rent arrears	17 and Table 4	0.016
Legal costs for continuation of pre-action requirements	18-20 and Table 5	0.200
Savings to local authorities arising from reduced numbers of Notice of Proceedings	22 and Table 6	0.214
<b>Registered Social Landlords (RSLs)</b>		
Costs of reviewing and re-organising individual RSL processes for handling rent arrears	26 and Table 7	0.053
Legal costs for continuation of pre-action requirements	27-29 and Table 8	0.096
Savings to RSLs arising from reduced numbers of Notice of Proceedings	30 and Table 9	0.083
<b>Other bodies, individuals or businesses</b>		
No provisions in the Bill		ND

\* Please also see paragraph 35 below regarding savings to Local Authorities and RSLs

#### ADDITIONAL EVIDENCE ON COST AND BENEFITS

32. As well as the potential costs and savings noted above, evidence available from landlords, including Glasgow Housing Association (GHA), suggests that there are considerable potential savings to be made from adherence to best practice on rent arrears. For example, through reviewing their processes and focussing on early intervention (similar to a pre-action requirement approach), GHA has reduced current tenant arrears by **£3.35 million** between April 2007 and March 2009.

33. In addition to the savings identified above, the additional social and financial costs of eviction need to be considered. Shelter estimates £11m was spent evicting families with children in Scotland in 2007-08. This includes the costs to the housing provider, homelessness service and legal costs.

34. The Scottish Council for the Single Homeless estimates an average cost to a Local Authority of a single person made homeless through eviction as around £23,000 (including the cost of temporary accommodation, uncollected rent and court costs).

35. Whilst there will be some immediate costs for landlords from the new regulations, landlords will also benefit financially, as soon as the regulations are introduced, from:

- a reduction in the number of Notice of Proceedings issued;

- a reduction in the number of cases going to court;
- a reduced requirement to house evicted tenants in more expensive temporary accommodation; and
- an anticipated increase in rental income flowing from pre-action requirement activity.

## **DUTY OF LOCAL AUTHORITIES TO ASSESS AND PROVIDE HOUSING SUPPORT**

36. Section 143B of the Bill was added at Stage 2. This provision places a statutory duty on local authorities to carry out a housing support assessment on all individuals who are assessed as homeless under section 31(1) of the Housing (Scotland) Act 1987, or as threatened with homelessness under section 32(1) of that Act, where the local authority has reason to believe that the applicant may be in need of housing support services. This duty would also extend to members of the individual's household residing with them at that time.

37. There are no significant direct costs associated with the amendment for the Scottish Administration, other than some resource implications in producing guidance, and amending data collection systems and processes.

## **COSTS ON LOCAL AUTHORITIES**

38. The principle underpinning the provision was originally proposed by Shelter Scotland when giving evidence to the Local Government and Communities Committee during its stage 1 consideration of the Bill. Shelter provided its estimate of the likely associated costs and subsequently referred to research<sup>2</sup> carried out in 2009 on English local authorities. This research indicated very significant cost savings from providing housing support to homeless people and those at risk of homelessness. However, the Scottish Government commissioned similar research<sup>3</sup> in 2007 on the costs and benefits of Supporting People funding in Scotland. That research suggested much more modest overall cost savings, particularly in relation to homeless clients, where the benefits did not in fact outweigh the costs of service provision.

39. At Stage 1, Shelter Scotland indicated that the maximum estimated costs for local authorities to provide housing support would be in the region of £40m. Shelter Scotland has since told the Scottish Government that these costings were subject to several suppositions which they believe could make the actual cost less than £10m.

40. Local authorities have expressed concern over the lack of detailed cost forecasts in the lead-up to the amendment being accepted at Stage 2. COSLA has indicated that – based on a rough estimate of a medium-sized local authority with annual homelessness presentations of around 2,000 – the costs to such an authority are likely to be in the region of £1.1m per annum. It estimates that the cost across Scotland could be in the region of £40m. Indeed COSLA believes this is a conservative estimate as it may not take full account of administrative costs nor of changing economic circumstances and welfare reform, which could lead to an increase in the number of people presenting as homeless.

41. The following table provides the Scottish Government's best estimate of the additional costs that are likely to be incurred by local authorities:

1 <http://scottish.parliament.uk/s3/committees/lgc/or-10/lg10-1102.htm#Col3029>

2 <http://www.communities.gov.uk/publications/housing/financialbenefitsresearch>

3 <http://www.scotland.gov.uk/Publications/2007/12/14141444/0>

**Table 11: Costs on local authorities**

1	Number of applicants assessed as homeless or potentially homeless in 2009/10	42,911
2	Number of applicants assessed as homeless or potentially homeless in 2009/10 and not assessed as having any support needs	29,382 (68%)
3	Number of applicants assessed as homeless or potentially homeless in 2009/10, and also assessed as having one or more support need	13,559 (32%)
4	Number of applicants assessed as homeless or potentially homeless in 2009/10, and also assessed as having one or more support needs and noted as being in receipt of housing support at case closure	5,190
5	Number of applicants assessed as homeless or potentially homeless in 2009/10 assessed as having one or more support needs and <b>not</b> noted as being in receipt of housing support at case closure	8,379
6	Cost of housing support per client per year (based on Supporting People costs for support to homeless per case per annum in 2004/05 – updated to reflect inflationary increase as at 2010/11)	£2,518
7	Cost of providing one-hour housing support assessment interview to all clients assessed as homeless or threatened with homelessness (based on average hourly rate of £12 for homelessness assessment officer <sup>1</sup> multiplied by number of applicants at row 1)	£515,052
8	Overall estimated cost of additional housing support assessment and provision (from rows 4-7)	£21.613M
	(8,379 x £2,518 = £21,098m + £0.515m)	

42. The above set of figures uses a range of assumptions, based on the limited historical data available. It is not possible to provide a robust assessment at this stage as to what the likely additional costs of providing housing support to all applicants assessed as homeless or threatened with homeless. The Scottish Government's analysis indicates that the most obvious variables which are likely to have a direct effect on the assumptions are as follows.

- a) Some of the 8,379 homeless people assessed as having support needs (and not recorded on the HL1 Homelessness data collection system as having their support need met) may in practice be provided with support. Housing support needs may be reassessed

at a later date, support provided at that later stage, but the HL1 data system may not be updated. That would act to reduce the level of unmet need below £21.6m.

- b) Conversely, imposing a statutory duty on local authorities to carry out a housing support needs assessment in all cases at the point of homeless assessment could identify even higher levels of unmet need as a result of a potentially more rigorous assessment process. There is likely to be some under reporting of support needs among the 29,382 homeless applicants that were not assessed as having any support needs. This would push up the £21.6m cost estimate still higher. However, it is difficult to quantify the numbers and costs because some of these additional support needs may again, in practice, already be being picked up and addressed through subsequent assessments at a later date, but similarly not recorded on the HL1 data system.
- c) The amendment also places a duty on local authorities to assess the support needs of all those persons residing with the applicant. The number of households assessed as homeless or threatened with homelessness containing more than one member in 2009/10 was 16,291. It is not clear at this stage whether local authorities routinely carry out such assessments as normal practice at present and what percentage of such support needs are currently met.

43. The above set of variables illustrates the difficulty in providing a robust assessment of the cost implications of the new duty. It may well be possible, however, to provide a more informed and robust analysis following a longer period of data collection and further consultation with stakeholders around the challenges of implementing such a statutory obligation on local authorities.

**Table 12**

**Summary table of additional costs – housing support assessment and provision**

	<b>Paragraph reference</b>	<b>Additional Costs/savings (£m)</b>
<b>Scottish Administration</b>		
No direct costs	37	nil
<b>Local Authorities</b>		
Overall estimated cost of additional housing	38-41	21.613
Support assessment and provision		
<b>Registered Social Landlords (RSLs)</b>		
No provisions in the amendment		Nil
<b>Other bodies, individuals or businesses</b>		
No provisions in the amendment		Nil