
Report To:	The Inverclyde Council	Date: 5 December 2013
Report By:	Acting Corporate Director Environment, Regeneration & Resources	Report No: SL/LA/1114/13
Contact Officer:	Sharon Lang	Contact No: 01475 712112
Subject:	Protection from Eviction (Bedroom Tax) (Scotland) Bill: Consultation Paper - Request by Councillor McCabe	

1.0 PURPOSE

- 1.1 The purpose of this report is to ask the Council to consider a request by Councillor McCabe.

2.0 SUMMARY

- 2.1 Councillor McCabe has requested that the Council supports the principles set out in the attached consultation paper on the proposed Protection from Eviction (Bedroom Tax) (Scotland) Bill. **APPENDIX 1**

- 2.2 A draft response has been prepared for Members' consideration. **APPENDIX 2**

3.0 RECOMMENDATION

- 3.1 That the Council approve the response to the consultation paper as set out in Appendix 2.

Sharon Lang
Legal & Democratic Services

Protection from Eviction (Bedroom Tax) (Scotland)

Bill

Consultation Paper

THE BEDROOM TAX
Amend Section 16

Exclusive: 50,000 people now facing eviction over bedroom tax

TAKE THE
BEDROOM
TAX

NO EVICTIONS
IN SCOTLAND

September 2013

Jackie Baillie MSP

Member for Dumbarton



Bedroom tax eviction nightmare for gran with sciatica as local council threatens to boot her out of home

Bill Proposal

The text of the draft proposal for a Member's Bill that Jackie Baillie lodged is as follows:

Protection from Eviction (Bedroom Tax) (Scotland) Bill

Proposal for a Bill to protect Scottish secure tenants from eviction as a result of rent arrears attributable to under-occupancy deductions of housing benefit.

Foreword



The bedroom tax was introduced by the UK Coalition Government for housing benefit recipients in the social rented sector in April 2013. The purpose was to deal with under-occupancy and reduce the housing benefit bill, but the policy failed to recognise the lack of smaller social housing to enable people to downsize, or that perversely, it would result in higher spending as tenants were forced to move to more expensive private rented sector properties.

In the relatively short time since it was introduced it has become increasingly clear that this policy disproportionately affects some of the most vulnerable groups in society.

We have all read the reports in the Scottish media which have shed light on the fear and anxiety experienced by tenants who are faced with the prospect of losing their home. Indeed, the UN's Special Rapporteur on housing, Ms Raquel Rolnik, suggested in her preliminary statement that vulnerable groups such as the disabled are bearing the brunt of this 'retrogressive' policy.¹

There is also a groundswell of opposition in the Scottish Parliament to this cruel and discriminatory policy. Both Scottish Labour and the Scottish National Party opposed its introduction and both parties have pledged to abolish it in the future.

However tenants should not have to wait for the votes to be counted in the referendum or the next general election. We have a responsibility to act now and that is why I am bringing forward this proposal to provide a statutory guarantee of no evictions in Scotland as a direct consequence of the bedroom tax.

The Scottish Parliament has the power to do this right now and my consultation paper will set out how this could be done by amending the Housing (Scotland) Act 2001. I am confident that, with the support of Members across the Chamber, the Scottish Parliament could remove the fear of eviction for thousands of Scots hit by the bedroom tax.

Before finalising this Bill I would like to hear a wide range of opinion. I am particularly keen to gather views on the potential implications for local authorities, housing associations and, most importantly, the tenants themselves. I would also welcome the opportunity to meet with individuals or organisations who have an interest in the proposal. Your response will assist me in formulating the best policy to take this initiative forward.

I would like to thank Govan Law Centre for their assistance in developing this consultation paper.

I look forward to hearing your views on how we can guarantee that no social housing tenant will lose their home because of the bedroom tax.

Jackie Baillie MSP

¹ <http://www.theguardian.com/world/interactive/2013/sep/11/full-statement-special-rapporteur-raquel-rolnik>

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1. How the consultation process works

This consultation is being launched in connection with a draft proposal which I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

A minimum 12 week consultation period is required, following which responses will be analysed. Thereafter, I would expect to lodge a final proposal in the Parliament along with a summary of the consultation responses. If that final proposal secures the support of at least 18 other MSPs from at least half the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, identifying equalities issues, suggesting improvements, considering financial implications and, in general, assisting in ensuring that the resulting legislation is fit for purpose.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at:

Jackie Baillie MSP, Constituency Office, 11 Castle Street, Dumbarton, G82 1QS.
Tel: 01389-734214 e-mail: bedroomtax.bill@scottish.parliament.uk

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website under Parliamentary Business/Bills/Proposals for Members' Bills/Session 4 Proposals
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/12419.aspx>

2. Background

Housing benefit under-occupancy deductions for tenants in the social rented sector are introduced by section 69 of the Welfare Reform Act 2012 and the Housing Benefit (Amendment) Regulations 2012 (SI 2012/3040), with effect from April 2013. The 2012 regulations inserted a new 'Regulation B13' into the Housing Benefit Regulations 2006 (SI 2006/1213), which sets out the following criteria for the determination of a maximum rent in the social rented sector:

“The claimant is entitled to one bedroom for each of the following categories of person whom the relevant authority is satisfied occupies the claimant’s dwelling as their home (and each person shall come within the first category only which is applicable)—

- (a) a couple² (within the meaning of Part 7 of the Act);
- (b) a person who is not a child;
- (c) two children of the same sex;
- (d) two children who are less than 10 years old;
- (e) a child,

and one additional bedroom in any case where the claimant or the claimant’s partner is a person who requires overnight care (or in any case where each of them is).”³

Where a tenant is determined to have more bedrooms than they are entitled to under Regulation B13, a deduction is made to their eligible housing benefit at one of two percentages:

- “(a) 14% where the number of bedrooms in the dwelling exceeds by one the number of bedrooms to which the claimant is entitled; and
- (b) 25% where the number of bedrooms in the dwelling exceeds by two or more the number of bedrooms to which the claimant is entitled”.

Under-occupancy deductions – now commonly referred to as ‘the bedroom tax’ - do not apply to claimants who have attained state pension credit age (currently 65)⁴ or certain claimants in supported or sheltered housing. An additional room is allowed for overnight carers, but not primary carers who occupy the tenancy subjects as their home. Accordingly the bedroom tax affects:

- separated families where the parent who does not have the main caring responsibilities requires a spare room for the children to visit or stay for part of the week;
- disabled tenants – including where the property has been adapted or purpose built;
- tenants with grown up children who have left the parental home; and
- couples who use their ‘spare’ bedroom when recovering from an illness or operation.

² ‘Couple’ means (a) a man and a woman who are married to each other and are members of the same household; (b) a man and a woman who are not married to each other but are living together as husband and wife; (c) two people of the same sex who are civil partners of each other and are members of the same household; or (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners, and for the purposes of sub-paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex: see Regulation 2, of the 2006 Housing Benefit Regulations (SI 2006/213).

³ Regulation 2 of the Housing Benefit Regulations 2006 defines a ‘child’ as ‘a person under the age of 16’, see: <http://www.dwp.gov.uk/docs/a8-2501.pdf>

⁴ <http://www.dwp.gov.uk/publications/specialist-guides/technical-guidance/pc10s-guide-to-pension-credit/pension-credit-qualifying-age/>

Housing benefit deductions will not be applied in the following circumstances:

- for 13 weeks in the case of anyone who could previously afford their rent (i.e. without housing benefit, and have not claimed it for the last year);
- for 52 weeks in the case of a person whose reason for under occupying is that they have suffered bereavement in the household;
- where the tenant is a pensioner;
- exempted supported accommodation;
- foster carers looking after children in certain circumstances; and
- parents of armed forces personnel who are away from home on operations.⁵

In Scotland, most tenants affected by the bedroom tax have remained in their home – with a dearth of smaller properties being available to realistically downsize to. The Department of Work and Pensions' Impact Assessment accepts there are insufficient smaller properties for tenants to downsize to, and therefore many tenants will have no realistic alternatives other than to accrue rent arrears from the bedroom tax.⁶ Annual savings to HM Treasury from the bedroom tax in Scotland are estimated at £50m-£80m, with concomitant costs for social landlords and tenants.⁷

On average, tenants of local authorities and housing associations ('Registered Social Landlords' or RSLs) in Scotland are expected to lose £12 per week, with some tenants losing as much as £22 per week in housing benefit. There is widespread concern amongst civic Scotland that these changes will cause major detriment to thousands of households.

The Department of Works and Pensions (DWP) estimates that 660,000 households will be affected across the UK, and the Scottish Government estimates that as many as 105,000 households could be affected in Scotland.⁸ The Scottish Government estimates that approximately 80% of all households affected by the bedroom tax in Scotland contain a person with a disability, with 15,500 affected households in Scotland containing children.⁹

The Bill proposal itself would not affect the law of debt in Scotland. Rent arrears is an ordinary debt and actions for recovery of heritable possession (eviction actions) in Scotland currently proceed with the landlord seeking a decree containing two separate elements: (a) decree for ejection and (b) decree for payment for a sum of money.

⁵ Housing Benefit (Amendment) Regulations 2013 (2013/665) - <http://www.legislation.gov.uk/ukxi/2013/665/contents/made>

⁶ <http://www.dwp.gov.uk/docs/social-sector-housing-under-occupation-wr2011-ia.pdf>

⁷ See: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/62069.aspx> and also: http://www.cih.org/resources/PDF/Scotland%20Policy%20Pdfs/Bedroom%20Tax/CIH_Bedroomtax_e.pdf

⁸ <http://www.scotland.gov.uk/News/Releases/2013/03/advice-for-landlords-on-bedroom-tax18032013>

⁹ <http://news.scotland.gov.uk/News/Bedroom-tax-help-2d9.aspx>

'Bedroom tax arrears' would still be a debt and fall under a payment decree; however, the proposed Bill would ensure that a tenant could never be evicted because of bedroom tax arrears. The Bill proposal would not prevent a landlord obtaining a decree for ejection for rent arrears, except in relation to arrears that a court was satisfied directly arose from bedroom tax deductions. Accordingly, if a tenant did not pay their rent or adhere to repayment agreements for reasons unrelated to the bedroom tax, they would be liable to eviction proceedings in the usual way.

The purpose of the Bill is to provide Scottish secure tenants with unequivocal statutory protection that they would never be evicted because of the impact of the bedroom tax. The scope of the Bill is therefore extremely narrow and focused.

3. Scottish local authority pledges and RSL proactive action

Many social landlords in Scotland have already taken proactive action to mitigate the bedroom tax, in particular by providing information and advice on housing options and downsizing where possible, and promoting the availability of local authority Discretionary Housing Payments (DHP) to their tenants.

All of these proactive actions are of course subject to major limitations. For example, the ability to downsize is curtailed in terms of the scarcity of alternative smaller accommodation (especially one bedroomed properties¹⁰), while DHPs are temporary, oversubscribed, and cash limited.¹¹

While no landlord wants to evict tenants because of under-occupancy deductions both RSLs and councils are subject to public audit and have a duty to pursue rent arrears as a matter of law, and ultimately do use eviction as a form of debt recovery. Accordingly, the proposed Bill would assist social landlords, by ensuring they could only pursue bedroom tax arrears by way of ordinary debt recovery (payment decree, followed by a charge for payment and the usual forms of diligence for money).

All Scottish Labour and SNP local authorities have now pledged not to evict tenants because of bedroom tax arrears where the tenant is co-operating with the council and acting reasonably.¹² In the case of the SNP this commitment is for one year only. The pledges have been criticised by some Scottish housing association professionals for being heavily caveated and providing nothing more than the equivalent of existing best practice in rent arrears control.¹³

There have also been stories reported in the Scottish media where Scottish secure tenants have been threatened with eviction action for bedroom tax arrears despite their local authority landlord having pledged not to carry out such evictions.¹⁴

¹⁰ See: <http://www.dailyrecord.co.uk/news/politics/100000-scots-set-fall-bedroom-1873507> and <http://www.dailyrecord.co.uk/news/scottish-news/bedroom-tax-sufferers-spell-out-2264657>

¹¹ <http://news.stv.tv/scotland/228318-bedroom-tax-sees-rise-in-tenants-emergency-support-requests/>

¹² <http://www.dailyrecord.co.uk/news/politics/bedroom-tax-labour-propose-new-2250952>

¹³ <http://www.insidehousing.co.uk/regulation/to-pay-or-not-to-pay/?/6528190.article>

¹⁴ <http://www.dailyrecord.co.uk/news/scottish-news/bedroom-tax-eviction-nightmare-local-1903620>

4. Govan Law Centre's 'No eviction for bedroom tax' petition

Govan Law Centre's (GLC) 'Evictions due to under-occupancy deductions' petition was lodged and published online by the Scottish Parliament's Public Petitions Committee on 1 February 2013.¹⁵ It secured the support of 4,755 people who signed the petition online, with 712 comments on the Scottish Parliament's website.¹⁶ GLC's petition was endorsed and supported by a range of civic bodies in Scotland including the STUC, Oxfam Scotland, Shelter Scotland, Money Advice Scotland, the Edinburgh Tenants Federation and mental health charities.

The petitioner's concern was that when it came to Scottish rent arrears eviction cases in sheriff courts, often the success or failure of preventing eviction turned on a few pounds per week. For example, for most tenants on welfare benefits the standard arrears payment to landlords (known as 'third party deductions') is £3.60 per week.¹⁷ Accordingly, the prospect of £12 to £22 per week being deducted from a Scottish Secure tenant's housing benefit under the bedroom tax makes it extremely difficult to defend eviction cases in practice.

GLC had therefore suggested amending the Housing (Scotland) Act 2001 which would prevent 'bedroom tax rent arrears' being used to establish or justify a 'crave' for eviction.¹⁸ Instead, the landlord could obtain a payment decree in relation to bedroom tax arrears, and pursue them as an ordinary debt. This could be achieved by a minor amendment to section 16 of the 2001 Act to require the court to disregard rent arrears accrued due to under-occupancy deductions for the purpose of subsection (2) of section 16 and paragraph 1 of Part 1 of schedule 2. In other words, bedroom tax arrears would not be used to make out, or justify, an ejection crave.

There is an important issue of proof here in relation to establishing what proportion of rent arrears accrues due to the bedroom tax. At present, the issue is more straightforward as social landlords know which of their tenants receive housing benefit as payments are made directly to them, and most will already know which of their tenants are affected by the bedroom tax as part of their proactive work undertaken before the introduction of these changes.

However, where tenants do not co-operate or communicate with their landlord it may be much more difficult to know precise arrangements; and the introduction of Universal Credit, which is being rolled out over 2013-2017¹⁹, will undoubtedly mean that the tenant him or herself will be the key person who knows how much of their rent arrears is due to the bedroom tax, and will be in a position to provide documentary evidence to establish this.

¹⁵ Petition number PE01468: <http://www.scottish.parliament.uk/GettingInvolved/Petitions/bedroomtax>

¹⁶ Available to view here: <http://www.scottish.parliament.uk/GettingInvolved/Petitions/bedroomtax>

¹⁷ <http://data.parliament.uk/DepositedPapers/Files/DEP2012-1830/ScheduleofproposedbenefitratesfromApril2013.pdf>

¹⁸ An eviction action, known as an action for recovery of heritable possession in Scotland, is usually a summary cause action in the sheriff court and proceeds by way of a summons, which craves (asks the court) to grant a decree for ejection and payment.

¹⁹ <http://www.cpag.org.uk/content/universal-credit-update>

Accordingly, the Bill would place the onus of proof on the defender to establish to the court what arrears were due to the bedroom tax. There is already a precedent for this approach in relation of private sector tenant eviction cases where the tenant has three months of arrears or more. In such circumstances a private sector landlord can raise proceedings and found upon ground 8 of Schedule 5 to the Housing (Scotland) Act 1988.²⁰ If there are three or more months of arrears lawfully due, the landlord is entitled to a mandatory decree for ejection.

The then Scottish Executive thought this was unfair where the debt, which placed the tenant in over three months or more of rent arrears, was attributable to housing benefit errors or delay. The 1988 Act was therefore amended by the Homelessness etc. (Scotland) Act 2003 to allow the tenant to argue that arrears were due to housing benefit mistakes or delays, and if so the mandatory entitlement to decree is replaced with a duty on the court to consider whether it was reasonable to make an order for possession.²¹ The Bill would follow a similar approach, which has worked well in relation to private sector evictions in practice.

The petitioner's policy justification for amending section 16 of the 2001 Act is summarised as follows:

- Arrears accrued by tenants due to the 'bedroom tax' since April 2013 are not the 'fault' of social rented sector tenants, and therefore using such arrears to establish or make out a case for eviction must be unfair and unreasonable as a matter of principle and social policy.
- The DWP's Impact Assessment accepts there are insufficient smaller properties for tenants to downsize to, and therefore many tenants will have no realistic alternatives other than to accrue rent arrears from the bedroom tax.
- The public cost to accommodate a family made homeless is on average £24,000 per case, which would place major pressure on local authorities and the NHS in Scotland in a time of budget cuts, and therefore the need to prevent eviction from the bedroom tax is in the wider public interest.²²
- Given the imminent nature of the cuts, and the lack of practical solutions available to tenants, there is a cogent case for providing social tenants with a statutory guarantee that they will not be evicted due to these reforms.
- Ultimately, many social landlords in Scotland have taken as much proactive action to mitigate housing benefit cuts as they can. RSLs and councils are subject to public audit and have a duty to pursue rent arrears. Amending section 16 of the 2001 Act would assist social landlords by ensuring they could only pursue bedroom tax arrears by way of ordinary debt recovery methods (payment actions, followed by ordinary diligence).

²⁰ <http://www.legislation.gov.uk/ukpga/1988/43/schedule/5>

²¹ <http://www.legislation.gov.uk/asp/2003/10/section/12>

²² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7596/2200485.pdf See also: <http://www.govanlc.com/HomelessnessPR2013.pdf> at page 13.

5. Scottish Government's response

The Scottish Government provided a written response to the GLC petition on 17 May 2013.²³ The Minister for Housing, Margaret Burgess advised that the Scottish Government was seeking ways to protect tenants but did not believe the petition 'would be in the best interest of tenants or landlords'. The Minister gave four principal reasons for this view in relation to the petition:

- This Petition is calling for a blanket exemption to eviction for all tenants affected by the bedroom tax in Scotland regardless of circumstances;
- By singling out the bedroom tax, it does not take account of tenants who fall into financial difficulty for other reasons. For example, a tenant in financial difficulty as a result of changes to other welfare benefits, such as Disability Living Allowance;
- She was concerned that such legislation could encourage tenants to get into debt; and
- A change to the legislation would remove the flexibility for landlords to treat each case on an individual basis.

The petitioner responded to the Scottish Government's concerns in a written response to the Public Petitions Committee dated 17 June 2013.²⁴ The petitioner's response in relation to the Scottish Government four areas of concern can be summarised as follows:

- Amending section 16 does not create a 'blanket exemption to eviction'; if tenants failed to pay their rent or adhere to payment arrangements they would be liable to eviction in the usual way. The proposal relates solely to bedroom tax arrears being used as grounds for eviction.
- It is wrong to compare subsistence benefits with housing benefit. In the leading English Court of Appeal case of *Burnip, Trengove, Gorry v SSWP* [2012] EWCA Civ 629, there was an attempt to argue that the tenants could have used the disability benefits for the disabled children to meet under-occupancy deductions. This was rejected by the court:

²³[http://www.scottish.parliament.uk/S4_PublicPetitionsCommittee/General%20Documents/PE1468 B Scottish Government 17.05.13.pdf](http://www.scottish.parliament.uk/S4_PublicPetitionsCommittee/General%20Documents/PE1468_B_Scottish%20Government%2017.05.13.pdf)

²⁴[http://www.scottish.parliament.uk/S4_PublicPetitionsCommittee/General%20Documents/PE1468 E Petitioner 17.06.13.pdf](http://www.scottish.parliament.uk/S4_PublicPetitionsCommittee/General%20Documents/PE1468_E_Petitioner%2017.06.13.pdf)

“First, I think it is necessary to draw a clear distinction between the benefits which Mr Burnip was entitled to claim for his subsistence, and those which he was entitled to claim in respect of his housing needs. His incapacity benefit and disability living allowance were intended to meet (or help to meet) his ordinary living expenses as a severely disabled person. They were not intended to help with his housing needs ... It would therefore be wrong in principle, in my judgment, to regard Mr Burnip’s subsistence benefits as being notionally available to him to go towards meeting the shortfall between his housing- related benefits and the rent he had to pay”. (Mr Justice Henderson at para 45).

Furthermore, as 80% of Scottish households affected by the bedroom tax contain a disabled person, it is wrong to suggest amending section 16 would not benefit those affected by welfare reform changes generally.²⁵

- Amending section 16 would not alter the Scots law of debt. All rent arrears would remain a debt lawfully due, including arrears attributable to the bedroom tax, and would be subject to litigation and debt enforcement. There is no evidence to suggest that amending section 16 would encourage tenants to get into debt. On the contrary, the emerging evidence is that tenants are getting into debt because of the bedroom tax while doing their best to pay their rent.
- The proposed law reform amendment would not have any impact on a social landlord’s discretion to treat each case on an individual basis. The only impact would be that arrears accrued, as a direct consequence of the bedroom tax, could not be used to justify eviction. They would still be pursued as a debt, and tenants who failed to pay their rent generally would be liable to eviction.

In the Housing Minister’s letter to the Public Petitions Committee, the Minister explained how the Scottish Government endorsed Dundee City Council’s ‘no eviction for bedroom tax arrears’ policy. Dundee City Council’s Housing Convener has noted that the petitioner’s ‘No evictions for bedroom tax’ campaign “was very influential in the formation of Dundee City Council’s non-eviction policy”.²⁶

On 11 September 2013, the Cabinet Secretary for Finance announced an additional £20m in the current year 2013/14 for Discretionary Housing Payments (DHP) for those affected by the bedroom tax in Scotland. This has been said to enable 1 in 7 households to be helped by Scottish councils this year, rather than the 1 in 18 households at previous funding levels.²⁷ There is as yet no additional funding for 2014/15 or 2015/16.

²⁵ See footnote 6 *ibid*.

²⁶ <http://www.housingnews.co.uk/index.asp?searchTerm=&searchDate=18&searchMonth=4&searchYear=2013&CAT=news&archive=search#436676>

²⁷ <http://www.insidehousing.co.uk//6528538.article>

6. Bedroom tax arrears and eviction in practice

At any given time there are thousands of eviction actions in sheriff courts across Scotland, many sisted (frozen) or continued to monitor payment arrangements. Cases can be sisted for several years, before they are dismissed once arrears are cleared or substantially reduced.

Shelter Scotland's research report 'Evictions by social landlords in Scotland 2011-12' examines the number of evictions for rent arrears by both councils and RSLs for the period April 2011 to March 2012.²⁸ Table 1 of the Shelter Scotland report²⁹, reproduced in full below, gives the combined totals for eviction actions for all social landlords in Scotland, and the percentage change from the previous year.

	Councils	RSLs	Total	Percentage change from 2010/2011
Notice of Proceedings	52,285	20,151	72,436	-8%
Taken to court	9,624	4,347	13,971	-4%
Decree granted	3,371	1,448	4,819	-5%
Eviction occurred*	1,057	767	1,824	-0.1%
Technical evictions**	354	302	656	-11%

Source: Housing Statistics for Scotland 2012, Scottish Government (August 2012), Annual Performance & Statistical Return (APSR), Scottish Housing Regulator (September 2012).

* Including post-decree abandonments
 ** Where a new post-decree tenancy has been granted at the same property

In 2011/12 social landlords in Scotland served a total of 72,436 'Notice of Proceedings', the formal statutory notice required to be served on Scottish secure tenants before court proceedings for eviction can competently commence.

On 1 August 2012 new 'Pre-Action Requirements' (PAR) came into force, which require social landlords to help tenants with a number of things including housing benefit claims and trying to work a repayment plan.³⁰ The PAR relies on the tenant co-operating with their landlord, and must be attempted prior to service of the Notice of Proceedings.

²⁸ http://scotland.shelter.org.uk/data/assets/pdf/file/0006/635028/Evictions_Report_11_-12_FINAL_2.pdf

²⁹ Page 7 of the Shelter Scotland research report, reference *ibid*.

³⁰ <http://www.legislation.gov.uk/sdsi/2012/9780111016336/contents>

The Housing Minister has cited the PAR as a form of 'strengthened protection' for tenants affected by the bedroom tax.³¹ However, the PAR is limited to information and advice, and if a tenant is unable to secure DHP or relocate to a small property the PAR are effectively meaningless to that tenant. The PAR makes no reference to under-occupancy charges and has not been updated to take into consideration the impact of the bedroom tax. Ultimately, the PAR is irrelevant to eviction actions currently in court.

In 2011/12 there were 13,971 new eviction actions raised. It is important to appreciate that there will also be actions from earlier years still in the court system given the nature of these, for example, with small payments to arrears over a long time.

The Scottish Federation of Housing Associations (SFHA) submitted a written response to the Public Petitions Committee dated 17 May 2013.³² At paragraph 1.4 of that response the SFHA stated that 'eviction is rarely used'. Table 1, shows that RSLs raised 4,347 new eviction actions in 2011/12. Table 1 also shows that while local authorities obtained more decrees for eviction than RSLs – 3,371 as against 1,448 for RSLs, councils were less likely to implement decree and carry out a physical eviction than RSLs.

Scottish local authorities carried out actual evictions/recovery of property in 31% of cases where decree was obtained, while RSLs carried out physical evictions/recoveries in 53% of cases where they obtained decree. Evictions are still relatively commonplace in Scotland in the social rented sector. As at March 2012 in Scotland, there were 277,000 homes let by RSLs, and 319,000 homes let by councils.³³

On 19 September 2013, False Economy published its research on the impact of the bedroom tax on the arrears of council tenants across Britain.³⁴ The survey involved 114 council Freedom of Information Act requests, and the results were that one tenant in three had been pushed into rent arrears because of the bedroom tax since April 2013.³⁵ Eight Scottish councils were amongst the most affected 20 councils.³⁶

³¹[http://www.scottish.parliament.uk/S4_PublicPetitionsCommittee/General%20Documents/PE1468_B_Scottish Government 17.05.13.pdf](http://www.scottish.parliament.uk/S4_PublicPetitionsCommittee/General%20Documents/PE1468_B_Scottish%20Government_17.05.13.pdf)

³²http://www.scottish.parliament.uk/S4_PublicPetitionsCommittee/General%20Documents/PE1468_C_SFHA_17.05.13.pdf

³³<http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/TrendData> See Tenure Data tables.

³⁴<http://falseeconomy.org.uk/blog/our-research-in-the-independent-bedroom-tax-50000-people-face-eviction> False Economy is an organisation led and supported by a number of trade unions across the UK.

³⁵<http://www.independent.co.uk/news/uk/politics/exclusive-50000-people-are-now-facing-eviction-after-bedroom-tax-8825074.html>

³⁶<http://www.tuc.org.uk/social/tuc-22608-f0.cfm>

Local authority	Number of tenants affected by bedroom tax	Number of tenants pushed into arrears since 1 April 2013	Proportion of tenants pushed into arrears since 1 April 2013
Barrow	289	219	76%
Clackmannanshire	720	480	67%
Tamworth	427	220	52%
South Kesteven	660	451	51%
Rotherham	3,656	1,841	50%
Dundee	2,118	1,028	49%
Brentwood	177	84	47%
Renfrewshire	1,825	859	47%
North Lanarkshire	5,503	2,515	46%
North Kesteven	471	212	45%
Redbridge	335	151	45%
South Lanarkshire	4,034	1,809	45%
Edinburgh	3,566	1,592	45%
East Ayrshire	2,421	1,069	44%
Anglesey	556	243	44%
Wrexham	1,370	607	44%
Barnsley	2,600	1,120	43%
East Renfrewshire	337	140	42%
Salford	1,371	565	41%
Wolverhampton	2,790	1,153	41%
Total	162,817	50,378	31%

There is no reason to believe the bedroom tax has not had a similar impact on rent arrears for housing association tenants. The emerging picture is that it is only a matter of time before tenants in Scotland are evicted directly because of the bedroom tax, and the need for the proposed Protection from Eviction (Bedroom Tax) (Scotland) Bill may become a matter of urgency.

7. Consultation questions

You are asked to give your written response to the following consultation questions:

[1] Do you support the aims of the proposed *Protection from Eviction (Bedroom Tax) (Scotland) Bill*? Please answer YES or NO or UNDECIDED.

You are invited to give your reasoning for your response.

[2] Do you support the principle of a statutory guarantee of no eviction solely in relation to arrears accrued from the bedroom tax? Please answer YES or NO. You are invited to give your reasoning for your response.

[3] Do you support the proposal of requiring the tenant to provide evidence to the court in relation to establishing what proportion of rent arrears were accrued as a direct result of the bedroom tax? Please answer YES or NO.

You are invited to give your reasoning for your response.

[4] Do you support amending s.16 of the Housing (Scotland) 2001 Act so that bedroom tax arrears would become an ordinary debt and not relied upon for the purpose of seeking a decree for physical eviction from a tenant's home? Please answer YES or NO. You are invited to give your reasoning for your response.

[5] What is your assessment of the likely financial implications (if any) of the proposed Bill to you or your organisation? What (if any) other significant financial implications are likely to arise?

[6] Is the proposed Bill likely to have any substantial positive or negative implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?

[7] Are there any other comments you would wish to make relevant to this proposal?

7. How to take part

Please send all responses to my office. E-mailed responses are preferable, but if you have no access to e-mail then please post your response. Copies of the paper or alternative formats can be requested using the contact details below. An on-line copy is available on the Scottish Parliament's website www.scottish.parliament.uk

I am also keen to meet with interested groups to hear their thoughts on the proposed Bill, so if you are interested in doing so please do not hesitate to get in touch with my office to arrange this. Please feel free to pass this paper onto other individuals and organisations who you think might be interested in participating in the consultation process.

Responses should be submitted by **18 December 2013** and sent to:

Jackie Baillie MSP
Constituency Office
11 Castle Street
Dumbarton
G82 1QS

e-mail: bedroomtax.bill@scottish.parliament.uk
telephone: 01389 734214

Please indicate whether you are a private individual or an organisation.

Respondents are also encouraged to begin their submission with a short paragraph outlining briefly who they are, and who they represent (which may include, for example, an explanation of how the view expressed was consulted on with their members).

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that the normal practice is to make responses public – by posting them on my website www.jackiebaillie.co.uk and in hard copy in the Scottish Parliament's Information Centre (SPICe).

Therefore, if you wish your response, or any part of it, to be treated as **anonymous**, please state this clearly along with the reasons for this. If I accept the reasons, I will publish it as "anonymous response". If I do not accept the reasons, I will let you know and give you the option of withdrawing it or submitting it on the normal attributable basis. If your response is accepted as anonymous, it is your responsibility to ensure that the content does not allow you to be identified.

If you wish your response, or any part of it, to be treated as **confidential**, please state this clearly and give reasons. If I accept the reasons, I will not publish it (or publish only the non-confidential parts). However, I am obliged to place a redacted copy of the responses to my consultation when lodging my final proposal. As the Parliament is subject to the Freedom of Information (Scotland) Act (FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Parliament may be legally obliged to release that information. Further details of the FOISA are provided below.

In summarising and analysing the results of this consultation we will normally aim to reflect the general content of any confidential response in that summary, but in such a way as to preserve the confidentiality involved. You should also note that members of the committee which considers the proposal and subsequent Bill may have access to the full text of your response even if it has not been published in full.

There are a few situations where not all responses will be published. This may be for practical reasons: for example, where the number of submissions we receive does not make this possible or where a large number of submissions are in very similar terms. In the latter case, only a list of the names of people and one response who have submitted such responses would normally be published.

In addition, there may be a few situations where I may not choose to publish your evidence or have to edit it before publication for legal reasons. This will include any submission which contains defamatory statements or material. If I think your response potentially contains such material, usually, this will be returned to you with an invitation to substantiate the comments or remove them. In these circumstances, if the response is returned to me and it still contains material which I consider may be defamatory, it may not be considered and it may have to be destroyed.

Data Protection Act 1998

As an MSP, I must comply with the requirements of the Data Protection Act 1998 which places certain obligations on me when I process personal data. Normally I will publish all the information you provide (including your name) in line with Parliamentary practice unless you indicate otherwise. However, I will not publish your signature or personal contact information (including, for example, your home telephone number and home address details, or any other information which could identify you and be defined as personal data).

I may also edit any information which I think could identify any third parties unless that person has provided consent for me to publish it. If you specifically wish me to publish information involving third parties you must obtain their consent first and this should be included in writing with your submission.

If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response.

Further information about the Data Protection Act can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, once your response is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees, it is considered to be held by the Parliament and is subject to the requirements of the Freedom of Information (Scotland) Act 2002 (FOI(S)A). So if the information you send me is requested by third parties the Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act, even if I have agreed to treat all or part of the information in confidence or to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FOI.

Further information about Freedom of Information can be found at: www.itspublicknowledge.info.

APPENDIX 2

Our Ref:

Your Ref:

Date: 22 November 2013

Jackie Baillie MSP
Constituency Office
11 Castle Street
DUMBARTON
G82 1QS

Dear Jackie,

Protection from Eviction (Bedroom Tax) (Scotland) Bill – Consultation on Proposals

I am writing on behalf of Inverclyde Council to confirm the Council's support for the principles outlined in your proposals for a Bill to protect individuals from evictions in relation to the 'Bedroom Tax'.

The Council recognises the matters you raise within your proposals in respect of the unfairness of the 'Bedroom Tax', the restrictions Councils face in supporting individuals impacted by the 'Bedroom Tax' and the shortage of appropriately sized housing to enable landlords to address the accommodation needs of those affected by the 'Bedroom Tax'.

In addition the Council fully recognises that the two major political parties in Scotland have both pledged to repeal the 'Bedroom Tax' legislation at the first available opportunity and therefore support for your proposal is a logical extension of those commitments.

The Council also supports the need for there to be a distinction between 'Bedroom Tax' rent arrears and other debts as it is important that landlords (Council and RSLs) are not undermined in their attempts to maximise rent collection to sustain their service delivery and housing improvements. Your proposals provide an appropriate balance on these two matters.

I hope this initial response from Inverclyde Council is helpful. The Council will be happy to provide further responses and information at the appropriate time.

Kind regards

Yours sincerely

Stephen McCabe
Council Leader

cc

John Mundell, Chief Executive