



The Scottish Parliament
Pàrlamaid na h-Alba

WELFARE REFORM COMMITTEE

AGENDA

18th Meeting, 2013 (Session 4)

Tuesday 12 November 2013

The Committee will meet at 10.00 am in Committee Room 5.

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.
2. **Public petitions: PE01468** The Committee will consider the following petition-PE01468 by Mike Dailly, on Evictions due to under occupation deductions.

Mike Dailly, Principal Solicitor, Garry Burns, Prevention of Homelessness Caseworker, and Alistair Sharp, Prevention of Homelessness Manager/senior Coordinator, Govan Law Centre;

and then from—

Jim Hayton, Policy Manager, Association of Local Authority Chief Housing Officers;

David Bookbinder, Head of Policy and Public Affairs, Chartered Institute of Housing;

David Ogilvie, Policy Manager, Scottish Federation of Housing Associations;

Councillor Harry McGuigan, Spokesperson Community Wellbeing, COSLA.

3. **Subordinate legislation:** The Committee will take evidence on the Council Tax Reduction (Scotland) Amendment No 4 Regulations 2013 (SSI 2013/287) from—

Jenny Brough, Team Leader, Council Tax Unit, Scottish Government.

4. **Draft Budget Scrutiny 2014-15 (in private):** The Committee will consider a draft report to the Finance Committee on the Scottish Government's Draft Budget 2014-15.
5. **Work programme:** The Committee will consider its work programme.

Simon Watkins
Clerk to the Welfare Reform Committee
Room T1.01
The Scottish Parliament
Edinburgh
Tel: 0131 348 5228
Email: simon.watkins@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda item 2

Note by the Clerk WR/S4/13/18/1

Written submission from SFHA WR/S4/13/18/2

Written submission from SFHA - annex

Written submission from CIH WR/S4/13/18/3

Written submission from ALACHO WR/S4/13/18/4

Agenda item 3

[The Council Tax Reduction \(Scotland\) Amendment \(No. 4\) \(SSI 2013/287\)](#) WR/S4/13/18/5

Note by the Clerk WR/S4/13/18/6

Agenda item 4

PRIVATE PAPER WR/S4/13/18/7 (P)

Agenda item 5

PRIVATE PAPER WR/S4/13/18/8 (P)

Welfare Reform Committee

18th Meeting, 2013 (Session 4), Tuesday, 12 November 2013

Petition PE1468

Introduction

1. This paper provides background information to inform the Committee's evidence session on petition [PE1468](#) on Evictions due to under occupation deductions, which was lodged on 16 March 2013.
2. "The petition calls on the Scottish Parliament to urge the Scottish Government to amend Section 16 of the Housing (Scotland) Act to prevent social landlords from using rent arrears caused by under occupation housing benefit deductions in eviction actions, and instead requiring such under occupation arrears to be pursued as an ordinary debt."
3. The Committee was referred the petition from the Public Petition Committee. At its meeting on 10 September 2013, the Welfare Reform Committee agreed to take evidence from Petitioner PE01468, Mike Dailly on behalf of Govan Law Centre Trust and from social housing landlords.
4. Written submissions from the Scottish Federation of Housing Associations, the Chartered Institute of Housing Associations and ALACHO have been received and are included as separate papers.

Consideration by Public Petitions Committee

5. At its meeting on 16 April 2013, the Public Petitions Committee agreed to write to the Scottish Government, COSLA, the Department for Work and Pensions and the Scottish Federation of Housing Associations for further information before referring the petition to the Welfare Reform committee. Responses were received from –

- Dumfries and Galloway Council
- Scottish Government
- Scottish Federation of Housing Associations
- DWP
- Mike Dailly, Petitioner

It was also agreed that the clerk would liaise with the clerk to the Welfare Reform Committee.

6. At its meeting on 25 June 2013, the Public Petitions Committee agreed to refer the Petition to the Welfare Reform Committee.

Background

7. Background information regarding this petition can be found on the Scottish Parliament website:

http://external.scottish.parliament.uk/gettinginvolved/petitions/PE01400-PE01499/PE01468_BackgroundInfo.aspx
[PE1403](#)

Annexes

8. The following items on the petition are included as annexes to this paper.

- Annexe A - Public Petition No. PE01468;
- Annexe B - SPICe briefing for the Public Petitions Committee;
- Annexe C - Public Petitions Committee consideration of PE01468 questions/issues arising from Committee meetings;
- Annexe D - Letter from Dumfries and Galloway Council to the Public Petitions Committee;
- Annexe E - Letter from the Scottish Government to the Public Petitions Committee;
- Annexe F - Letter from SFHA to the Public Petitions Committee;
- Annexe G - Letter from DWP to the Public Petitions Committee;
- Annexe H - Letter from Petitioner Mike Dailly to the Public Petitions Committee;

ANNEXE A**Petition PE1468**

1. Name of petitioner
Mike Dailly on behalf of Govan Law Centre Trust
2. Petition title
Evictions due to under occupation deductions
3. Petition summary
<p>Calling on the Scottish Parliament to urge the Scottish Government to amend Section 16 of the Housing (Scotland) Act 2001 to prevent social landlords from using rent arrears caused by under occupation housing benefit deductions in eviction actions, and instead requiring such under occupation arrears to be pursued as an ordinary debt.</p>
4. Action taken to resolve issues of concern before submitting the petition
<p>This issue has been raised and discussed in local public meetings in Glasgow, and we have provided a full briefing paper on the proposal to Humza Yousaf MSP, Scottish Government Minister, who has passed same to the Housing Minister. The briefing paper was also forwarded to Johann Lamont MSP. Both Humza Yousaf and Johann Lamont were present at a public meeting of concerned tenants in Govan last month where the proposal was supported by 100 local tenants. Both Shelter Scotland, the STUC and the Glasgow Advice Agency support the proposal in this petition. We await the response from the Housing Minister, and Johann Lamont MSP.</p> <p>Govan Law Centre defends a high volume of eviction actions in Glasgow, and specialises in the prevention of homelessness across the West of Scotland. We and our partner agency, the Glasgow Advice Agency, which provides advice services across two-thirds of Glasgow City, have already had many tenants contact us concerned that they will be unable to pay the shortfall in their rents due to under occupancy deductions from April 2013. We, along with other civic and local bodies, have no doubt that unless measures are taken to mitigate the effects of the under occupancy deductions, Scotland will see a significant increase in eviction actions, which may be extremely hard to defend given current housing law.</p>
5. Petition background information
<p>Housing benefit under-occupancy provisions for tenants in the social rented sector are introduced by section 69 of the Welfare Reform Act 2012 and the</p>

(draft) Housing Benefit (Amendment) Regulations 2012, with effect from April 2013. These provisions will see tenants of councils and RSLs in Scotland lose on average £12 per week, with some tenants losing as much as £22 per week in housing benefit. There is widespread concern in Scotland that these changes will cause major detriment to thousands of households in Scotland.

The DWP estimate 660,000 claimants will be affected across the UK, and the Chartered Institute of Housing in Scotland suggest as many as 95,000 tenants could be affected in Scotland:

<http://www.cih.org/resources/PDF/Scotland%20Policy%20Pdfs/Bedroom%20Tax/Bedroom%20Tax%20Final.pdf>

When it comes to Scottish rent arrears eviction actions in sheriff courts, often the success or failure of a tenant in preventing eviction will turn on a few pounds per week, for example the standard payment for arrears direct is £3.55 per week. Accordingly, the prospect of £12 to £22 per week being deducted from rent payments under the bedroom tax from next April means Scotland's law centres and advice sector will be unable to defend many eviction cases in practice.

We are suggesting a minor amendment to section 16 of the Housing (Scotland) Act 2001 (as follows) which would prevent 'bedroom tax rent arrears' being used to establish or justify a crave for eviction, and instead the landlord could obtain a payment decree for these 'type of arrears', and pursue them an ordinary debt. A proposed illustrative amendment is as follows:

Section 16 of the Housing (Scotland) Act 2001 (asp 10) is amended as follow –

(a) In subsection (2) after “Subject to subsection (1)” insert <and (7)>

(b) After subsection (6) insert –

“(7) For the purpose of subsection (2), the court must disregard any rent lawfully due from the tenant which has been accrued due to a shortfall in housing benefit in consequence of regulation B13 (Determination of a maximum rent (social sector) of the Housing Benefit Regulations 2006 (2006/213)).

(c) In paragraph 1 of Part 1 of schedule 2 before “rent lawfully due” insert, <Subject to section 16(7),”

Such a minor amendment would prevent arrears created from the bedroom tax being relied upon to establish grounds for eviction, or to make out a case of why it was reasonable to evict. Eviction based purely on bedroom tax arrears would be incompetent.

The policy rationale for this approach can be summarized briefly as follows:

- Arrears accrued by tenants due to the ‘bedroom tax’ from 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 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.
- 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 longer transitional period, and a guarantee that they will not be evicted due to these reforms in the short to medium term.
- Ultimately, many social landlords in Scotland are already taking proactive action to mitigate against these forthcoming housing benefit cuts, and have no desire to evict tenants because of the cuts. However, RSLs and councils are subject to public audit and have a duty to pursue rent arrears as a matter of law, and in terms of their regulatory supervision. Accordingly, this amendment would assist social landlords, by ensuring they could only pursue bedroom tax arrears by way of ordinary debt recovery (payment actions, followed by ordinary diligence).

Further background information:

- Explanatory Memorandum to the draft 2012 Housing Benefit (Amendment) Regulations 2012 - http://www.legislation.gov.uk/ukdsi/2012/9780111525784/pdfs/ukdsiem_9780111525784_en.pdf
- House of Commons Library briefing (updated 3 December 2012) - <http://www.parliament.uk/briefing-papers/SN06272>

Unique web address
http://www.scottish.parliament.uk/bedroomtax
Related information for petition
http://govanlc.blogspot.co.uk/
Do you wish your petition to be hosted on the Parliament's website to collect signatures online?
YES
How many signatures have you collected so far?
0
Closing date for collecting signatures online
15/03/2013
Comments to stimulate online discussion
<p>Besides the poll tax, the last time Scotland saw such a regressive housing tax on the low paid and poor, was back in 1748 when you were taxed on the number of windows your house had. The phrase 'day-light robbery' was coined, and people bricked up their windows to escape it. Sadly, escaping the regressive bedroom tax won't be so easy.</p> <ul style="list-style-type: none"> • Where will people in homes with an 'extra room' go when there is insufficient capacity in the social rented sector? • How will people and families cope with being evicted as they will be unable to pay their rent due to the bedroom tax? • Where will people find the money to make up bedroom tax rent arrears – payday loans, high interest home credit or money lenders?

ANNEXE B**Briefing for the Public Petitions Committee****Petition Number:** PE01468**Main Petitioner:** Mike Dailly on behalf of Govan Law Centre Trust**Subject:** Evictions due to under-occupation deductions

Calling on the Scottish Parliament to urge the Scottish Government to amend Section 16 of the Housing (Scotland) Act 2001 to prevent social landlords from using rent arrears caused by under occupation housing benefit deductions in eviction actions, and instead requiring such under occupation arrears to be pursued as an ordinary debt

Background

The petitioner raises concerns regarding section 69 of the Welfare Reform Act 2012 and the Housing Benefit (Amendment) Regulations 2012 which cover housing benefit under-occupancy provisions for tenants in the social rented sector. As of 1 April 2013 these provisions will see an estimated 105,000 tenants across Scotland who are considered to be under occupying their property by one or more bedrooms receive either a 14% or 25% reduction to their housing benefit. This equates to an average of £12 per week ([Scottish Government 2013](#)).

The petitioner feels that any arrears accrued due to the bedroom tax are not the fault of the tenant and to pursue eviction would be unfair and unreasonable. It would also have a detrimental impact on homelessness and would place increased pressure on finance and resources at the local authority level. Furthermore the option of moving is unavailable to many as there are not enough smaller properties for people to move to.

The petitioner states that the success or failure of a tenant in preventing eviction action can depend on only a few pounds a week. Payment plans to avoid rent arrears eviction can be as little as £3.55 a week. Therefore he feels that the prospect of losing from £12 up to possibly £22 per week in housing benefit will mean that Scotland's law centres and advice sector will be unable to defend many eviction cases in practice.

He contends that an amendment to section 16 of the Housing (Scotland) Act 2001 should be made to prevent 'bedroom tax rent arrears' being used to establish or justify eviction, and instead the landlord could obtain a payment decree for these type of arrears and pursue them as an ordinary debt.

Scottish Government Action

In the view of the Scottish Government eviction should only be used as a last resort. It introduced measures in sections 153 and 155 of the [Housing \(Scotland\) Act 2010](#) to improve protection for tenants in the social rented sector facing eviction for rent

arrears. These measures strengthen the pre-action requirements that must be followed before action to evict can be taken and make a change to repossession orders which means that there is a final opportunity, even after a court has granted an order for possession, for tenants and landlords to agree a way to resolve the arrears and avoid eviction

The Minister for Housing and Welfare wrote to councils in March 2013 to encourage them to consider all possible options and use all reasonable means to prevent eviction of housing tenants struggling to pay rent due to the bedroom tax. It highlighted the example of Dundee City Council which has committed that where tenants are doing all that can be reasonably expected to avoid falling into arrears, they will use all legitimate means to collect rent due, except eviction. The letter also makes landlords aware that in certain circumstances it may be possible to reclassify rooms so they are not considered bedrooms.

Angus, Argyll and Bute, Clackmannanshire, East Ayrshire, Fife, Highlands, Midlothian, Perth and Kinross and North Ayrshire have committed to a similar non-eviction policy to Dundee. Clackmannanshire and Renfrewshire are reported in Scottish Housing news as having tabled a motion for debate in support for non-eviction. City of Edinburgh Council has also released the text for a non- eviction motion to be debated on 16 April 2013.

Scottish Parliament Action

There have been many Parliamentary Questions and Motions raised by Members on issues surrounding the bedroom tax. Actions specific to the subject of evictions include the following:

[Motion S4M-05517](#): Kevin Stewart, Aberdeen Central, Scottish National Party, Date Lodged: 29/01/2013. The Bedroom Tax, an Attack on Scots [Accessed 04.04.13]

That the Parliament regrets the UK Government's decision to introduce the so-called bedroom tax, which, it believes, will cut tenants' housing benefit if they have a spare room; understands that over 100,000 people in Scotland will be affected and lose out on up to £600 per year; considers that this will have a negative impact on single parents who share custody of their children and disabled people who live in specially adapted social housing, and believes, with regret, that these plans will lead to more rent arrears and evictions in social housing.

Supported by 36 members

[Motion S4M-05724](#): Hanzala Malik, Glasgow, Scottish Labour, Date Lodged: 25/02/2013. Real Impact of the Bedroom Tax [Accessed 04.04.13]

That the Parliament notes growing concern regarding the so-called bedroom tax under new welfare reform plans, which means that social housing tenants can lose a portion of their housing benefit if they are deemed to be underoccupying their home;

understands that Shelter Scotland has urged the Scottish Government to make up to £50 million available to help tackle the impact and that the charity's three-point plan calls for a guarantee that no-one should be evicted for bedroom tax arrears or deemed intentionally homeless if they are evicted for that reason; understands that the Scottish Government has calculated that eight out of 10 households affected by the change included a disabled adult, and considers that these concerns are serious and that steps must be taken before real hardship is suffered.

Supported by 10 members

Question S4W-12541: Jackie Baillie, Dumbarton, Scottish Labour, Date

Lodged: 30/01/2013 [Accessed 04.04.13]

To ask the Scottish Government whether it will take action to prevent local authority or housing association tenants being evicted due to rent arrears that arise because of the proposed housing benefit reforms.

Answered by Margaret Burgess (25/02/2013): The Scottish Government has been consistent in our opposition to the way in which welfare reforms are being implemented by the Westminster Government and is discussing with key stakeholders how to help tenants cope with them.

We are very sympathetic to the difficulties that some tenants will find themselves in as a result of these reforms but in the interests of tenants themselves, we cannot advocate placing tenants in situations where they cannot afford to pay off debts to their landlords. We are also concerned that if tenants do not pay their rent in full, landlords will lose a significant proportion of the income they rely on to provide services to all of their tenants.

The Scottish Government has already strengthened the protection for tenants in Scotland against eviction for rent arrears. From 1 August 2012 we brought pre-action requirements for rent arrears into force to ensure that eviction is a last resort.

Question S4W-13016: Jackie Baillie, Dumbarton, Scottish Labour, Date

Lodged: 08/02/2013 [Accessed 04.04.13]

To ask the Scottish Government whether it plans to issue additional guidance on evictions in the context of changes to the housing benefit system and, if so, what the guidance will contain.

Answered by Margaret Burgess (05/03/2013): The Scottish Government is committed to ensuring that eviction is the last resort. In August 2012, it introduced regulations under the Housing (Scotland) Act 2010 which require landlords to have exhausted all attempts to resolve the arrears with the tenant before taking action to evict. In June 2012 we published guidance for social

landlords on these pre-action requirements. The guidance is published at:
<http://www.scotland.gov.uk/Publications/2012/06/2337> .

We will update the guidance to take account of the introduction of Universal Credit in due course.

We have also recently funded the Chartered Institute of Housing to provide guidance to social landlords on the UK Government's reforms to housing benefit. This guidance highlights the challenges landlords are likely to face and asks landlords to identify whether there are other ways of collecting unpaid rent which do not risk the tenancy. The guidance is published at:

http://www.cih.co.uk/resources/PDF/Scotland%20Policy%20Pdfs/Bedroom%20Tax/CIH_Bedroomtax_e.pdf

Emergency Question, Jackie Baillie, Dumbarton, Scottish Labour, Date Lodged: 27/03/2013 [Accessed 04.04.13]

To ask the Scottish Government whether it will bring forward emergency legislation to protect tenants from eviction as a result of arrears arising from the so-called bedroom tax and financial support to help local authorities and housing associations mitigate its impact.

Answered in the Chamber by Nicola Sturgeon (27/03/13): "The change that is proposed in the question would create an anomalous situation and would provide no additional protection for people who get into difficulties as a result of welfare cuts other than the bedroom tax. Further it would involve the Scottish Government taking £50 million out of other areas of public spending". (For full text see the Official Report)

The issue was also discussed in the [7th meeting of the Welfare Reform Committee on 26 March 2013](#). An evidence panel of four council representatives from across Scotland discussed their views on the so called Bedroom Tax and the no eviction commitment taken by Dundee City Council. Dundee and Highland Councils representatives voiced their support for the commitment. The North Lanarkshire representative stated that the council doesn't want to evict anyone but is working on an impact analysis of the implications of the under occupancy legislation before deciding on evictions. There were also general concerns raised over the impact that any reduction on council income could have on capital building projects. Scottish Borders Council who was also present does not hold any housing stock.

Key Organisations

The Govan Law Centre and Mike Dailly report online that the petition has support from a range of civic bodies in Scotland including the STUC, Oxfam Scotland, Shelter Scotland, Money Advice Scotland, tenants bodies, disability groups and mental health charities.

The Glasgow and West of Scotland Forum for Housing Associations has [produced a briefing on the bedroom tax](#). The forum is against amending legislation as it feels

that that the idea of “under-occupation arrears” is misleading. It argues that blanket legislation will take no account of tenant behaviour, individual circumstances, reasonableness or proportionality which Sheriffs currently have to consider. It also doesn’t take into account current regulation which demands that social landlords only seek repossession for rent arrears as a last resort and have stringent pre-action requirements to fulfil. It also suggests that removing the possibility of repossession on this issue would mean an increase in arrears which would have a detrimental impact on landlords, their investments and the services they provide.

The Chartered Institute of Housing In Scotland is sympathetic to the issue but is against changing the legislation as a mitigating course of action. It believes that removal of the option to evict would be detrimental to the long term viability of social landlords. It may also send the wrong message to other tenants who would effectively be subsidising those who are not paying their rent. “no matter how well-meaning, preventing providers from taking action when tenants do not pay the rent will only put their long-term viability at risk, helping neither landlord nor tenant” (Elaine Gibson, CIH Scotland Chair, CIH Conference, 12 March 2013)

Heather Lyall
Senior Research Specialist
04 April 2013

SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However if you have any comments on any petition briefing you can email us at spice@scottish.parliament.uk

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

ANNEXE C

PUBLIC PETITIONS COMMITTEE CONSIDERATION OF PE1468 QUESTIONS / ISSUES ARISING FROM COMMITTEE MEETINGS

TUESDAY 16 APRIL 2013

Scottish Government—

- What is the Scottish Government's stance on the issues raised in the petition and during the discussion on the petition at the meeting on 16 April 2013?

COSLA—

- What is COSLA's stance on the issues raised in the petition and during the discussion on the petition at the meeting on 16 April 2013?

Scottish Federation of Housing Associations—

- What are SFHA's views on the issues raised in the petition and during the discussion on the petition at the meeting on 16 April 2013?
- What is the incidence of eviction actions taken by housing associations across Scotland, and what are the main reasons for such action being taken?
- What will be the impact of the introduction of under occupation deductions, and other legislative changes to housing benefit, on housing associations?

Department for Work and Pensions—

- What is the DWP's stance on the issues raised in the petition and during the discussion on the petition at the meeting on 16 April 2013?
- What is the estimated number of evictions that may occur in Scotland, and elsewhere in the UK, as a result of changes to housing benefit from under occupation deductions?

ANNEXE D

Your Ref:

Councillor Jim McClung
Wigtown West

Our Ref: A/4 JMcC/MS

Kirkbank House
English Street
Dumfries
DG1 2HS

9 May 2013

Ms Anne Peat
Clerk
Public Petitions Committee

petitions@scottish.parliament.uk

Dear Madam

**WELFARE REFORM ACT 2012
PETITION BY GOVAN LAW CENTRE TO SCOTTISH PARLIAMENT'S PUBLIC
PETITIONS COMMITTEE**

I refer to the petition submitted by the Govan Law Centre seeking changes to Section 16 of Housing (Scotland) Act 2001, that would prevent 'bedroom tax' arrears being used to establish or justify a crave for eviction.

This matter was recently considered by Dumfries and Galloway Council's Housing Sub Committee and a unanimous decision of Elected Members was to formally submit this letter to articulate this Council's support for the petition.

There are currently 1,800 households in Dumfries and Galloway affected by the bedroom tax. Many of these tenants have lived in their homes for years, in small rural and remote communities. It is unreasonable and often not possible for these households to move to smaller accommodation as the stock of one and two bedroom homes is insufficient to meet existing demand. In these circumstances, Members believe it is fundamentally unjust to threaten such households with the possibility of eviction.

As a stock-transferred authority, we work very closely with our strategic partners in the RSL sector and support the range of additional tenancy services they have put in place to mitigate some of the impacts of welfare reform. Our Council has also provided a number of additional services and increased our Discretionary Housing Payment fund, which is now under unprecedented pressure with hundreds of applications having been received since April 2013.

I would urge the Public Petition's Committee to consider these issues when examining Govan Law Centre's petition. Our Elected Members are of the clear view that removing the possibility of eviction through change in legislation is fully justified.

Yours faithfully

Cllr Jim McClung
Chairman
Housing Sub-Committee

ANNEXE E

Minister for Housing and Welfare
Margaret Burgess MSP

T: 0845 774 1741
E: scottish.ministers@scotland.gsi.gov.uk

Andrew Howlett
Assistant Clerk to the Public Petitions
Committee
T3.40
Scottish Parliament
Edinburgh
EH99 1SP

17 May 2013

Dear Mr Howlett

Thank you for your letter of 19 April seeking further information on the Scottish Government's stance on the issues raised in respect of Petition PE1468, lodged by Mike Dailly on behalf of the Govan Law Centre Trust. I welcome the opportunity to set out the Scottish Government's position and respond to the points made in the petition.

Petition PE1468

This petition "calls on the Scottish Parliament to amend Section 16 of the Housing (Scotland) Act 2001 to prevent social landlords from using rent arrears caused by under occupation housing benefit deductions in evictions actions, and instead requiring such under occupation arrears to be pursued as ordinary debt".

The "Bedroom Tax"

Under-occupancy deductions, more commonly referred to as the bedroom tax, is a measure that has been introduced by the UK Government as part of a package of welfare reforms. The measure took effect from 1 April 2013 and reduces the housing benefit of social sector tenants who are deemed to be under-occupying their homes. The Scottish Government has estimated that the average monthly loss will be around £50 per affected household.

The Scottish Government has consistently opposed the introduction of the bedroom tax in Scotland. We are of the view that:

- The rationale for the measure is not of Scotland's making;
- What the measure saves in housing benefit expenditure will be greatly outweighed by the negative economic and social impacts;

- The measure runs roughshod over devolved policy making, taking no account of Scotland's housing and homelessness policies; and
- The Scottish allocation of the DWP Discretionary Housing Payment (DHP) fund is entirely insufficient.

However, as the bedroom tax is a penalty pertaining to housing benefit, the policy is currently reserved to the Westminster Parliament. Notwithstanding this, the Scottish Government is committed to taking all reasonable action to mitigate its impact.

Scottish Government Action

Where responsibility for benefits has been localised, the Scottish Government is doing what it can to protect vulnerable people. This includes:

- An extra £7.9 million for advice and support services in Scotland. This includes a £2.5 million funding stream for social landlords to help those affected by changes to housing benefit;
- A package of £590,000 to boost the capacity of social landlords and homelessness prevention services to deal with housing benefit reforms;
- I wrote to social landlords to make them aware of the flexibility that exists to classify bedrooms for the purposes of housing benefit;
- £40 million with Local Government to protect people who previously received Council Tax Benefit from the UK Government's 10% cut in funding for successor arrangements in 2013/14;
- An additional £9.2 million to the Scottish Welfare Fund, giving a total Fund of £33 million, providing more Community Care Grants and Crisis Grants to the most vulnerable households; and
- £400,000 to support a range of pilots in Scottish local authorities to help test out new ways of delivering services after the introduction of Universal Credit.

The Scottish Government is working in partnership with COSLA and the Improvement Service to strengthen our collective efforts to manage the transition to the new benefits regime for people and councils.

Existing Protection for Tenants

We strengthened protection from rent arrears eviction in August 2012 (regulations laid through 2010 Housing Scotland Act) through pre-action requirements to ensure eviction is a last resort. In every rent arrears case, social landlords must take a number of steps before eviction action can be taken to court. These steps include:

- Give clear information about the tenancy agreement and the unpaid rent or other financial obligations;
- Make reasonable efforts to give help and advice on eligibility for housing benefit and other types of financial assistance;
- Give information about sources of help and advice with the management of debt;

- Make reasonable efforts to agree with the tenant a reasonable plan for future payments;
- Consider the likely result of any application for housing benefit that has not yet been decided;
- Consider other steps the tenant is taking which are likely to result in payment within a reasonable time;
- Consider whether the tenant is complying with the terms of an agreed plan for future payments; and
- Encourage the tenant to contact their local authority (where the local authority is not the landlord).

Landlords must confirm to the court that the pre-action requirements have been complied with and the court checks this before authenticating the summons that landlords can then serve on tenants. Guidance has been issued to assist social landlords understand their requirements.

A tenant who falls into arrears due to benefit changes will therefore have every opportunity to take up advice and assistance and agree a repayment plan that is affordable and sustainable for them. If landlords do raise proceedings, then it is for the courts to consider the reasonableness of granting an eviction order. In doing so, section 16(3) of the 2001 Act requires the court to have regard to, amongst other things, "the extent to which the conduct is or was the conduct of, or a consequence of acts or omissions of, persons other than the tenant".

The Role of Landlords

By reducing housing benefit, the bedroom tax places at risk a tenant's ability to pay their rent. Due to this and the unprecedented nature of the bedroom tax, social landlords are keen to work closely with the households affected to assess individual circumstances and develop ways to lessen the impact of the measure.

Therefore, I advocated the approach taken by Dundee City Council to dealing with arrears as a result of the bedroom tax. The Council has committed that, where the Director of Housing is satisfied that affected tenants are doing all they can be reasonably expected to in order to avoid falling into arrears; they will use all legitimate means to collect rent due, except eviction. This approach strikes a pragmatic balance between supporting the affected tenants and protecting the finances of the landlords, which are used to provide services to all tenants.

Protection from Eviction

This Petition is calling for a blanket exemption to eviction for all tenants affected by the bedroom tax in Scotland regardless of circumstances. The issues that the Scottish Government sees with such an approach include:

- 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;

- We are 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.

Conclusion

The Scottish Government is opposed to the bedroom tax and is seeking ways to protect tenants and landlords. However, after careful consideration, we do not believe that a change to legislation advocated in this Petition would be in the best interest of tenants or landlords.

Kind regards

MARGARET BURGESS

ANNEXE F

IN RESPONSE TO THE SCOTTISH PARLIAMENT'S PUBLIC PETITIONS COMMITTEE'S CALL FOR EVIDENCE ON PUBLIC PETITION PE1468 ON EVICTIONS DUE TO UNDER OCCUPATION DEDUCTIONS

May 2013

1 The SFHA's Views on Public Petition PE01468

- 1.1 The Scottish Federation of Housing Associations (SFHA) cannot support Public Petition PE01468 from the Govan Law Centre Trust on evictions due to arrears arising from under occupation deductions.
- 1.2 Rent arrears arising from restrictions on eligibility for Housing Benefit imposed on tenants by DWP should be treated no differently from the many other situations which trigger an arrear, such as illness, or job loss. Tenants are liable for their rent, whether it is paid through Housing Benefit or not.
- 1.3 We do not agree that it would be fair for landlords to be able to differentiate legal responses based on the nature of arrears. We are concerned about the fairness of this. Other forms of welfare changes adversely impact on support to tenants. Also, working households may find it difficult to meet their rent payments as a result of reductions in earnings. But no-one is suggesting that landlords should not be allowed to seek eviction in these circumstances. Housing associations and co-operatives treat every rent arrears case on its own merits but consistently, by taking all of the facts into account, offering advice and assistance and making suggestions to help the tenant to tackle the situation.
- 1.4 Eviction is rarely used and only having exhausted the alternatives, but it remains an important tool for every landlord in the management of tenancies.

2 Impact of Under Occupation Deductions

- 2.1 In common with other housing bodies across the UK, we opposed and lobbied against proposals to restrict tenants' eligibility for Housing Benefit relative to house size. We did so because the proposals are unfair and incompetent, not least due to the structural mismatch between the profile of stock and households which means there simply are not enough smaller houses.
- 2.2 While housing associations and co-operatives are proactive in doing all that they can to help people under occupying properties to find a smaller property to rent, the Scottish Government's assessment into the impact of welfare reform estimates that there are 12,572 one bedroom properties available for let by housing associations and co-operatives in a year, with a further 13,269 two bedroom properties available. Leaving aside any other allocations considerations this falls well short of what would be required to relocate the:

- 75,800 affected households under occupying by 1 bedroom and therefore subject to a 14% reduction in support (which equates to £9 per week on average in Scotland); and
 - 19,600 affected households under occupying by 2 or more bedrooms and therefore subject to a 25% reduction in support (which equates to £16 per week on average in Scotland).¹
- 2.3 Leaving aside all of the other welfare reforms, Scotland's social landlords therefore face the prospect of having to collect an additional £51.7 million per year in rents simply as a result of under occupation restrictions.
- 2.4 In April 2012, the SFHA commissioned i.s.4 housing and regeneration limited (i.s.4) to conduct an independent examination of the potential direct and indirect financial impacts of welfare reform on housing associations and co-operatives in Scotland. The report was published in August 2012.²
- 2.5 The analysis suggests that the various welfare reforms will result in a total loss of benefit income for working age tenants in the RSL sector of up to £228m by 2017. Around £33.5m of the annual estimated loss is related to Housing Benefit reform. Working age households will face further significant pressure as a result of the reform of other working age benefits and the uprating of benefits using CPI rather than RPI. Our analysis suggests that, by 2017, a further £39.5m will be lost annually as a result of other working age reforms and £50.4m will also be lost each year as a result of the uprating of benefits using CPI rather than RPI.
- 2.6 The estimated losses of income to tenants is critically important to landlords because a tenant's propensity to pay their rent on time is sensitive to overall levels of household income, not just Housing Benefit.
- 2.7 The tenants most exposed to the reforms include:
- Tenants who are out of work, including those with disabilities and complex support needs
 - Tenants who are on low incomes and may have children (larger families, in particular);
 - Tenants who have non-dependents living with them;
 - Tenants who are considered to be under occupying against the relevant size criteria.

¹ Scottish Government (2011), *Housing Benefit changes: Scottish Impact Assessment*. Available at <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/supplydemand/chma/marketcontextmaterials/hbchangesscottishimpact/> (accessed 17th May 2013)

² i.s.4 (August 2012) for SFHA, *The Impact of Welfare Reform on Housing Associations and Housing Co-operatives in Scotland*. Available at <http://www.sfha.co.uk/sfha/welfare-reform/welfare-reform-research-and-publications/menu-id-311.html> (accessed 17th May 2013)

- 2.8 Transitional Protection may assist some households for a short period of time, but will not alleviate the long term financial pressure tenants and ultimately on landlords.
- 2.9 The scale of the reforms for tenants indicates significant direct financial risks for landlords including:
- Rent loss as a result of increased arrears and bad debts. Our analysis suggests rental income could be at risk amounting to £51.2m.³ The £33.5m which is currently met directly from Housing Benefit and which tenants will have to fund from other sources in future is a particularly significant risk. Most organisations anticipate increased rent arrears as a result of the various welfare reforms.⁴
 - Slower and costlier cash collection as a result of having to collect rents individually from tenants (currently the majority of tenants who receive Housing Benefit mandate payment via the local authority, made in batches to housing associations and cooperatives). We estimate a 50% increase in current tenant arrears, amounting to £12.4m, representing 1.3% of gross rents.
 - An increase in cost of between £11.902m and £12.676m, depending on whether financing costs are required, and arising as a result of increased housing management activity.
- 2.10 Unless these increased costs and reduced income levels can be alleviated for landlords, the result across the sector will be poorer financial performance. This may cause issues for some landlords, particularly being able to meet agreed financial and business plan parameters and in meeting existing loan covenants to lenders.
- 2.11 Landlords that are likely to be most exposed will include those who have a higher concentration of working age and single households who are currently out of work or are on low incomes. The exposure may be further increased if, within those households, there are concentrations of tenants with disabilities or with large families.
- 2.12 As well as the direct financial issues associated with welfare reform, there are a number of additional indirect impacts which are likely to involve financial consequences for our members. Whilst it is difficult to be too specific in

³ i.s.4 (August 2012) for SFHA, *The Impact of Welfare Reform on Housing Associations and Housing Cooperatives in Scotland*. Available at <http://www.sfha.co.uk/sfha/welfare-reform/welfare-reform-research-and-publications/menu-id-311.html> (accessed 17th May 2013)

⁴ SFHA (February 2013), *Preparing For Welfare Reform*. Available at <http://www.sfha.co.uk/sfha/welfare-reform/welfare-reform-research-and-publications/menu-id-311.html> (accessed 17th May 2013)

anticipating indirect consequences of the reforms, these can be considered in two key categories as follows:

- Pressures for individual housing associations and co-operatives, and the extent to which welfare reform detracts from the delivery of their specific business, financial and performance targets. This will be very specific to each landlord and their particular circumstances.
- The ability of housing associations and co-operatives to deliver the Scottish Government's broader housing and housing related policy objectives including new housing supply and the prevention/reduction of homelessness.

3 Eviction Action by Housing Associations

- 3.1 There is clear evidence that housing associations and co-operatives only ever seek repossession as a last resort after all other approaches have failed. Furthermore, tenants are already protected by the tests of reasonableness and proportionality applied by Sheriffs to repossession actions. There is a tremendous amount of good practice being carried out throughout the housing association sector in relation to the early identification of risk and prevention of rent arrears, as well as the recovery activity once an arrear has started to accrue. Though some of this practice is innovative, the majority of it includes established, tried and tested techniques which our members have used successfully.
- 3.2 Many of these methods have now been formalised into pre action requirements, introduced by the Housing (Scotland) Act 2010, which are effectively a check list of actions a landlord must take before being able to serve an eviction notice on a tenant. These requirements, along with the Sheriff's tests of reasonableness and proportionality, are more than sufficient protection against unfair eviction.
- 3.3 It is never in the interests of a housing association or co-operative to evict a tenant without having pursued all of the alternatives. Scotland's housing associations and co-operatives are not cavalier about evicting tenants. Eviction action is not pursued lightly. The SFHA and its members view eviction as an absolute, but necessary, last resort. Evictions are a failure for all concerned.
- 3.4 And a tiny proportion of tenancies end in eviction: barely a quarter of 1% (0.25%) of all tenancies in 2011/12, of which 96% of all evictions were for rent arrears. Scotland's housing associations and co-operatives have made great strides in recent years to reduce the number of evictions they carry out.⁵

⁵ Shelter Scotland (March 2013), *Evictions by social landlords in Scotland*. Available at http://scotland.shelter.org.uk/_data/assets/pdf_file/0006/635028/Evictions_Report_11_-_12_FINAL_2.pdf (accessed 17th May 2013)

Year	Number of evictions by housing associations	Relative to previous year
2009/10	942	- 38%
2010/11	761	- 19%
2011/12	767	- 0%

4 Concluding Comments

- 4.1 Housing associations and co-operatives have a duty of care to all of their tenants to ensure that rental income is collected in order to pay for services. Indeed, in response to welfare reform, most of our members have increased the resources in their budgets to provide more advice, support and debt management assistance and so they must ensure that nothing undermines their ability to pay for this.
- 4.2 The Scottish Housing Regulator expects housing associations and co operatives to ensure they minimise the risks arising from rising arrears and bad debts. The majority of associations are charities and the charity regulator OSCR would similarly expect its trustees to ensure that risks to the business are minimised.
- 4.3 Removing a sanction for non-payment of rent for one category of arrear undermines the landlord's ability to collect rent. Both the duty of care to all tenants and ensuring fairness and equity in treating arrears in the same way, no matter how they have occurred, is fundamental to how our members are expected to operate and be held to account.
- 4.4 For these reasons we cannot support this petition.

SFHA

May 2013

ANNEXE G



Department
for Work &
Pensions

Ministerial
Correspondence
Caxton House
Tothill Street
LONDON
SW1H 9DA

0207 340 4000

www.dwp.gov.uk

ministers@dwp.gsi.gov.uk

Andrew Howlett
T3.40
Scottish Parliament
Edinburgh
EH99 1SP

Our ref: POS(4)4035/1138

20 May 2013

Dear Andrew,

Thank you for your e-mail of 19 April regarding the removal of the spare room subsidy.

The Committee has asked for responses to the following questions:

- What is the Department for Work and Pensions' stance on the issues raised in the petition and during the discussion on the petition at the meeting on 16 April 2013?
- What is the estimated number of evictions that may occur in Scotland, and elsewhere in the UK, as a result of changes to housing benefit from under occupation deductions?

Turning to the first question, a number of issues were raised in debate and I shall address these in turn.

With regard to the effect on those who fall into arrears as a result of reductions applied to Housing Benefit, it is too early to say what the real impact of these changes will be and what claimants are likely to do; or whether there will be a substantial increase in rent arrears. Individuals may choose to continue to live in their existing properties and fund any shortfall themselves, by finding or increasing their hours of work, or by taking in a lodger. Alternatively others may decide to move to the private rented sector or downsize to a more appropriately sized property within the social sector.

In relation to concerns that claimants who cannot meet the shortfall in rent, due to the removal of the spare room subsidy, face court cases, evictions and homelessness, again, it is too early to say what the real impact of these changes will be and what claimants are likely to do; or whether there will be a substantial increase in rent arrears.

With regard to a possible increase in arrears due to impact of direct payment, local authorities and Housing Associations will be able to nominate in advance those they believe will struggle to cope and alternative payment arrangements will be available for them. This will include paying rent directly to the landlord, a more frequent than monthly payment, or a split payment between partners. These arrangements could be considered at any point during the Universal Credit claim. They may be identified at the outset when the personal budgeting support is decided, or during the claim; for example, because the claimant is struggling with the standard monthly payment or moves house.

We are developing a rent arrears trigger that sets a level at which landlords can contact us to have rent paid direct to them. There will also be a deductions system, whereby a claimant's current Universal Credit payment will be reduced to re-pay any rents arrears accrued. Together these measures will provide clear safeguards for landlords and claimants; arrears cannot build beyond a certain level and any arrears accrued will be repaid.

Where a need for payment exceptions is identified, we will put the appropriate support in place to build claimants' financial capability and resolve any underlying problems, moving them over time to a point where they can manage the default Universal Credit payment arrangements.

Turning to the availability of alternative housing, the underlying principle behind this policy is not to force people into moving, but for people who are under occupying to make realistic choices about how they will meet the rent on a property that is larger than they need.

However, we recognise that in some areas there is a shortage of suitable sized accommodation, especially one and two bedroom properties. We have worked together with the Chartered Institute of Housing who have produced an online guide for social sector landlords *Making it Fit* – a guide to preparing for the social size criteria. This was launched in June last year and is designed to help landlords to develop a strategic and operational approach to the size criteria, tailored to their local area.

Turning to the impact of arrears on housing associations and local authorities and concerns that other welfare reforms may cause Housing Associations to become unviable, the measures will be monitored and evaluated over a two year period from April this year. Initial findings will be available in 2014 and the final report in late 2015.

The evaluation will include small scale primary research with a range of local authorities, social landlords and voluntary organisations. As part of the research, we will look at supply issues, rural factors and people unable to share rooms and where possible it will also consider people's financial circumstances, social networks and family life.

With regard to the amount of Discretionary Housing Payment (DHP) funding, the Government has increased funding towards DHPs to £150 million for 2013/14. This includes £25 million to support disabled people living in adapted accommodation who may be affected by removal of the spare room subsidy in the social rented sector.

DHPs are allocated to local authorities in England, Scotland and Wales. The distribution of funds is made, as far as possible, to target resources according to need and is agreed following discussions with local authority groups.

Although DWP provides guidance to local authorities on how DHPs can be used, local authorities have a large degree of discretion over the scheme and there are few regulatory restrictions. However, the increased funding has been made to support people affected by some of the key welfare reforms, including the benefit cap and removal of the spare room subsidy. Although we have identified customers that local authorities should consider prioritising it is equally important that local authorities are flexible, taking into account local demand and circumstances.

Finally, in your second question, you asked for the estimated number of evictions in Scotland, England and elsewhere. Unfortunately, this information is not available. As noted above, it is too early to say what the real impact of these changes will be.

It is however worth noting that when we introduced reforms to Housing Benefit payments in the private rented sector in 2011 and 2012 there were a great number of negative predictions. It was claimed that 42 per cent of landlords would scale back rentals to Housing Benefit claimants. It was claimed that 134,000 people would have to move home or become homeless. These fears have not come to pass. The Housing Benefit caseload has risen by over 5 per cent since the reforms were introduced in April 2011. The number of households in temporary accommodation has risen by just 900 in London, and across the country the number of families accepted as homeless is still less than half the level reached in the mid 2000s. Therefore, our experience suggests that landlords and benefit claimants are able to adapt to Housing Benefit reforms.

Yours sincerely,

Lord Freud

Minister for Welfare Reform

ANNEXE H

17 June 2013

Our Ref : MRD

Your Ref :

By E-mail and First Class Post

Andrew Howlett

Assistant Clerk to the Public Petitions Committee

T3.40

Scottish Parliament

Edinburgh

EH99 1SP



Orkney Street Enterprise Centre
Units 4 & 6
18-20 Orkney Street
Glasgow G51 2BZ

Tel 0141 440 2503
Fax 0141 445 3934
Minicom 0141 445 1955
Email m@govanlc.com
Website www.govanlc.com

Dear Mr Howlett

Response from Govan Law Centre to Written Submissions to Petition PE01468

I write on behalf of the Board of the Govan Law Centre Trust (GLC) to provide GLC's response to the written submissions the Public Petitions Committee has received from the Scottish Government, DWP, SFHA and Dumfries and Galloway Council.

GLC is aware that the Committee has so far chosen not to invite oral evidence from either the petitioners or any pro-tenant housing charities in Scotland; given the complexity of the issues being discussed – and the variance in evidence between parties – we do believe the Committee might find it more expedient and efficient to speak directly to parties, and GLC would be happy to provide such assistance to the Committee if so advised.

(1) Scottish Government response dated 17 May 2013

GLC supports the Scottish Government's pledge to scrap the bedroom tax (in the event it is in a position to implement same) but notes at best this would still require around 105,000 Scottish tenants to experience four to five years of the bedroom tax with concomitant damage to households, and social landlords, in addition to unacceptable human misery and needless evictions.

It has been suggested that it would create an anomalyⁱ if the Scottish Parliament supported the petition's policy approach because this would single out protection for those affected by the bedroom tax as opposed to other benefits. It will be noted that the Scottish Government has itself singled out the bedroom tax by promising to abolish it, whereas it has not pledged to scrap the introduction of PIP, for example, (replacing DLA and resulting in significantly less money for many thousands of disabled persons).

There is no anomaly when one considers that (a) the bedroom tax affects the most vulnerable tenants in Scotland – with 79% of those households affected including someone with a recognised disabilityⁱⁱ and (b) no other benefit deductions directly results in the threat of eviction and homelessness.

The Housing Minister has indicated that she prefers and advocates the approach of Dundee City Council. GLC has welcomed Dundee City Council's approach, and indeed the council's Housing Convenor has graciously noted that GLC's work '*was very influential in the formation of Dundee City Council's non-eviction policy*'.ⁱⁱⁱ However, as the Daily Record newspaper reported, even local authorities who have signed up to this voluntary policy are not applying it consistently.^{iv} There is a distinct lack of clarity and certainty, and ultimately the policy – which

is piecemeal in approach – does not provide any comfort for the many thousands of tenants of registered social landlords.

The Minister's letter mistakenly asserts that GLC's petition is calling for a '*blanket exemption to eviction for all tenants affected by the bedroom tax regardless of circumstances*'. No such exemption is proposed, tenants who did not pay their rent and/or failed to engage or act reasonably with their landlord would be liable to eviction proceedings. What the petition recognises – just as the Scottish Government, numerous Scottish civic organisations supporting the petition such as Oxfam, the STUC, Shelter Scotland, Money Advice Scotland, and the 5,000 signatories who back the petition – is that the bedroom tax is not the fault of Scottish tenants. So why should they be evicted because of it?

At the very least we would invite the Committee to consider how the Minister's advocated approach (as taken by Dundee City Council and some other local authorities) could be progressed and strengthened as a statutory requirement so that all Scottish secure tenants benefited from this additional protection in a manner that was consistent and robust, with clarity and certainty. There is no evidence to suggest the approach of the petition '*could encourage tenants to get into debt*'. All of the evidence available to GLC is that Scottish tenants want to remain in their homes and will do all that they can to do so. We (and others) have had some early success with our bedroom tax toolkit in overturning bedroom tax decisions, and we believe there much scope to reduce the number of tenants affected by the bedroom tax by challenging decisions on a number of factual and legal grounds.

(2) DWP response dated 20 May 2013

The written response from Lord Freud on behalf of the DWP appears non-committal, suggesting it is too early to say what the impact of the bedroom tax will be. We have already set out in the petition itself what we believe the impact of the bedroom tax will be in Scotland, and we have no reason to depart from that position. As an overall observation, GLC notes that in order for the DWP's under occupation policy to make the estimated £980m saving across the UK over two years, there is a need for tenants to remain in their homes and absorb the cuts directly. If all affected tenants were to move to smaller homes (which the DWP accepts is not possible) then the policy would be cost neutral, as there would be still be a housing benefit cost from the reallocated tenants downsizing and upsizing or moving to the more expensive private rented sector. GLC believes the bedroom tax policy at its heart is designed to pass the cost onto tenants, local authorities and RSLs.

(3) SFHA response dated May 2013

The SFHA suggest that '*eviction is rarely used*' (at paragraph 1.4) if that were so there would not be almost 14,000 evictions court actions raised in Scotland each year in the social rented sector.^v GLC has already set out arguments in the petition document explaining why on an economic analysis it is not good business sense for social landlords to evict tenants for bedroom tax arrears; other non-eviction solutions are much more effective and we would be happy to address the committee on innovative approaches.

(4) Dumfries and Galloway response dated 9 May 2013

Dumfries and Galloway Council make a cogent and powerful case why it is not possible or reasonable for tenants in small rural or remote communities to downsize to smaller properties, and we agree that it is patently unjust and unfair for such tenants to then face eviction and homelessness through no fault of their own. It is precisely this gross injustice that GLC's petition seeks to address.

As noted at the outset of this letter, GLC welcomed the opportunity to assist the Committee on any issue arising from the written evidence to date.

GLC believes that the bedroom tax represents the most serious risk to tenants in the social rented sector in Scotland now and in the next few years – on a scale much worse than the poll tax in its impact – and we believe a solution can be found which can avoid needless evictions and homelessness, yet balance the interests and sustainability of social landlords in Scotland.

Many thanks for your kind attention.

Yours sincerely

Mike Dailly
Principal Solicitor
On behalf of the Govan Law Centre Board of Trustees

ⁱ Deputy First Minister's answer; see page 4 of

<http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/Petitions%20briefings%20S4/PB13-1468.pdf>

ⁱⁱ <http://www.heraldsotland.com/news/home-news/bedroom-tax-hits-disabled.20311365>

ⁱⁱⁱ <http://us5.campaign-archive2.com/?u=91cb73bca688114fefed773f2&id=761ac825e0&e=0ad3f72156#News3>

^{iv} <http://www.dailyrecord.co.uk/news/scottish-news/bedroom-tax-eviction-nightmare-local-1903620>

^v See table at page 7: http://scotland.shelter.org.uk/_data/assets/pdf_file/0006/635028/Evictions_Report_11_-_12_FINAL_2.pdf

EVIDENCE FROM THE SCOTTISH FEDERATION OF HOUSING ASSOCIATIONS

**TO THE SCOTTISH PARLIAMENT'S WELFARE REFORM COMMITTEE TAKING ORAL
EVIDENCE ON PUBLIC PETITION PE1468 ON EVICTIONS DUE TO UNDER-
OCCUPATION DEDUCTIONS**

October 2013

1 The SFHA's Views on Public Petition PE01468

- 1.1 As stated in previous evidence to the Scottish Parliament's Public Petitions Committee in May 2013, the Scottish Federation of Housing Associations (SFHA) cannot support Public Petition PE01468 from the Govan Law Centre Trust on evictions due to arrears arising from under-occupation deductions.
- 1.2 Rent arrears arising from restrictions on eligibility for Housing Benefit imposed on tenants by DWP should be treated no differently from the many other situations which trigger an arrear, such as illness, or job loss. Tenants are liable for their rent, whether it is paid through Housing Benefit or not.
- 1.3 We do not agree that it would be fair for landlords to be able to differentiate legal responses based on the nature of arrears. We are concerned about the fairness of this. Other forms of welfare changes adversely impact on support to tenants. Equally, working households may find it difficult to meet their rent payments as a result of reductions in earnings, but no-one is suggesting that landlords should not be allowed to seek eviction in these circumstances.
- 1.4 Housing associations and co-operatives treat every rent arrears case on its own merits but consistently, by taking all of the facts into account, offering advice and assistance and making suggestions to help the tenant to tackle the situation.
- 1.5 Eviction is rarely used and only after having exhausted the alternatives. However, it remains an important tool for every landlord in the management of tenancies.

2 Impact of Under-occupation Restrictions

- 2.1 In common with other housing bodies across the UK, SFHA has opposed and lobbied against the imposition of under-occupation restrictions for tenants in receipt of Housing Benefit.
- 2.2 We have done so because the proposals are unfair and incompetent, not least due to the structural mismatch between the profile of stock and households. Despite the fact that housing associations and co-operatives are proactively helping those tenants who are deemed to be under-occupying properties to 'downsize' so they can avoid the penalty, the fact remains there is a serious shortfall of suitable, smaller accommodation available to rent.
- 2.3 At the end of May 2013 there were an estimated 82,500 households in Scotland incurring a reduction in their Housing Benefit because they were assessed as under-occupying their property. Of these households, around 68,500 were under-occupying by one bedroom, around 14,000 were under-occupying by two or more bedrooms, with around 47,500 being local authority tenants and around 35,000 housing association tenants.¹

¹ Scottish Government (2013) *Updated Evidence On The Number Of Households Affected By The Housing Benefit Under Occupation Penalty*, Available at <http://www.scotland.gov.uk/Topics/Built->

- 2.4 In contrast, we estimate that only around 20,000 one bedroom local authority or housing association properties become available for letting by each year. Even then, not all of these properties will be available to people looking to 'downsize' to avoid the under-occupancy restriction, as the recently completed University of Glasgow report to the Welfare Reform Committee highlights: *"In the housing association sector, one third of all lettings are for homeless households. Given that a disproportionate number of homeless lettings are for single people and therefore one-bedroom properties, a reasonable guesstimate might be that half of all one-bedroom properties are not available."*²
- 2.5 This situation is further compounded by the fact that the availability and turnover of smaller properties is much lower than it is for larger properties. According to our own research, the vast majority of tenants (80%) affected by the 'bedroom tax' are underoccupying by one bedroom and require a one bedroom property, but only a quarter of housing association stock is comprised of one bedroom properties. Turnover of these properties is also much slower, with only 12% of one bedroom properties become available to let each year.
- 2.6 Setting aside all of the other welfare reforms, Scotland's social landlords therefore face the prospect of having to collect the £50million³ due to them each year in rents simply as a result of under-occupation restrictions.
- 2.7 In April 2012, the SFHA commissioned i.s.4 housing and regeneration limited (i.s.4) to conduct an independent examination of the potential direct and indirect financial impacts of welfare reform on housing associations and co-operatives in Scotland. The report was published in August 2012.⁴
- 2.8 The analysis suggested that the various welfare reforms would result in a total loss of benefit income for working age tenants in the RSL sector of up to £228m by 2017. Around £33.5m of the annual estimated loss is related to Housing Benefit reform. Working age households will face further significant pressure as a result of the reform of other working age benefits and the uprating of benefits using CPI rather than RPI. The report suggests that, by 2017, a further £39.5m will be lost annually as a result of other working age reforms and £50.4m will also be lost each year as a result of the uprating of benefits using CPI rather than RPI.

[Environment/Housing/supply-demand/chma/Benefitchanges/underoccupancypenalty](#) (accessed 30th October 2013)

² Scottish Parliament (2013) *Welfare Reform Committee 5th Report, 2013 (Session 4), The 'Bedroom Tax' in Scotland*. Available at <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/68917.aspx> (Accessed 30/10/2013)

³ Scottish Parliament (2013) *Welfare Reform Committee 2nd Report, 2013 (Session 4), The Impact of Welfare Reform on Scotland* Available at <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/62069.aspx> (Accessed 30/10/2013)

⁴ i.s.4 (August 2012) for SFHA, *The Impact of Welfare Reform on Housing Associations and Housing Co-operatives in Scotland*. Available at http://www.sfha.co.uk/index.php?option=com_docman&task=doc_download&gid=2393&Itemid=37 (Accessed 30/10/2013)

2.9 The estimated losses of income to tenants is critically important to landlords because a tenant's propensity to pay their rent on time is sensitive to overall levels of household income, not just Housing Benefit.

2.10 The tenants most exposed to the reforms include:

- Tenants who are out of work, including those with disabilities and complex support needs
- Tenants who are on low incomes and may have children (larger families, in particular);
- Tenants who have non-dependents living with them;
- Tenants who are considered to be under occupying against the relevant size criteria.

2.11 We have said from the outset that while Transitional Protection may assist some households for a short period of time, it will not alleviate the long term financial pressure tenants and ultimately on landlords.

2.12 Our recent research indicates that Scottish housing associations and their tenants have been having a patchy experience when it comes to Discretionary Housing Payments.⁵ This is a matter of concern in light of Gibb's observation that: *"DHP has become a much more important part of the system than hitherto expected and while the resources are obviously welcome, they add further administrative cost and personal uncertainty to many vulnerable low-income households across Scotland."*⁶

2.13 Even before the implementation of Housing Benefit reforms, our own analysis indicated that the scale of the reforms for tenants would translate into significant direct financial risks for landlords including:

- Rent loss as a result of increased arrears and bad debts. Our analysis suggests rental income could be at risk amounting to £51.2m.⁷ The £33.5m which is currently met directly from Housing Benefit and which tenants will have to fund from other sources in future is a particularly significant risk. Most organisations anticipate increased rent arrears as a result of the various welfare reforms.⁸
- Slower and costlier cash collection as a result of having to collect rents individually from tenants (currently the majority of tenants who receive

⁵ SFHA (2013) *"Bedroom Tax": Early Impacts*, available at <http://www.sfha.co.uk/sfha/publications/qbedroom-taxq-early-impacts-report> (Accessed 30/10/2013)

⁶ Scottish Parliament (2013) *Welfare Reform Committee 5th Report, 2013 (Session 4), The 'Bedroom Tax' in Scotland*. Available at <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/68917.aspx> (Accessed 30/10/2013)

⁷ i.s.4 (August 2012) for SFHA, *The Impact of Welfare Reform on Housing Associations and Housing Co-operatives in Scotland*. Available at http://www.sfha.co.uk/index.php?option=com_docman&task=doc_download&gid=2393&Itemid=37 (Accessed 30/10/2013)

⁸ SFHA (February 2013), *Preparing For Welfare Reform*. Available at <http://www.sfha.co.uk/sfha/publications/preparing-for-welfare-reform-in-2013> (accessed 01/11/ 2013)

Housing Benefit mandate payment via the local authority, made in batches to housing associations and co-operatives). We estimate a 50% increase in current tenant arrears, amounting to £12.4m, representing 1.3% of gross rents.

- An increase in cost of between £11.902m and £12.676m, depending on whether financing costs are required, and arising as a result of increased housing management activity.

- 2.14 The impact of the ‘bedroom tax’ is now starting to become clear. After just the first six months of its implementation, we are already seeing some of our concerns about the financial impact on the housing association sector beginning to be realised. Our own “Early Impacts” report, published June 2013, found that while total arrears were between 3% and 4% of rental income in 2011-12, housing associations were projecting their arrears to be between 5% and 6% of rental income in 2013-14.⁹
- 2.15 Subsequent to that we now have baseline evidence from the Scottish Housing Regulator (SHR) showing that, in monetary terms, in the first financial quarter of 2013/14 there has been an increase of approximately £789,000 in rent arrears across all RSLs for which they have complete data, and that 65% of RSLs have seen an increase in their percentage arrears levels in the same period.¹⁰ However, the findings of this report must be regarded with some caution, as it is still relatively early in the implementation of the under-occupancy restriction to have a clear picture and consequently it must be borne in mind that factors such as Discretionary Housing Payments may be masking the true scale of the impact of this change.
- 2.16 Unless these increased costs and reduced income levels can be alleviated for landlords, the result across the sector will be poorer financial performance. This may cause issues for some landlords, particularly being able to meet agreed financial and business plan parameters and in meeting existing loan covenants to lenders.
- 2.17 Landlords that are likely to be most exposed will include those who have a higher concentration of working age and single households who are currently out of work or are on low incomes. The exposure may be further increased if, within those households, there are concentrations of tenants with disabilities or with large families.
- 2.18 As well as the direct financial issues associated with welfare reform, there are a number of additional indirect impacts which are likely to involve financial consequences for our members. Whilst it is difficult to be too specific in anticipating indirect

⁹ SFHA (2013) “Bedroom Tax”: *Early Impacts*, available at <http://www.sfha.co.uk/sfha/publications/qbedroom-taxq-early-impacts-report> (Accessed 30/10/2013)

¹⁰ Scottish Housing Regulator (2013) *Early impacts of Welfare Reform on rent arrears: Research Report*, available at <http://www.scottishhousingregulator.gov.uk/publications/early-impacts-welfare-reform-rent-arrears-research-report> (Accessed 30/10/2013)

consequences of the reforms, these can be considered in two key categories as follows:

- Pressures for individual housing associations and co-operatives, and the extent to which welfare reform detracts from the delivery of their specific business, financial and performance targets. This will be very specific to each landlord and their particular circumstances.
- The ability of housing associations and co-operatives to deliver the Scottish Government's broader housing and housing related policy objectives including new housing supply and the prevention/reduction of homelessness.

3 Eviction Action by Housing Associations

3.1 In June 2013 SFHA was invited to provide evidence to the House of Commons Scottish Affairs Committee on the impact of the 'bedroom tax' and other changes to Housing Benefit in Scotland.¹¹

3.2 In the course of that evidence SFHA was asked if housing associations would follow the example of some local authority landlords by adopting a "no evictions" policy for 'bedroom tax' arrears. Ignoring for a moment that these 'no evictions' policies include the proviso that eligible tenants must be making every effort to pay rent – which signals no great departure from current practice – the SFHA reaffirmed its view that eviction is still a necessary sanction for persistent non-payment of rent. That said, evictions are only ever used as an absolute last resort, which is emphasised in our position statement on 'bedroom tax' arrears:

*"Arrears arising from restrictions on eligibility for Housing Benefit imposed on tenants by DWP should be treated no differently from the many other situations which trigger an arrear, such as illness, or job loss. Housing associations and co-operatives treat every rent arrears case consistently, by taking all of the facts into account, offering advice and assistance and making suggestions that will help the tenant to tackle the situation. Housing associations only ever seek repossession as a last resort after all other approaches have failed."*¹²

3.3 There is clear evidence that housing associations and co-operatives only ever seek repossession as a last resort after all other approaches have failed. Furthermore, tenants are already protected by the tests of reasonableness and proportionality applied by Sheriffs to repossession actions. There is a tremendous amount of good practice being carried out throughout the housing association sector in relation to the early identification of risk and prevention of rent arrears, as well as the recovery activity once an arrear has started to accrue. Though some of this practice is innovative, the

¹¹ Scottish Affairs Committee (2013) Transcript of Oral Evidence "*The Impact of the Bedroom Tax and other changes to Housing Benefit in Scotland*" available at <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmsscota/uc288-i/uc28801.htm> (accessed 30/10/2013)

¹² SFHA position statement on arrears arising from under-occupation restrictions in Housing Benefit and Universal Credit (19 February 2013) – see Annex A to this document

majority of it includes established, tried and tested techniques which our members have used successfully.

- 3.4 Many of these methods have now been formalised into pre action requirements, introduced by the Housing (Scotland) Act 2010, which are effectively a check list of actions a landlord must take before being able to serve an eviction notice on a tenant. These requirements, along with the Sheriff's tests of reasonableness and proportionality, are more than sufficient protection against unfair eviction.
- 3.5 It is never in the interests of a housing association or co-operative to evict a tenant without having pursued all of the alternatives. Scotland's housing associations and co-operatives are not cavalier about evicting tenants. Eviction action is not pursued lightly. The SFHA and its members view eviction as an absolute, but necessary, last resort. Evictions are a failure for all concerned.
- 3.6 Housing associations offer tenants a security of tenure not afforded by the private rented sector, where eviction orders are served on more than 2% of all private tenants each year.¹³ Furthermore, of the more than 6,500 eviction cases in Scotland in 2011-12, just 12%, or 767, were pursued by housing associations. In contrast, nearly eight in ten of all evictions are made by private landlords. Whilst it is true that a tiny proportion of tenancies end in eviction: it amounted to barely a quarter of 1% (0.25%) of all tenancies in 2011/12, of which 96% of all evictions were for rent arrears.
- 3.7 Scotland's housing associations and co-operatives have made great strides in recent years to reduce the number of evictions they carry out – a point which has been acknowledged publicly by Shelter Scotland¹⁴ and is further borne out by statistics:

Year	Number of evictions by housing associations	Relative to previous year
2009/10	942	- 38%
2010/11	761	- 19%
2011/12	767	- 0%

- 3.8 Consistently low eviction rates of social tenants are the combined result of several measures put in place by landlords and legislators to protect tenants from unfair

¹³ Figures are not held on the number of eviction orders enforced against private tenants. The number of eviction orders granted to private landlords was approximated by assuming that half of all disposed eviction case were found in favour of the pursuer, as suggested in the "Spotlight on repossession and eviction" in Civil Law Statistics in Scotland 2011-12 <http://www.scotland.gov.uk/Publications/2012/12/9263/0>.

¹⁴ Shelter Scotland (March 2013), *Evictions by social landlords in Scotland*. Available at http://scotland.shelter.org.uk/_data/assets/pdf_file/0006/635028/Evictions_Report_11_-12_FINAL_2.pdf (accessed 17th May 2013)

eviction. Before a notice can be served on a tenant, the landlord has to show that it has taken certain steps to engage with, advise and assist the tenant. Should the situation escalate to a point where court action is initiated, the landlord would still have to prove to a Sheriff that it is both reasonable and proportionate to evict the tenant. This judicious approach to evictions is reflected in recent studies we have conducted with housing associations on welfare reform.¹⁵

3.9 These surveys revealed housing associations to be a reluctant enforcer of the 'bedroom tax' - doing all they can to help their tenants avoid this reduction in Housing Benefit while at the same time protecting their rental income. Some examples of the mitigation activities of housing associations include:

- Expanding tenant services, particularly around welfare rights and income maximisation
- Engaging tenants and offering a more personalised service
- Expanding payment options and connecting those without bank accounts to financial products
- Helping the digitally excluded get online
- Reviewing an array of policies and procedures, particularly around rent arrears and allocations
- Improving data management and information systems
- Considering reclassification of property sizes and criteria for rent setting

¹⁵ SFHA (2013) "*Bedroom Tax*": *Early Impacts*, available at <http://www.sfha.co.uk/sfha/publications/qbedroom-taxq-early-impacts-report> (Accessed 30/10/2013)

- 3.10 Given the social mission of housing associations, it is unsurprising that pursuing legal action against tenants does not make the list of top actions identified by organisations in their preparations for welfare reform.¹⁶
- 3.11 It is worth noting that Professor Gibb in his recent report to the Welfare Reform Committee states in his conclusions that: *“Arrears arising from the ‘bedroom tax’ need to be clearly understood (and their relationship with other rent arrears) but caution should be exercised and further consultation should take place before considering blanket forgiveness of such arrears.”*¹⁷ In our view, the practicability of any proposal to prohibit evictions for ‘bedroom tax arrears’ is questionable. While it is currently possible for some sort of an approximation to be made about the generic level of rent arrears which may be related to the under-occupancy restriction, as Universal Credit rolls out, it will become increasingly the case that landlords simply will not be able to readily identify what proportion of any rent arrear is attributable to the ‘bedroom tax’.

4 Concluding Comments

- 4.1 Housing associations and co-operatives have a duty of care to all of their tenants to ensure that rental income is collected in order to pay for services. Indeed, in response to welfare reform, most of our members have increased the resources in their budgets to provide more advice, support and debt management assistance and so they must ensure that nothing undermines their ability to pay for this.
- 4.2 The Scottish Housing Regulator expects housing associations and co-operatives to ensure they minimise the risks arising from rising arrears and bad debts. The majority of associations are charities and the charity regulator OSCR would similarly expect its trustees to ensure that risks to the business are minimised.
- 4.3 Removing a sanction for non-payment of rent for one category of arrear undermines the landlord’s ability to collect rent. Both the duty of care to all tenants and ensuring fairness and equity in treating arrears in the same way, no matter how they have occurred, is fundamental to how our members are expected to operate and be held to account.
- 4.4 For these reasons we cannot support this petition.

SFHA

October 2013

¹⁶ SFHA (February 2013) *“Preparing for Welfare Reform in 2013”* Available at http://www.sfha.co.uk/index.php?option=com_docman&task=doc_download&gid=2843&Itemid=37 (Accessed 01/11/2013)

¹⁷ Scottish Parliament (2013) *Welfare Reform Committee 5th Report, 2013 (Session 4), The ‘Bedroom Tax’ in Scotland*. Available at <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/68917.aspx> (Accessed 30/10/2013)

SFHA POSITION STATEMENT

SUBJECT: ARREARS ARISING FROM UNDER OCCUPATION RESTRICTIONS IN HOUSING BENEFIT AND UNIVERSAL CREDIT

“Housing associations and co-operatives are proactive in doing all that they can to help people under occupying properties to find a smaller property to rent. But the fact remains that, there is a shortage of suitable smaller properties for them to move into.

Arrears arising from restrictions on eligibility for Housing Benefit imposed on tenants by DWP should be treated no differently from the many other situations which trigger an arrear, such as illness, or job loss. Housing associations and co-operatives treat every rent arrears case consistently, by taking all of the facts into account, offering advice and assistance and making suggestions that will help the tenant to tackle the situation.

Housing associations only ever seek repossession as a last resort after all other approaches have failed. Tenants are already protected by the test of reasonableness and proportionality applied by sheriffs to repossession actions. “

SFHA

19th February 2013

Welfare Reform Committee

18th Meeting, 2013 (Session 4), Tuesday, 12 November 2013

Written submission from the Chartered Institute of Housing Scotland

PE01468 – Evictions Due to Under Occupation Deductions

CIH Scotland welcomes the opportunity to give evidence on Petition PE01468 aimed at a legislative change to prohibit evictions solely for arrears of 'bedroom tax'.

Undoubtedly the petition is well intended in seeking to protect people from losing their home. On a UK-wide basis CIH strongly opposes the bedroom tax, but CIH Scotland does not support this petition and our reasons for this are entirely practical. We believe that the proposed legislation would actually do more harm than good.

We do not believe that there will be mass evictions for bedroom tax arrears alone. At forums and events, councils and housing associations across Scotland are telling us that the majority of affected tenants are engaging with their landlord: most that are not paying are looking at their options and trying to find a way of paying. Landlords have no interest in taking action against people who are in touch with them about the problem. Only a small minority are neither paying nor engaging. Hence the Bill's preventative impact would almost certainly be minimal.

Instead, we fear that such legislation would send the strongest message yet to tenants that it does not really matter whether they pay their rent or not. And it would effectively reward those tenants who persistently choose not to engage with their landlord.

There are already clear indications that some councils who very publicly declared 'no evictions' policies earlier in the year (we know of course that the policies did *not* rule out evictions) are now paying the penalty with particularly high arrears levels, with indications of non-payment of bedroom tax being as high as 75% in some cases. The proposed legislation – or merely the prospect of it – is likely to further increase arrears levels, which would not be in the interests of any of the landlord's tenants.

Importantly, we believe that inappropriate messages about rent payment can affect not only the level of bedroom tax arrears but also of *general* arrears. There is clear evidence – not least from the Scottish Housing Regulator's recent survey – that overall arrears are rising. Whilst some of this is likely to be down to the recession, it has to be a possibility that some of the messages around the bedroom tax have led to a more relaxed attitude from some tenants about their overall responsibility to pay their rent.

What the legislation would not do is remove the debt and the worry that this brings to tenants. It may be that the petition and related Private Members Bill are partly being used as a political lever with which to continue pressing the Scottish Government to find a full £50m year on year to pay the entire cost of the bedroom tax in Scotland, notwithstanding that it does not have the powers to do this.

CIH Scotland would also question why it would be appropriate to pick out this one group of tenants affected by the welfare reforms. It would seem disproportionate to legislate for one particular group of tenants but not for another, such as private tenants under the age of 35, who have been badly hit by much greater cuts to their Housing Benefit.

There are other practical considerations. Tenants' rent accounts do not have an automatic mechanism for identifying bedroom tax arrears separately from general arrears. Whilst landlords are working to find ways of making the distinction, it will not be helpful to introduce legislation which deals exclusively with one type of arrear. On top of this is the prospect of it being all but impossible to make the distinction in the future under Universal Credit.

Focusing attention on supporting tenants to pay their rent – not least by helping them apply for Discretionary Housing Payments, which risk being underspent in Scotland – will benefit both tenants and landlords far more effectively than prohibiting evictions and imagining that the problems faced by tenants have therefore been solved.

CIH

November 2013

Welfare Reform Committee

18th Meeting, 2013 (Session 4), Tuesday, 12 November 2013

Written submission from ALACHO

1. As the representative body for Scotland's senior local authority housing professionals, the Association of Local Authority Chief Housing Officers (ALACHO) is pleased to have the opportunity to respond to Petition PE01468, which seeks legislative change to prohibit evictions for rent arrears arising solely from the under occupation penalty, or "bedroom tax".
2. ALACHO would wish to point out that no-one is more aware of the damaging impacts of the current welfare reforms than the local government officers who deal on a daily basis with the consequences of cuts to tenants' benefits. We have deprecated these reforms and their consequences from the outset, and continue to campaign with other organisations for measures which might mitigate their impact. Working in local government, ALACHO's members are also acutely aware of the imperatives of local democracy, which is why we are content to leave the details of eviction policy to individual councils. Where tenants seek to engage, we firmly believe that few if any councils would pursue evictions for arrears resulting from non payment of the under occupation penalty alone. We also understand why elected members might wish to provide a degree of comfort to tenants adversely affected by the under occupation penalty that, particularly in circumstances where they engage with their local authority, they would not be evicted for those arrears alone.
3. That said, as a professional representative body we would also wish to point out some issues and potential challenges should the Parliament be minded to approve this legislative amendment; in particular that :
 - although appearing to be straightforward in intent, the proposal could be complex and unwieldy to implement, and may require the allocation of significant resources (including possibly expensive IT system changes) to prepare cases for court which clearly and unambiguously identify "bedroom tax" arrears separately from other rent arrears.
 - the proposal is potentially unfair in singling out a particular group for special consideration, i.e. those affected by the under occupation penalty , when there are other groups equally adversely affected by aspects of welfare reform (single people, or those in temporary accommodation for example)who may merit assistance
 - the proposal is unfair to, and could penalise, those tenants who, despite financial hardship, do pay the under occupation penalty, thereby complying with their contractual commitment to pay rent (to the extent that bedroom tax arrears or any other debts are ultimately written off, the burden falls on those tenants who **do** pay their rent to make up the shortfall)

- the proposal has potentially risky consequences , in that its enactment could encourage a culture of non-payment of rent, which could potentially extend beyond non-payment of the under occupation penalty to non-payment of rent more generally (there is already some evidence to suggest that some councils who have already declared policies of non-eviction for bedroom tax arrears are experiencing higher than average arrears levels)
4. ALACHO is content for this matter to be decided by the Welfare Reform Committee on the merits of the arguments, and acknowledges that, with or without legislation, councils are broadly free to decide policy on rent arrears recovery (subject of course to satisfactory audit). In this context ALACHO believes that the best means of mitigating the adverse impact of welfare reforms is to ensure that tenants are given the support necessary to ensure incomes are maximised through access to appropriate benefits, the provision of employment advice and information where appropriate, alternative accommodation where possible, and in the creative use of other income support funding such as discretionary housing payments and the Scottish Welfare Fund.
 5. We are also confident that, notwithstanding the challenges and potential costs involved, should the Parliament decide to implement the legislative amendment, councils across Scotland will do what is necessary to comply with that legislation.

Jim Hayton
ALACHO Policy Manager
November 2013

SCOTTISH STATUTORY INSTRUMENTS

2013 No. 287

COUNCIL TAX

**The Council Tax Reduction (Scotland) Amendment (No. 4)
Regulations 2013**

<i>Made</i>	- - - -	<i>8th October 2013</i>
<i>Laid before the Scottish Parliament</i>		<i>10th October 2013</i>
<i>Coming into force</i>	- -	<i>25th November 2013</i>

The Scottish Ministers make the following Regulations in exercise of the powers in sections 80 and 113(1) and (2) of, and paragraph 1 of Schedule 2 to, the Local Government Finance Act 1992(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Council Tax Reduction (Scotland) Amendment (No. 4) Regulations 2013 and come into force on 25th November 2013.

Amendment of the Council Tax Reduction (Scotland) Regulations 2012

2. The Council Tax Reduction (Scotland) Regulations 2012(b) are amended in accordance with regulations 3 to 11.

3. In regulation 2(1) (interpretation)(c)—

(a) in the definition of “child”, at the end insert—

“and where section 145A of the 1992 Act(d) (entitlement after death of a child or qualifying young person) applies, then during the period prescribed under subsection (1) of that section (and only during that period)—

(a) references in these Regulations to a child include the child in respect of whom there is entitlement under that section; and

(b) for the purposes of these Regulations the circumstances pertaining to the child at the date of their death are deemed to continue throughout that period”; and

(b) omit the definitions of “child care costs element” and “housing costs element”.

(a) 1992 c.14. Section 80 was amended by paragraph 176 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39) and S.I. 2013/388. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.S.I. 2012/303, amended by S.S.I. 2013/48, S.S.I. 2013/142 and S.S.I. 2013/218.

(c) There are amendments to regulation 2(1) that are not relevant to these Regulations.

(d) Section 145A was inserted by section 55 of the Tax Credits Act 2002 (c.21) and amended by paragraph 48 of Schedule 24 to the Civil Partnership Act 2004 (c.33) and paragraph 12 of Schedule 1 to the Child Benefit Act 2005 (c.6).

4. In regulation 4 (young persons)(a), after paragraph (2) insert—
 - “(3) Where section 145A of the 1992 Act(b) (entitlement after death of a child or qualifying young person) applies, then during the period prescribed under subsection (1) of that section (and only during that period)—
 - (a) references in these Regulations to a young person include the young person in respect of whom there is entitlement under that section; and
 - (b) for the purposes of these Regulations the circumstances pertaining to the young person at the date of their death are deemed to continue throughout that period.”.
5. In regulation 12(1)(b) (application of the Regulations), after “income support,” insert “universal credit,”.
6. In regulation 23 (applicable amount: persons who have an award of universal credit)(c)—
 - (a) in paragraph (1) for “adjustments described in paragraphs (2) (if applicable) and” substitute “adjustment described in paragraph”; and
 - (b) omit paragraph (2).
7. In regulation 26 (calculation of income and capital: persons who have an award of universal credit)—
 - (a) in paragraph (2) after “Secretary of State” insert “to convert it into a weekly amount using the adjustment set out in regulation 23(2A) and must then further modify the weekly amount”;
 - (b) for paragraph (2)(a) substitute—
 - “(a) as income, the amount of any universal credit payable converted into a weekly amount using the adjustment set out in regulation 23(2A);”;
 - (c) omit sub-paragraphs (b), (c) and (d) of paragraph (2); and
 - (d) omit paragraph (3).
8. In regulation 28 (treatment of child care charges)(d)—
 - (a) at the start of paragraph (1) insert “Subject to paragraph (1A),”; and
 - (b) after paragraph (1) insert—
 - “(1A) This regulation does not apply where an applicant or an applicant’s partner has, or the partners jointly have, an award of universal credit.”.
9. In the heading to regulation 32, omit “working”.
10. In regulation 32 (calculation of average weekly income from tax credits)—
 - (a) in paragraph (1) after “working tax credit” insert “or child tax credit”;
 - (b) in paragraph (2) omit “Where this regulation applies,”; and
 - (c) in paragraphs (2) and (3) for “a working” substitute “that”.
11. In paragraph 1 (amount of alternative maximum council tax reduction)(e) of Schedule 2, in item (a) in column (1) in the table omit “or in receipt of universal credit”.

(a) Regulation 4 was amended by S.S.I. 2013/48.
(b) Section 145A was inserted by section 55 of the Tax Credits Act 2002 (c.21) and amended by paragraph 48 of Schedule 24 to the Civil Partnership Act 2004 (c.33) and paragraph 12 of Schedule 1 to the Child Benefit Act 2005 (c.6).
(c) Regulation 23 is amended, and paragraph (2A) inserted, by S.S.I. 2013/48.
(d) There are amendments to regulation 28 that are not relevant to these Regulations.
(e) There are amendments to paragraph 1 that are not relevant to these Regulations.

Amendment of the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012

12. The Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012(a) are amended in accordance with regulations 13 to 18.

13. In regulation 2(1) (interpretation)—

(a) in the definition of “child”, at the end insert—

“and where section 145A of the 1992 Act(b) (entitlement after death of a child or qualifying young person) applies, then during the period prescribed under subsection (1) of that section (and only during that period)—

(a) references in these Regulations to a child include the child in respect of whom there is entitlement under that section; and

(b) for the purposes of these Regulations the circumstances pertaining to the child at the date of their death are deemed to continue throughout that period”; and

(b) after the definition of “the Trusts” insert—

““universal credit” has the meaning given by section 1 of the Welfare Reform Act 2012(c);”.

14. In regulation 4 (young persons)(d), after paragraph (2) insert—

“(3) Where section 145A of the 1992 Act(e) (entitlement after death of a child or qualifying young person) applies, then during the period prescribed under subsection (1) of that section (and only during that period)—

(a) references in these Regulations to a young person include the young person in respect of whom there is entitlement under that section; and

(b) for the purposes of these Regulations the circumstances pertaining to the young person at the date of their death are deemed to continue throughout that period.”.

15. In regulation 12(2) (application of the Regulations), after “income support,” insert “universal credit,”.

16. In the heading to regulation 30, omit “**working**”.

17. In regulation 30 (calculation of average weekly income from tax credits)—

(a) in paragraph (1) after “working tax credit” insert “or child tax credit”;

(b) in paragraph (2) omit “Where this regulation applies,”; and

(c) in paragraphs (2) and (3) for “a working” substitute “that”.

(a) S.S.I. 2012/319, amended by S.S.I. 2013/49, S.S.I. 2013/142 and S.S.I. 2013/218.

(b) Section 145A was inserted by section 55 of the Tax Credits Act 2002 (c.21) and amended by paragraph 48 of Schedule 24 to the Civil Partnership Act 2004 (c.33) and paragraph 12 of Schedule 1 to the Child Benefit Act 2005 (c.6).

(c) 2012 c.5.

(d) Regulation 4 was amended by S.S.I. 2013/49.

(e) Section 145A was inserted by section 55 of the Tax Credits Act 2002 (c.21) and amended by paragraph 48 of Schedule 24 to the Civil Partnership Act 2004 (c.33) and paragraph 12 of Schedule 1 to the Child Benefit Act 2005 (c.6).

18. In paragraph 1 (amount of alternative maximum council tax reduction)(**a**) of Schedule 5, in item (a) in column (1) in the table omit “or in receipt of universal credit”.

JOHN SWINNEY

A member of the Scottish Government

St Andrew’s House,
Edinburgh
8th October 2013

(a) There are amendments to paragraph 1 that are not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Council Tax Reduction (Scotland) Regulations 2012 (“the principal CTR Regulations”) and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (“the SPC CTR Regulations”).

Regulations 3 and 4 provide for the operation of references in the principal CTR Regulations to a child or a young person in situations where a child or young person has died, but child benefit continues to be payable for a period of time. Regulation 3 also omits two definitions that are made otiose by other amendments made by these Regulations.

Regulation 5 amends the principal CTR Regulations to provide that they apply to persons who have attained the qualifying age for state pension credit in cases where that person or their partner is in receipt of universal credit.

Regulations 6 to 8 amend the principal CTR Regulations to take account of the manner in which universal credit will be provided and operate. In particular they address the possibility that the exact amount of the housing costs element of a universal credit award may not be readily identifiable by a local authority when that local authority is considering an application for a council tax reduction.

Regulations 9 and 10 provide that where an applicant receives a child tax credit, the period over which it is to be taken into account in the principal CTR Regulations is calculated in the same manner as is applied to a working tax credit.

As a result of the change made by regulation 11, an alternative maximum council tax reduction of 25 per cent of the daily council tax will no longer be determined where second adults who reside with an applicant are in receipt of universal credit. The effect is that instead the universal credit will be taken into account as income and entitlement to a council tax reduction determined accordingly.

Regulations 13 and 14 make provision for the operation of references to a child or a young person in the SPC CTR Regulations equivalent to that made by regulations 3 and 4 in relation to the principal CTR Regulations. Regulation 13 also inserts a definition of universal credit.

Regulation 15 provides that the SPC CTR Regulations do not apply to persons if they or their partner is in receipt of universal credit. An application by such a person would be progressed under the principal CTR Regulations, as a result of the amendment made by regulation 5.

Regulations 16 and 17 make provision for child tax credits in the SPC CTR Regulation equivalent to that made by regulations 9 and 10 in relation to the principal CTR Regulations.

Regulation 18 makes provision for universal credit in the SPC CTR Regulation equivalent to that made by regulation 11 in relation to the principal CTR Regulations.

Welfare Reform Committee

18th Meeting, 2013 (Session 4), Tuesday, 12 November 2013

Council Tax Reduction (Scotland) Amendment (No.4) Regulations 2013 (SSI 2013/287)

1. The Scottish Government laid the Council Tax Reduction (Scotland) Amendment (No.4) Regulations 2013 (SSI 2013/287) before the Parliament on 10 October. The Regulations are enclosed with this note, along with the accompanying Policy Note (Annexe A) and EQIA (Annexe B).
2. The Regulations make further amendments to the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 and the Council Tax Reduction (Scotland) Regulations 2012.
3. The Regulations amend various provisions for the calculation of council tax reduction in cases where an applicant is in receipt of Universal Credit, in advance of the start of the roll-out of that benefit in Scotland by the Department for Work and Pensions later this year. For example, the Council Tax Reduction (Scotland) Regulations require to be amended so that they apply to persons who have attained the qualifying age for state pension credit, but where that person or their partner is in receipt of Universal Credit.
3. In addition, the Regulations also address a few minor issues within the principal Regulations. An example is the insertion of provision for the operation of references to a child and a young person in situations where a person is deceased, but child benefit continues to be payable for a period of time.
4. The Policy Note confirms that all the amendments are consistent with the original policy intention of the schemes in the principal 2012 Regulations (paragraph 6 of the Note).
5. The Regulations are subject to the negative procedure. They will come into force on 25 November 2013.

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform Committee considered the Regulations at its meeting on 5 November 2013.
7. In relation to the Council Tax Reduction (Scotland) Amendment (No.4) Regulations 2013 (SSI 2013/287), the Convener proposed that the Committee considers that the Regulations may raise a devolution issue and should be drawn to the attention of the Parliament on that basis. The proposal was disagreed to by

division (For 3, Against 4, Abstentions 0). Further information on the Committee's consideration is available in the Official Report.¹

Recommendation

8. The Committee is invited to consider and note the Regulations.

¹ Scottish Parliament Delegated Powers and Law Reform Committee. Official Report, 5 November 2013, Col 1121-1123
<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8601&mode=pdf>

ANNEXE A

POLICY NOTE

THE COUNCIL TAX REDUCTION (SCOTLAND) AMENDMENT (No.4) REGULATIONS 2013 (SSI 2013/287)

1. The above instrument is made in exercise of the powers conferred by sections 80 and 113 of, and paragraph 1 of Schedule 2 to, the Local Government Finance Act 1992. It is subject to the negative procedure.

Policy Objective

2. The UK Government's abolition of Council Tax Benefit from April 2013 included a transfer of funding to allow the Scottish Government to take over responsibility for addressing the difficulties which persons on low income or who are otherwise vulnerable might face in meeting liability to Council Tax. The Scottish Government provided for a Council Tax Reduction Scheme for such people, which provides that their liability to Council Tax is lower than it would otherwise have been.

3. The scheme operates by reducing liability, which it is within devolved competence to provide, rather than by providing a replacement social security benefit to meet liability (which would be reserved to Westminster under the current devolution settlement). The Council Tax Reduction (Scotland) Regulations 2012 and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (jointly referred to as "the principal Regulations") came into force on 28 January 2013.

4. This instrument amends the principal Regulations. In particular, it amends the provision in the Council Tax Reduction (Scotland) Regulations 2012 for calculation of Council Tax Reduction in cases where an applicant is in receipt of Universal Credit, in advance of the start of Universal Credit roll-out in Scotland by the Department for Work and Pensions (DWP) later this year.

5. These Regulations also address a small number of minor issues identified in relation to the Council Tax Reduction Scheme. An example is the insertion of provision for the operation of references to a child and a young person in situations where that person is deceased, but child benefit continues to be payable for a period of time. A similar provision was removed from the principal Regulations in response to concerns that its effect was unclear, and the revised provision seeks to address these concerns.

6. All of these amendments are consistent with the original policy intention of the Council Tax Reduction Scheme.

Consultation

7. Formal consultation was not considered to be necessary as these amendments do not alter the overall policy intention of the principal Regulations. However, the Scottish Government has worked with the Convention of Scottish Local Authorities, the Institute of Revenues, Ratings and Valuations, local authority revenues and benefits practitioners, local authority software suppliers, and the DWP in the development of these Regulations and in advance of the roll-out of Universal Credit in Scotland.

Financial Effects

8. The amount of Council Tax Reduction which an applicant receives is derived from their income less their deemed living expenses. The principal Regulations are amended to refine their mechanism for calculating Council Tax Reduction when an applicant is in receipt of Universal Credit, including how income from Universal Credit awards is treated.

Impact Assessments

9. The policy will have a potential equalities impact and therefore an Equalities Impact Assessment (EQIA) has been undertaken. A summary of the results of the EQIA has been made available on the Scottish Government's website. Equalities impacts are being continually reviewed and evaluated during the implementation of the Council Tax Reduction Scheme this year.

10. As the policy has no direct impact on business or the third sector, or on the environment or environmental issues, neither a Business and Regulatory Impact Assessment (BRIA) or a Strategic Environmental Assessment (SEA) is required.

11. Implementation of the Council Tax Reduction Scheme will involve the use and storage of personal data, such as date of birth and postcode of Council Tax Reduction recipients. This data will be supplied to the Scottish Government by local authorities. In order to ensure the risks involved in transferring, processing and storing this data are assessed, and kept to a minimum, a Privacy Impact Assessment has been carried out, including a Risk Identity checklist.

Local Government and Communities

Scottish Government

October 2013

ANNEXE B**EQUALITY IMPACT ASSESSMENT – RESULTS**

Title of Policy	Council Tax Reduction scheme in Scotland: 2013/14
Summary of aims and desired outcomes of Policy	Introduction of Council Tax Reduction scheme in Scotland to follow the abolition of Council Tax Benefit from 1 April 2013. The policy intention is to ensure, as far as possible, that no CTB claimant is disadvantaged during 2013/14 as a result of the abolition of Council Tax benefit.
Directorate: Division: team	Local Government & Communities: Local Government: Council Tax Unit

Executive summary

The overall intention of Scottish Government policy is to introduce measures to reduce the Council Tax liability of persons who have a low income, in order to ensure that, as far as possible, no Council Tax Benefit (CTB) claimant is disadvantaged as a result of the abolition of CTB from April 2013. This will be achieved by establishing a national schedule of reliefs to be administered by local authorities, and those currently in receipt of CTB will receive an equivalent reduction in liability for Council Tax (provided that their circumstances remain the same) to the support that they would have received by way of CTB.

This EQIA has considered the impacts of this policy approach against alternative approaches for successor arrangements to Council Tax Benefit, such as passing on cuts in funding to recipients. It has explored the potential impacts of policy implementation on the Protected and other groups. The EQIA has identified positive impacts on certain Protected groups (Age, Disability and Gender) and has identified potential future data-collection requirements to enable monitoring of the impact of implementation and to inform policy development for future years. The EQIA has not altered the policy intention to maintain the protection afforded to vulnerable groups.

This process has highlighted particular areas within preparations for implementation where we wish to explore with local authorities issues such as how best to promote awareness of the impending changes to Council Tax Benefit, how to identify potential barriers to access, and how to ensure access arrangements take into account the needs of potential applicants with specific support requirements.

Background

As part of the UK Government Welfare Reform Act 2012, the existing Council Tax Benefit – which supports vulnerable people in meeting their Council Tax liabilities – will be abolished from April 2013. Responsibility for delivering future Council Tax support will be ‘localised’ to English local authorities and to the Welsh Assembly and Scottish Governments. The Scottish Government will receive a transfer of funding

from the UK Government, cut by 10% from forecast 2013/14 levels, to support delivery of future support arrangements.

In Scotland, a national schedule of reliefs, to be known as 'Council Tax Reductions' (CTR), will be established in legislation and will be administered by local authorities. Existing recipients of CTB will receive an equivalent reduction in liability for Council Tax (provided that their circumstances remain the same) to the support that they would have received by way of CTB. This will ensure that no individual is disadvantaged by UK funding cuts for Council Tax Benefit successor arrangements in 2013/14, provided their circumstances remain the same.

This policy will contribute to delivery of several National Outcomes, including:

- Our children have the best start in life and are ready to succeed.
- We have tackled the significant inequalities in Scottish Society.
- We have improved the life chances for children, young people and families at risk.
- Our people are able to maintain their independence as they get older and are able to access appropriate support when they need it.

The Scope of the EQIA

Officials examined current data identifying the effects of existing Council Tax Benefit and its administration on the Protected Groups, and considered potential future impacts of the new Council Tax Reductions.

While the policy intention is to protect current entitlement to support, the EQIA also assessed the potential impact of alternative approaches, as well as seeking to identify gaps in existing data on current policy. The intention is to continue to explore existing data, and how impacts following implementation could be monitored. This will inform mitigation of any negative impacts which may emerge, and inform future policy development for subsequent provision of support.

A number of sources of evidence have helped us assess the likely impacts of policy introduction, including:

- Current administrative data from the UK Department for Work and Pensions (DWP)
- Surveys and statistical data about income and poverty e.g. from the Scottish Household Survey (SHS), Family Resources Survey (FRS) and Life Opportunities Study (LOS)
- Other equality impact assessments (e.g. the UK Department for Communities and Local Government's EQIA on Localising Council Tax support, the Scottish Government's EQIA on the Scottish Community Support Fund)
- Other research (e.g. The Scottish Government's report The Position of Scotland's Equality Groups: Revisiting Resilience in 2011, the Joseph Rowntree Foundation 'findings' series on council tax)
- Future evidence and administrative data from local authorities relating to the 2013/14 system
- Current and ongoing data collection on the Council Tax base

We have not undertaken external consultation as part of this EQIA but throughout policy development we have worked closely with local authority representatives, practitioners, professional bodies and software suppliers.

We have also engaged with the Scottish Government's Welfare Reform Scrutiny Group and Housing Benefit Advisory Group. We will continue this engagement during implementation.

Key Findings

Some positive impacts have been identified for the Age, Disability and Gender groups, based on comparison with potential policy alternatives. These covered both potential alternative approaches to Council Tax Reductions in Scotland (for example, a decision not to mitigate the funding gap for 2013/14) and comparison with changes elsewhere in the UK.

There are limits to some of the data available at this time, because the introduction of Council Tax Reductions is a new policy – therefore any potential unintended consequences are necessarily more likely to become apparent during implementation when support is delivered during 2013/14. This exercise has informed consideration of and planning for information-gathering following introduction, which in turn will assist with further examination of any unforeseen effects which may emerge – both positive or negative.

Recommendations and Conclusion

As noted above, the aim of the policy is to mitigate the potential negative impacts of a 10% cut in UK Government funding for Council Tax Benefit successor arrangements and to ensure protection for vulnerable groups in meeting their Council Tax liability is maintained. This will be achieved by establishing a national schedule of reliefs, which will be administered by local authorities as reductions to individuals' Council Tax liabilities. The intention is to protect current recipients of support – who, as comprising a majority of people from lower income deciles, are those least able to bear the burden of having to pay more towards their Council Tax liability.

This EQIA has not altered the policy intention to mitigate the funding gap for Council Tax support in 2013/14, but it has assisted in identifying potential future data needs, gaps in existing data which we would wish to try and address, and considerations around implementation for us to explore with local authorities.

Possible future data monitoring and reporting arrangements have still to be discussed with local authorities, who will be responsible for administering the new system of Council Tax Reductions. However, it is anticipated that local authorities themselves would also wish to assess the impacts of new Council Tax Reduction arrangements in their own areas. We therefore intend to work with local authorities to consider how experience and information gathered from the first year of CTR might inform future policy development beyond April 2013, as well as assisting in identification and mitigation of any unforeseen impacts.