

Prevention of Homelessness Duties Consultation
Response from Propertymark
March 2022

Background

Propertymark is the leading professional body for estate and letting agents, commercial agents, inventory providers, auctioneers, and valuers, comprising nearly 18,000 members across the UK. We are member-led, with a Board which is made up of practising agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

Prevention Review Group proposed recommendations for private landlords

Question 51: Do you agree with the proposal to make pre-action requirements on private landlords in cases of rent arrears permanent in legislation?

1. Propertymark does not consider legislation to make permanent pre-action requirements brought in due to the public health crisis necessary. The introduction of pre-action requirements in respect of evictions relating to rent arrears was accepted as a temporary measure during the COVID-19 pandemic as the Scottish Government introduced them alongside measures of financial support to tenants and to sustain tenancies. However, it has not been made clear what, if any, financial support the Scottish Government intends to introduce should the requirements become a permanent feature.
2. Prior to any temporary measures being introduced on a permanent basis, the Scottish Government must be transparent and provide the evidence that has led to this decision. But no analysis of the successes and failures of the requirements have been presented. How many payment plans were entered into and maintained by tenants, how many payment plans were not adhered to? SafeDeposits Scotland offered tenants and landlords a resolution service during the pandemic to mediate for rent arrears cases and provide landlords with certification they had attempted to successfully resolve arrears issues. The Scottish Government must present the figures of the resolution scheme to establish how successful this was.
3. Propertymark questions the motivations of the Scottish Government in attempting to make permanent these temporary measures and is concerned that the pre-action requirements may simply 'trip up' landlords and delay processes, as opposed to benefitting and supporting tenants. The possessions process had been described as "one that sets a trap for the unwary landlord" being "unnecessarily complex" to "challenge a legally qualified person, much less a lay person" in a First Tier Tribunal (FTT) decision by Adrian Stalker, one of Scotland's most respected and authoritative voices on housing law. This is reinforced by the overview of the Bill, which suggests the provisions are about landlords having adhered to requirements rather than having attempted to engage with their tenants.

Question 52: How might a new legislative duty on local authorities to respond to referrals to prevent homelessness from private landlord work in practice?

4. Further clarity is needed on the circumstances and in which a private landlord would be expected to make a homelessness prevention referral as part of the pre-action requirements to a local authority. The Prevention Review Group (PRG) proposal states that, where a tenant agrees, a landlord "may" make a referral to a local authority, suggesting it is at the discretion of the landlord as to whether a referral is submitted. Propertymark would urge Scottish

Government to make landlords' responsibilities clear so that any ambiguity in this regard can be eliminated and not used against a landlord in respect of any subsequent possession claim.

5. Under present (pre-COVID-19) arrangements, a landlord is required to issue a Section 11 notice at the start of possession proceedings, meaning a local authority receives up to 84 days' notice of a potential threat of homelessness. In cases of arrears this is reduced to 28- or 14-days' notice, falling within the definition of statutory homelessness for the purposes of local authority support. In these instances, we do not consider it to be practical for a landlord to give notice of a potential threat of homelessness any earlier in proceedings since pre-action requirements will, by definition, not be carried out until a tenant is in arrears, and a landlord should not be required to wait any longer to start possession proceedings than is presently the case.
6. Furthermore, we do not see any merit in a landlord being obligated to serve notice to a local authority before the statutory definition of homelessness applies. A tenant is entitled to support from a local authority when they are threatened with homelessness within two months, but until then a local authority is permitted to take no action. This creates a system in which a tenant may be disincentivised from seeking alternative accommodation which may in fact be available to them. We do not believe a requirement to inform a local authority earlier of a potential threat of homelessness when a tenant fails to meet the criteria necessary for local authority support to be helpful to landlord or tenant.

Question 53: What sort of support do you think private landlords may need to ensure they meet this requirement?

7. As indicated, we do not believe it is feasible for private landlords to make a homelessness prevention referral to a local authority earlier than they are required to do so presently. The alternative would be that landlords serve a Section 11 notice at the start of a tenancy 'just in case' which cannot be the Scottish Government's intention. However, if pre-action requirements are made permanent, landlords would require clear direction on the circumstances and timeframes in which they should make such a notification. We would also suggest that guidance would be necessary to outline the procedure whereby a tenant does not agree for a landlord to make a referral as part of the pre-action requirements, so that a landlord cannot subsequently be penalised for failing to do so.

Question 54: Do you agree with the proposal that a local authority should have a power to request a delay to eviction to allow time to secure a positive outcome for the tenant?

8. No, we do not agree that a local authority should be able to request a delay to eviction when a landlord has "failed to cooperate". This would add additional uncertainty to the possessions process and appears tantamount to extending notice periods.
9. Under a private residential tenancy, a tenant must have built up arrears over a minimum of three consecutive months before possession proceedings can be commenced. Propertymark feels that this constitutes sufficient time for a landlord to have engaged with a tenant (which the majority do, irrespective of any requirement to carry out pre-action requirements) and for the tenant to have paid their arrears or be adhering to a repayment plan if they intend to do so. It also means that, at the point of serving notice, a tenant may have amassed three months' arrears and a landlord facing potential financial hardship.

10. While all grounds for possession remain discretionary until 30 September 2022, and with the Coronavirus (Recovery and Reform) Bill likely to remove mandatory grounds on a permanent basis, it will therefore be at the discretion of the First Tier Tribunal (FTT) as to whether a possession claim will be granted. If, as appears inevitable, pre-action requirements are also retained, the FTT will reject a claim for possession where a landlord has “failed to cooperate” so we do not see the necessity for local authority powers to request delays to eviction.

Question 55: The Prevention Review Group propose that the homelessness advice and assistance is designed to meet the needs of people living in and seeking to access the private rented sector. Do you agree with this proposal?

11. Yes, we agree that homelessness advice and assistance should be better designed to meet the needs of those in the private rented sector. The private rented sector is a crucial source of accommodation and those it houses must be supported, including financially, to ensure that tenancies can be sustained where possible and landlords are not disincentivised from investing in the sector. But the private rented sector must not be viewed as an extension to the social rented sector, and any advice and assistance must recognise this and not seek to prolong otherwise unviable tenancies.

Question 56: How would a specific legislative duty on local authorities to provide homelessness advice and assistance relating to living in and/or accessing the private rented sector work in practice?

12. Propertymark is unclear what benefit would be derived from a specific legislative duty on local authorities to provide advice and assistance relating to the private rented sector (PRS). Some local authorities have designated support officers for the PRS and while we consider such roles to be worthwhile, particularly where private landlords must liaise with local authorities on regaining possession of property, we believe that the majority of PRS tenants would, if they required it, access support from organisations such as Citizens Advice Scotland or Shelter Scotland. Local authorities are already obligated to provide support where a private tenant is threatened with homelessness, and while we agree that advice might be better designed for those within the PRS, we feel a legislative duty as described could duplicate assistance that is already available elsewhere. It could also add an unnecessary burden to a local authority, depending on the precise obligations, and constitute a poor allocation of resources.