



PREVENTING HOMELESSNESS IN SCOTLAND

Recommendations for legal duties
to prevent homelessness: A report
from the Prevention Review Group

FEBRUARY 2021

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Becoming homeless is one of the most damaging situations someone can find themselves in. There is a moral imperative to prevent homelessness, and it is often much easier to prevent than to fix.

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Forewords

Foreword – Professor Suzanne Fitzpatrick, chair of the Prevention Review Group

Scotland is rightly proud of having some of the best homelessness legislation in the world. Yet too many people experience the trauma and indignity of homelessness and the disruption that can be associated with spending lengthy periods of time in temporary accommodation.

Beginning in late 2019, the Prevention Review Group has taken forward the work carried out by the Homelessness and Rough Sleeping Action Group and the subsequent Scottish Government / COSLA Ending Homelessness Together Action Plan, to recommend new legal duties on local authorities and other public bodies to prevent homelessness.

Research shows at least 8% of the Scottish population has experienced homelessness – a proportion that together we can and must reduce.

While we have strong protections in place to help individuals and families when they are at imminent risk of losing their home, we have laid far less emphasis to date on effective work to prevent homelessness happening in the first place. This means it is all too common for someone to reach crisis point before they get the help they need.

It was this need to act earlier and prevent people from ever having to experience the trauma of homelessness, which drove the work of the Prevention Review Group.

Our work was guided by three principles: that there should be a collective responsibility across public services to prevent homelessness; that intervention to prevent homelessness should start as soon as possible; and that those at risk of homelessness should have greater choice in where they live and access to the same options as other members of the public.

Strongly influenced by the Prevention Commission, a group of people with lived and frontline experience of homelessness, and shaped by expertise from stakeholders across a wide range of sectors, the recommendations in this report hold the potential to radically change the face of the homelessness system in Scotland.

Central to the report is the need for relevant public bodies to *ask* about people's housing situations to

identify any issues at an early stage, to *act* where a problem is identified, and *work together*, to prevent homelessness wherever possible.

The report contains a range of recommendations, putting collective action at the forefront of assistance, and the experience of people facing homelessness at the centre of the process. Together these form a coherent package of measures which hold the potential to protect people from homelessness.

Scotland has laid down some of the strongest protections anywhere in the world for people facing a homelessness crisis. The work in this report sets out the next step, to prevent people having to face these crises in the first place. We need this twin-pronged approach if we are to move closer to our shared goal of ending homelessness in Scotland.

Foreword – Lisa Punton, Prevention Commission Member

Having worked in the sector for more than 10 years it was a joy to be able to work on the Prevention Commission and contribute to this report of the Scotland Prevention Review Group.

Over the years I have become increasingly frustrated with the existing legislative framework. In providing such a strong safety net for people experiencing homelessness something of what we were trying to achieve, which is to prevent homelessness, was lost. Similarly, the policy recognition that homelessness is often the failing of all services and public policies, and the role of other public bodies in preventing it, is long overdue.

Having lived experience in this process was crucial, whilst we often think we know how good our systems and processes are, those who have experienced them can tell us how they truly impact on their lives amid crisis and trauma.

For me this was powerful. It challenged my thinking in some areas but also affirmed it in others, which was reassuring as a service provider. If we really want to end homelessness those with lived experience must always have a seat at the table. I also met some lovely people and hope to stay in touch with them.

Executive summary

Scotland has historically had some of the strongest homelessness legislation in the world. But at least 8% of the Scottish population have experienced homelessness. This figure can and must be reduced so that as few people as possible have to experience the trauma and indignity of homelessness.

The independent Prevention Review Group (PRG) was set up at the request of Scottish Government to take forward work on preventing homelessness identified by the independent Homelessness and Rough Sleeping Action Group and the subsequent Scottish Government / COSLA *Ending Homelessness Together Action Plan* published in 2018. The Group's task was to identify legal duties on local authorities and other public bodies to prevent homelessness.

The Group was chaired by Prof Suzanne Fitzpatrick of Heriot-Watt University and included local authority bodies and representatives from the housing and homelessness sectors and from health and social care. A wide-ranging consultation process was carried out, involving around 100 organisations from different sectors.

The Group was supported by the Prevention Commission, a group of people with lived and frontline experience of homelessness, who met regularly during the lifetime of the PRG to discuss and shape the proposals. They emphasised the importance of choice and control for people facing homelessness, and of services working in partnership with them to find out what assistance they need to address their situation.

The Group's foundational principles were that

- There should be a collective responsibility across public services to prevent homelessness
- Intervention to prevent homelessness should start as early as possible
- People facing homelessness should have an appropriate degree of choice in where they live and access to the same accommodation options as other members of the public, with protections in place to prevent them from becoming homeless again.

Duties on wider public bodies

There should be a shared public responsibility to ensure no one ends up without a roof over their head. Effective homelessness prevention requires action as early as possible. People facing housing difficulties may be involved with various services before they make contact with housing or homelessness service, providing potential opportunities to act early. Health and social care services, children's services, police and prisons may all work with people who are at risk of homelessness, as well as social and private landlords, providing opportunities to identify issues early and intervene.

Public bodies should:

- Ask about people's housing situations to identify any issues at an early stage
- Act where a problem is identified, so that people get the right support to prevent homelessness. This might be by acting within their own powers or referring on to more appropriate help
- Work together so that no one leaves an institution such as prison or hospital without somewhere to sleep that night

Specific recommendations are made for relevant public bodies and for social and private landlords based on these principles.

Notably, the Group have made recommendations in these priority areas:

- Health and social care partnerships should co-operate with the local authority to plan for the needs of applicants for homelessness assistance who may have health and social care needs
- Where people needing homelessness assistance have complex needs requiring input from multiple services, a case co-ordination approach should be put into place
- 16 and 17 year olds who are at risk of homelessness should be assisted by children's services rather than adult services
- Recommendations in relation to support for victims of domestic abuse include:

- o Support and security measures to remain safely in their own home where this is their preference
- o Access to free legal aid to get an exclusion order to prevent them losing their home, if this is appropriate for them
- o Social landlords should put in place protocols to address housing issues relating to domestic abuse

Requirements for effective strategic planning by all the relevant services, including the local authority, health and social care partnerships and other community planning partners will help join up services and provide a coherent approach to homelessness prevention. The National Performance Framework should have an emphasis on enabling people to live successfully in their housing to minimise homelessness.

Reforming the homelessness legislation

Local authorities have expressed concern about how to do effective homelessness prevention within the current statutory framework, particularly after the critical 2014 Housing Options report from the Scottish Housing Regulator. Recently in Wales, and subsequently in England, new legislation has been developed to strengthen the homelessness framework in those nations so that there is much more emphasis on helping people at an early stage, so that they don't lose their homes at all, or are rehoused rapidly without having to have the lived experience of homelessness.

The PRG have developed a comprehensive set of proposals which, if enacted, would transform the homelessness system to focus on helping individuals as early as possible so that as few people as possible lose their homes and face the trauma and indignity of homelessness, and avoid the disruption of having to move into temporary accommodation. The homelessness system should become the last resort safety net it was intended to be, with most people helped well before they reach that acute crisis stage.

Such a system would be based on partnerships at operational and strategic level, with prevention work starting from six months away from losing accommodation, giving applicants greater choice and control, while having strong protections in

place to so that the accommodation secured to resolve their housing problems is both settled and suitable for their specific needs.

The recommendations of the Group seek to achieve the following:

- 1) Clarify, strengthen and extend a duty to prevent homelessness, and integrate it within the main statutory framework, so that local authorities assist anyone threatened with homelessness in the next six months.
- 2) Prescribe a range of reasonable steps to be used to prevent or alleviate homelessness, based on the existing Housing Options framework. These steps are to be included in a personalised and tailored housing plan that enhances applicants' choice and control. Where applicants have housing support needs these should be assessed and met.
- 3) Ensure the service meets the needs of specific groups at risk of homelessness by working with other services and partners, including for those experiencing domestic abuse, and those leaving prison, care and other institutions, those facing a threat of homelessness living in the private rented sector.
- 4) Ensure people requiring assistance to prevent or alleviate homelessness are assisted into accommodation which is available for a minimum of 12 months and suitable to their needs, with appropriate safeguards to ensure that homelessness does not reoccur. This would allow a wide range of accommodation options, allowing people choice and control insofar as possible.
- 5) Provide clarity and accountability in the system, giving people appropriate and effective rights of reviews and challenge throughout the process. There should be a comprehensive right to request a review of decisions at all stages of the process. Where the applicant is still not content with the outcome, they should have a right to challenge decisions through the Housing and Property Tribunal.

A full list of recommendations is included at the end of the main report. Draft legislative clauses are included at appendix 1 which set out the Group's intention in detail.



Introduction

Background to the Group

Homelessness has rightly gained increasing focus in recent years. In autumn 2017 First Minister Nicola Sturgeon commissioned the Homelessness and Rough Sleeping Action Group (HARSAG) to identify recommendations to tackle rough sleeping, reduce the use of temporary accommodation and, ultimately, to end homelessness in Scotland. HARSAG, as it became known, published its final set of recommendations in June 2018.

They noted that “The culture we are proposing places the homeless person or household at the centre and ensures that all professionals are working together in the interests of that person not becoming homeless or having their homelessness resolved quickly and sustainably if they do become homeless”¹. Prevention of homelessness was a strong and recurring theme throughout their work, in recognition of the importance of stemming the flow of people into homelessness in the first place. Relevant recommendations are set out in Appendix 3 and include the following:

Legislate for a new prevention duty that brings the “Housing Options” approach into the heart of the statutory homelessness framework – so that outcome-orientated preventative practice can be better regulated, and also encouraged, as local authorities engaging in good preventative work will no longer be exposed to legal challenge. Extend robust preventative duties to other public bodies, Housing Associations and other organisations commissioned by public bodies to deliver homelessness and associated services².

Specific reference was made to examining the recent experiences of changes to homelessness legislation in both England and Wales, which now place a strong emphasis on preventing homelessness.

The initial action plan on ending homelessness published jointly by Scottish Government and COSLA in response to HARSAG’s recommendations³ stated:

We will work with public bodies, housing providers and other partners to develop a new duty on local authorities, wider public bodies and delivery partners for the prevention of homelessness...

We will ensure local authorities, housing providers and public bodies work together to prevent homelessness and rough sleeping at every opportunity. As part of the development of the prevention duty..., we will work with expert practitioners, public bodies and housing providers to develop the ways in which they can support those they come into contact with at an early stage to prevent them becoming at risk of homelessness...

Our work to develop a new wide-ranging prevention duty will help drive better join up in planning, resourcing and delivery. (p23, p37, p39)

The task

The Scottish Government asked Crisis to convene an independent group of experts chaired by Professor Suzanne Fitzpatrick of Heriot-Watt University in order to develop legislative proposals to prevent homelessness. Group members were identified jointly by the chair, Scottish Government and Crisis. The Group membership is listed at Appendix 4. The secretariat was provided by Crisis staff.

Following on from the recommendation made by HARSAG, and the action in the joint Scottish Government and COSLA Ending Homelessness Together High Level Action Plan, the Group set out the task as follows:

“the working group will develop recommendation to the Scottish Government for a legal duty or duties on Scottish local authorities and wider public bodies to prevent homelessness. The Group will also provide advice on how to ensure the recommendations are successfully implemented in the context of wider reforms to homelessness provision in Scotland”.

The Group has been specifically tasked to address legal duties to prevent homelessness. Effective legal duties can create enforceable protections for individuals, drive the allocation of resources, set expectations, shape incentive structures, and propel positive cultural change. On the other hand, where legal duties are unclear they can create barriers to effective practice.

Structure of report

Below we discuss the current policy and legislative context for homelessness prevention in Scotland, England and Wales, and look briefly at the statutory role of other public bodies. We go on to set out how we approached the work, including our foundational principles.

The main body of this report is structured into two parts. The first addresses the role of public bodies and landlords outwith the homelessness framework to ensure that opportunities are taken to prevent homelessness before this reaches crisis point, and makes proposals for legal requirements to act so that as few people as possible find themselves without somewhere to live. The second part focuses on reforming the current statutory framework on homelessness to give greater priority to preventing homelessness.

Policy and legislative context

Homelessness prevention across Great Britain

The Group began its work by examining the current situation in Wales⁴ and in England⁵ following the implementation of their new legislation. Alongside HARSAG, both Shelter Scotland and Crisis have made recommendations in recent years to consider a similar approach to the Welsh prevention duty in Scotland⁶. Calls for action to involve wider public bodies in homelessness prevention go even further back⁷.

The intention was to draw on the best of those new statutory processes to improve prevention work for people at risk of homelessness, whilst building on the vital strengths of the existing Scottish system. The Group is clear that, while there are lessons to learn from these provisions, they operate in a very different context, with the continued use of the priority need test, and particularly in parts of England, extreme pressures on the housing market, and the provisions do not fully reflect the intent of the Group. For instance, it is clear that the duties in Wales and England on wider public bodies to co-operate and to refer to local authority homelessness services respectively need to be strengthened to make them more effective. A table comparing the current duties in Wales, England and Scotland, and the proposed duties for Scotland are included at Appendix 2.

Rates of homelessness across the three nations

Scotland consistently has a much higher rate of homelessness acceptances compared to England and Wales, as shown in the diagram below⁸. Around 11 in 1000 Scottish households each year,

1 HARSAG (2018) Ending Homelessness The report on the final recommendations of the Homelessness and Rough Sleeping Action Group, p2 <https://www.gov.scot/groups/homelessness-and-rough-sleeping-action-group/>

2 HARSAG (2018) Transforming the use of temporary accommodation in Scotland: an interim report on the activity of the Homelessness and Rough Sleeping Action Group, Recommendation 2

3 Scottish Government / COSLA (2018) Ending homelessness together high level action plan

4 Mackie, P., Fitzpatrick, S., Stirling, T., Johnsen, S., and Hoffman, S. (2012) Options for an Improved Homelessness Legislative Framework in Wales. Cardiff: Welsh Government; Fitzpatrick, S. et al (2017) Homelessness Monitor: Wales 2017. Crisis; Ahmed, A, Wilding, M, Gibbons, A, Jones, K, Rogers, M, Madoc-Jones, I (2018) Post-implementation evaluation of Part 2 of the Housing Act (Wales) 2014: Final report

5 Crisis (2015) The homelessness legislation: an independent review of the legal duties owed to homeless people. London: Crisis; Fitzpatrick et al (2019) Homelessness Monitor England 2019; Crisis (2019) Crisis evidence to the Communities and Local Government Select Committee inquiry: One year on since the introduction of the Homelessness Reduction Act <https://old.parliament.uk/documents/commons-committees/communities-and-local-government/Crisis-written-evidence-HRA-one-year-on.pdf>

6 Shelter Scotland (2016) Homelessness: Far from fixed – Why Scotland needs a national homelessness strategy; Crisis (2018) Everyone In How to end homelessness in Great Britain

7 Shelter Scotland (2013) People not process: An action plan for the delivery of Scotland’s homelessness commitment

8 Fitzpatrick and Bramley: Homelessness and Complex Needs: Comparing Policies and Outcomes Across Great Britain. Powerpoint presentation

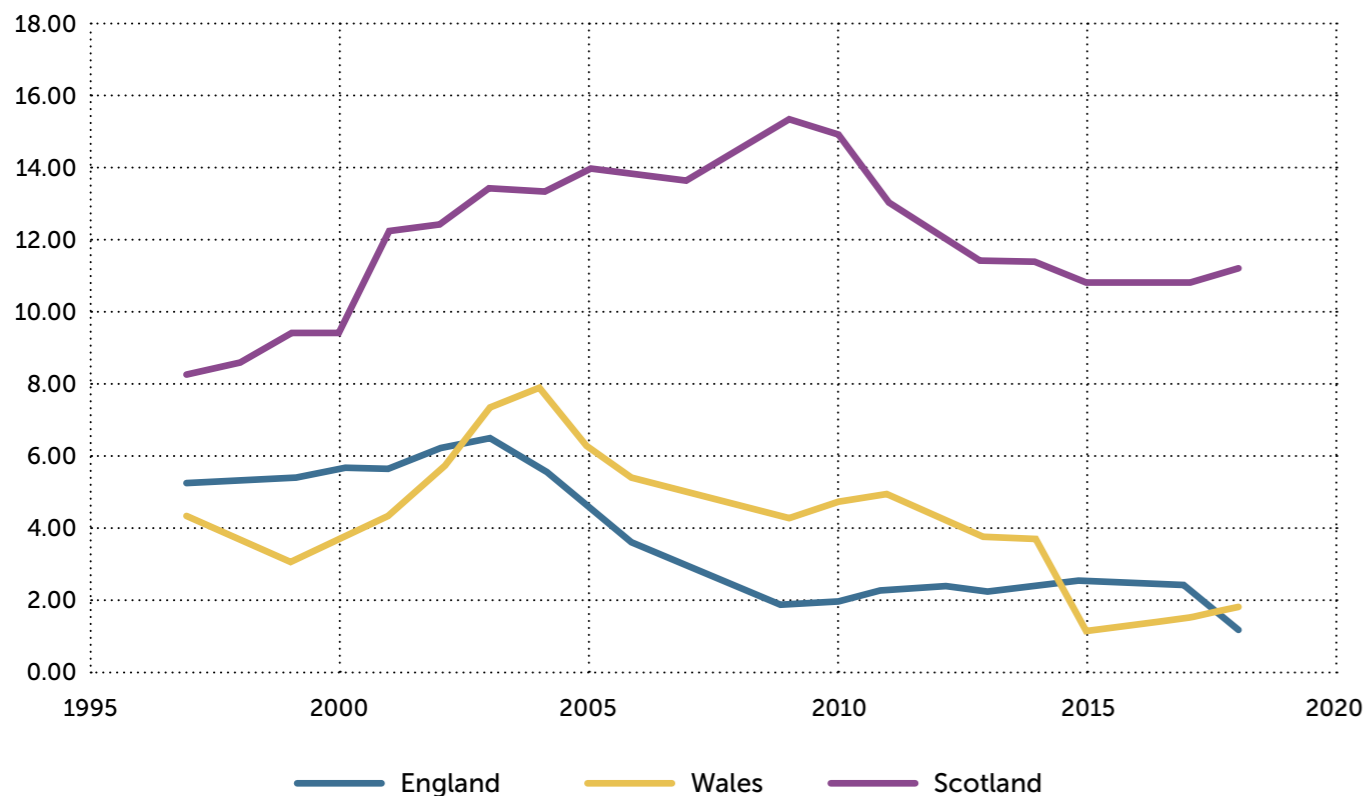
or one in every 90, are accepted as requiring homelessness assistance from their local authority. Some of this difference between nations relates to different levels of entitlement and support in each nation and over time, and specifically greater availability of support on becoming homeless in Scotland. Nevertheless, this suggests a concerning high part of the population in Scotland become homeless annually.

Notably, over the last two years there have been decreases in the rate of full homelessness acceptances in England and Wales, following the introduction of new prevention legislation there. This suggests that the legislation has led to the resolution of cases that otherwise would have ultimately lost their accommodation and had to apply for full homelessness assistance. Meanwhile Scotland has seen a slight increase in the rate

of people making homeless applications. The Scottish Government infers from this "that in its current form, the impact of housing options work is unlikely to lead to further large reductions in applications beyond those already seen"⁹.

The result of such high rates of homelessness applications and acceptances is very high use of temporary accommodation, with the number of households in such accommodation consistently around 11,000 at any one time, around three times the number of twenty years ago¹⁰. Most temporary accommodation placements are in social housing. In 2013 Audit Scotland estimated that it cost councils 75% more to accommodate people in temporary accommodation than it would have done to house them in a permanent home¹¹, while also reducing the amount of social housing available for permanent accommodation. Figures

Homeless priority need acceptances per 1000 households by country, 1997-2018



From Fitzpatrick and Bramley: Homelessness and Complex Needs: Comparing Policies and Outcomes Across Great Britain

9 Scottish Government (2018) Homelessness in Scotland 2017/18, p4

10 As a result of the COVID-19 pandemic, numbers in temporary accommodation have risen significantly, and stand at 14,229 at the end of September. Scottish Housing Regulator (2020) September monthly COVID dashboard

11 Audit Scotland (2013) Housing in Scotland

obtained from Freedom of Information requests in 2018 put the bill for temporary accommodation at £660m over five years¹². In human terms, at its worst, temporary accommodation can lead to a deterioration in people's physical and mental wellbeing¹³.

Meanwhile, over the past six years in England and Wales, legislation has been created to prevent homelessness by taking steps to intervene as early as possible for people at risk of homelessness. In these jurisdictions, this is particularly beneficial for those households not likely to be entitled to a full rehousing duty because they are not found to be in priority need. The legislation is contained within Part 2, Chapter 2 of the Housing (Wales) Act 2014¹⁴ and the Homelessness Reduction Act 2017¹⁵ (HRA) for England.

Following the introduction of the 2014 Act, two thirds (62%) of people who approached homelessness services in Wales in 2016/17 had their homelessness prevented, with 77% of this group assisted into alternative accommodation. 18 out of 22 local authorities say they are doing more prevention work, and that it is more inclusive, and 13 out of 22 also say it is now more effective¹⁶.

Since the introduction of the English Homelessness Reduction Act, the majority (54%) of people seeking assistance are threatened

with homelessness. Of the prevention cases that were closed in the last year, 58% secured accommodation for six months or more and so had their homelessness prevented. Some of this was in their existing accommodation, and some moving to other accommodation. 19% of these people became homeless and went on to the homelessness relief duty. This means that the local authority must take reasonable steps to help the applicant so that accommodation becomes available for six months¹⁷. For 9% contact was lost and 7% had no further action taken¹⁸.

Accommodation to prevent homelessness was secured in a range of accommodation types, primarily evenly split between the private and social sector: 42% were housed in social accommodation and 41% in private rented accommodation. A further 9% stayed with family, and 1% moved into owner occupation¹⁹.

In addition, the evaluations²⁰ of the impact of the new legislation in Wales and England suggest that it has led to a more proactive and person-centred culture, albeit implementation has not been as consistent or effective as might be desirable, and both countries remain inhibited by the continued priority need test, unlike Scotland. England in particular suffers from chronic housing shortages²¹ and affordability problems²² that are holding back

12 Goodwin, K, Geoghegan, P (2018) Councils paid £660m for temporary homeless accommodation, The Ferret, 17 August 2018 <https://theferret.scot/councils-half-billion-temporary-accommodation/>

13 Crisis (2018) I won't last long in here: Experiences of unsuitable temporary accommodation in Scotland; Watts, B, Littlewood, M, Blenkinsopp, J & Jackson, F 2018, Temporary Accommodation in Scotland: Final Report. Social Bite, Edinburgh.

14 <http://www.legislation.gov.uk/anaw/2014/7/part/2/chapter/2/enacted>

15 <http://www.legislation.gov.uk/ukpga/2017/13/contents/enacted>

16 Fitzpatrick, S. et al (2017) Homelessness Monitor: Wales 2017. Crisis

17 If the applicant is not in priority need, or is intentionally homeless, or if a decision has not been made on these, the relief duty may come to an end after 56 days if the local authority has taken reasonable steps to provide assistance. People will only receive interim accommodation if they are considered to be in priority need and therefore likely to be eligible for the main housing duty.

18 MHCLG (2020) Statutory Homelessness Annual Report, 2019-20, England https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/923123/Annual_Statutory_Homelessness_Release_2019-20.pdf and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/930561/StatHomeless_202006.ods

19 *ibid*

20 Ahmed, A, Wilding, M, Gibbons, A, Jones, K, Rogers, M, Madoc-Jones, I (2018) Post-implementation evaluation of Part 2 of the Housing Act (Wales) 2014: Final report; Shelter Cymru (2016) Reasonable steps: Experiences of homelessness services under the Housing (Wales) Act 2014; Fitzpatrick, S., Pawson, H., Bramley, G., Wilcox, S., Watts, B. & Wood, J. (2017) The Homelessness Monitor: Wales 2017; Fitzpatrick et al (2019) Homelessness Monitor England 2019; Crisis (2019) Crisis evidence to the Communities and Local Government Select Committee inquiry: One year on since the introduction of the Homelessness Reduction Act

21 Bramley, G (2018) Housing supply requirements across Great Britain for low income households and homeless people. Crisis / National Housing Federation

22 Analysis of Local Housing Allowance rates in 2019 showed that private sector accommodation was unaffordable in 97% of areas in England, compared to 82% of areas in Wales and 67% areas in Scotland. Basran J (2019) Cover the Cost: How gaps in Local Housing Allowance are impacting homelessness

the effectiveness of the HRA.

Since the introduction of legislation, there has been a drop in the number of homelessness acceptances in each country. In Wales in 2016/17 there was a 59% drop in full homelessness acceptances compared with 2014/15, from 5,070 households to 1,611 (the year before the legislation came into effect). In England homelessness acceptances dropped from 50,600 households in 2017/18 to 30,500 the following year, a fall of 46%, as the legislation came into effect and more people had their homelessness prevented.

This suggests that the introduction of prevention legislation in Scotland could allow a much greater proportion of people to seek assistance before they become homeless. This could lead to a reduction in the proportion of the Scottish population that needs to make an application to their local authority because they have become homeless, often with the resultant long periods in temporary accommodation and with significant associated financial and human costs. It could also support a more proactive and person-centred approach amongst local authority homelessness services.

Homelessness prevention in Scotland

Scotland rightly has a reputation for having strong rights for people who become homeless. The discharge of a local authority's duty to someone who is homeless is clear, to secure that accommodation becomes available for occupation.

This can be into one of two types of permanent accommodation:

- A Scottish secure tenancy in the social sector (or a short Scottish secure tenancy in certain circumstances)
- A private residential tenancy, or in the past, an assured tenancy (but not a short assured tenancy)

23 A homelessness application is not mentioned at this stage of the guidance, but there is a clear expectation that the local authority has a reasonable belief that there is a threat of homelessness and that this is not intentional, which suggests an investigation has taken place. The requirement to take a homelessness application was however clarified in the 2009 and 2016 guidance, see below. If the threat of homelessness is decided to be intentional then the local authority has the responsibility to provide advice and assistance to support attempts by the applicant to ensure accommodation does not cease to become available.

24 Paragraphs 2.15 and 8.43 of the 2019 update of the guidance (Paragraphs 2.15 and 9.42 of the 2005 guidance; Scottish Executive (2005) Code of Guidance on Homelessness

However, rights for those threatened with homelessness are less clear cut.

Under section 32(2) of the Housing (Scotland) Act 1987, if someone is threatened with unintentional homelessness in the next two months, then the authority must take "reasonable steps to ensure that accommodation does not cease to become available". The Homelessness Code of Guidance goes on to state:

The accommodation obtained for a person threatened with homelessness need not be his or her existing accommodation, although in practice this will often be the best option; assuming that it is reasonable for the applicant to continue to occupy it. If the local authority concludes that the loss of the applicant's present accommodation cannot be avoided, it should consider what duties it would have towards him or her if the person becomes homeless and act quickly to prevent homelessness – and particularly rooflessness – actually occurring. In either case, local authorities should intervene as early as possible.

If it is not possible to prevent the loss of the accommodation, the authority must ensure that other housing becomes available. Unless there is a change of circumstances the household will still be in priority need and unintentionally homeless and therefore this accommodation should be provided on a permanent basis^{23,24}.

The definition of what steps are reasonable is not explicit in legislation or the guidance, and it is not clear what duration and security of tenure is sufficient to sustainably resolve the homelessness risk. The role of applicant choice in accepting preventative measures or choosing to seek a new settled option through a homelessness application is also not clear. Thus, it is difficult for local authorities to know at what point their responsibility to prevent homelessness is discharged, or when their reasonable steps have

failed and its responsibility to secure settled accommodation arises²⁵.

Around 2010, the Housing Options agenda was developed in Scotland to support local authorities to prevent and alleviate homelessness more effectively, particularly in the context of abolishing the legal test of priority need. Housing Options has been noted as one of the most significant developments in homelessness policy in recent years, and has led to a significant reduction in the number of people needing to make homelessness applications²⁶. But a tension emerged between the non-statutory Housing Options approach and statutory homelessness framework, whereby actions to prevent homelessness were perceived as "gatekeeping" access to statutory assistance through a homelessness application. This has been widely highlighted, notably by the Scottish Housing Regulator in 2014²⁷, and more recently in a consultation to inform the work of HARSAG²⁸, and work by both Shelter Scotland and Crisis²⁹.

Clarification of guidance in 2016³⁰ means a local authority must take a homelessness application where anyone is threatened with homelessness in the next 56 days. However, in 2019/20, local authorities recorded less than 5% of homeless applications (1,737 households) being related to a threat of homelessness rather than current homelessness. For those unintentionally facing homelessness, only 1,260 returned to their current or previous accommodation, 5% of housing outcomes³¹.

At the same time, work on Housing Options is primarily being recorded as signposting to other services (54% of work), rather than a more proactive case management approach. The most common outcome of a Housing Options case is a homelessness application, accounting for 21,387 cases, or 50% of outcomes in 2018/19³².

HARSAG noted that "a prevention duty should place responsibility on public bodies and other allied organisations to work effectively together to prevent and relieve homelessness where someone is at risk of homelessness... In addition to this, existing powers should be used to reduce barriers to people getting the support they need so that people can be helped at the earliest opportunity and use of temporary accommodation can be reduced or eliminated... Implicit in many of the recommendations on prevention is the need to continue to build on the strengths of the Housing Options model, ensuring it is equipped and resourced to be accessible to all, flexible in relation to the needs of people who are homeless or at risk of homelessness."³³

Finally, the statutory definition of homelessness in Scotland is – rightly – defined very broadly. Only a very small proportion of homeless applicants sleep rough immediately before applying as homeless – 4% in 2019/20³⁴. Many people who are found to be homeless under the legal definition will not yet have left the accommodation which they are about to lose. For instance, a young person may have been told by their parents they have to leave by the end of the month, a

25 We refer to the local authority in this report. However, we acknowledge that under the Public Bodies (Joint Working) (Scotland) Act 2014 the responsibilities for homelessness under Part IV of the Housing (Scotland) Act 1987 discussed in this report may be delegated to the Health and Social Care Partnership. In practice, only a small number of areas have chosen to delegate responsibility for homelessness to the health and social care partnership, most notably in Glasgow.

26 Fitzpatrick, Pawson, Bramley, Wilcox and Watts (2015) Homelessness Monitor Scotland. Crisis

27 Scottish Housing Regulator (2014) Housing Options in Scotland: Thematic inquiry

28 Indigo House (2018) Scotland's transition to rapid rehousing: market area analysis, legislative and culture review

29 Shelter (2020) Public bodies and homelessness prevention: working towards a prevention duty; Dunn, L (2020) Rapid rehousing Transition Plans: A Scottish overview. Crisis

30 Scottish Government / COSLA (2016) Housing Options guidance, p27

31 Scottish Government (2019) Homelessness in Scotland 2018/19. Recording of "threatened with homelessness" applications varies widely across Scotland, from over 30% of applicants making an application before becoming homeless in East Dunbartonshire and Argyll & Bute, compared to no applicants being threatened with homelessness in Clackmannanshire, Inverclyde, Orkney or Shetland. In Edinburgh and Glasgow respectively, only 15 and 10 households are recorded as making an application prior to becoming homeless (0.5% and 0.2% of successful applicants). It may be that in recording the statistics local authorities do not clearly distinguish between threatened with homelessness applications and applications where people are already homeless. But this again suggests a lack of clarity on prevention action.

32 Scottish Government (2019) Housing Options (PREVENT1) Statistics in Scotland 2018/19

33 HARSAG (2018) Transforming the use of temporary accommodation, p5

34 Scottish Government (2020) Homelessness in Scotland 2019/20

couple have just split up but are still living in the same home, or someone may be living with an abuser. In these situations, people will often be statutorily homeless, but the accommodation may be saveable if appropriate steps are taken to ensure that it is a safe and appropriate place for them to remain living in it. Alternatively, it may be possible to help them smoothly move somewhere else without having to have the lived experience of becoming actually homeless, and particularly without having to go into temporary accommodation.³⁵

In summary, a change to the law is required in order to: clarify the place of homelessness prevention in the existing statutory homelessness framework, so that prevention is not perceived as gatekeeping; clarify what must be done to meet the duties; and to bring the law into line with best practice. Requiring activity further upstream will reduce the numbers of people losing their homes needlessly, as well as reducing use of temporary accommodation with its accompanying high costs relating to finance, pressure on social housing and impact on people's wellbeing. In addition, many people with statutory homelessness status may be in a situation where their current accommodation can be saved, or they can move in a planned way to a new settled place without requiring temporary accommodation with all the uncertainty, harm and stigma that may bring.

Co-operation to address homelessness

While there is a general duty in the Scottish homelessness legislation to co-operate, this is limited to local authorities, housing associations and social work services³⁶ and is not perceived as effective or enforceable. Local authority stakeholders consulted suggested that historically there has been greater recognition of the wider local authority's responsibilities in relation to homelessness, but more recently this focus has

reduced. They also noted missed opportunities to address homelessness, such as when social work notes someone as "not open to service" after trying to engage with them and subsequently the individual loses their home. This can mean that responsibility for tackling homelessness is left to the homelessness (or housing) department alone and / or after situations are escalated to crisis point.

The duties on housing associations were latterly supplemented by more enforceable duties, specifically a duty on private and social landlords to notify the local authority when a landlord takes eviction action, and a separate requirement on registered social landlords to house homeless applicants referred by the local authority³⁷. Like England and Wales, Scotland does not have a full duty on other public bodies to co-operate in individual cases to prevent homelessness³⁸.

In England, a proposal in the original draft of the Homelessness Reduction Bill for a duty on a wide range of public bodies to co-operate was amended during parliamentary process to a duty to refer. It applies to a wide range of bodies including prisons, Jobcentre Plus, social services, emergency departments and hospitals and the regular Armed Forces, requiring these bodies to refer anyone at risk of homelessness to refer them to the local authority homelessness service. It does not apply to housing associations or GPs. Research on the implementation of the English Act demonstrates the importance of public bodies working together, with 65% of service users in the case study research³⁹ engaging with at least one other service at the time of attending Housing Options. Research in Scotland has uncovered a similar pattern, with a peak of interactions with health services just before someone makes their first homelessness application⁴⁰.

Evidence from the Homelessness Monitor

35 This is what we understand by the Scottish Government's intention that "homelessness is ended" (Scottish Government 2018) Ending Homelessness Together High Level Action Plan), not that people never meet the statutory definition of homelessness, but that they do not lose their accommodation.

36 Section 38, Housing (Scotland) Act 1987

37 Section 11, Homelessness Etc. (Scotland) Act 2003; Section 5, Housing (Scotland) Act 2001

38 The range of public bodies likely to be involved in homelessness prevention sit across reserved and devolved powers. While the Scottish Government has the powers to create duties affecting some of the key public bodies, they do not have power to direct some government departments, notably DWP and Home Office, and change in these arenas will need to come from Westminster.

39 Crisis (2019) Crisis evidence to the Communities and Local Government Select Committee inquiry: One year on since the introduction of the Homelessness Reduction Act

40 Waugh et al (2018) Health and homelessness in Scotland

Scotland 2019 suggests that the necessary co-operation is not always happening. Only 8 out of 28 local authorities responding to the research said that their local Health and Social Care Partnership helps them prevent homelessness:

"...it's a failure of services, whether health or social work, to pick up the harm that's been done to that person at the time...and there's so many different opportunities to pick that up, until the person hits the homeless service. At that point in time, what they do need is somewhere to stay, but what's brought them there has been a series of trauma, and other incidents, that's had a detrimental effect on their mental health and wellbeing..."

(Independent key informant, 2018)

Even while services do not formally co-operate to assist homeless households, they may end up providing support to people facing homelessness, often through crisis support. As well as costs to housing and homelessness services, research suggests that the costs of failing to intervene to prevent homelessness often accrue to wider public bodies including health and criminal justice services, particularly through some of the more intensive and crisis services including A&E, acute inpatient admissions, mental health services and criminal justice services^{41,42}.

Approaching the work

The Prevention Review Group (PRG) were keen that the Group's work be transparent. Papers, briefings and updates were published online⁴³, and stakeholders were encouraged to contribute through a series of themed stakeholder engagement meetings, submitting written responses and through one to one meetings with the secretariat.

In total, over 100 stakeholders contributed to the thinking of the Group over a 12 month period between November 2019 and October 2020⁴⁴.

Stakeholders represented local authorities, Health and Social Care Partnerships, Scottish Government and related bodies and third sector organisations from homelessness, housing, domestic abuse, children and young people's services, health and social care and the criminal and community justice sectors. A full list is included at appendix 5.

The voices of people with lived and frontline experiences were recognised as particularly important. To that end, Crisis asked Homeless Network Scotland to set up a "Prevention Commission" made up of people with such experiences. The Commission held a series of meetings during the course of the Group's work and were instrumental in shaping the Group's thinking and proposals. The Commission's reports are available on the PRG's webpage⁴⁵.

An advocate specialising in housing law was commissioned by Crisis to draft legal proposals in order to flesh out and stress test the Group's recommendations and ensure that their intention could be translated effectively into law. These proposals represent the legal crystallisation of the policy intentions of the Group, particularly in relation to revising Part II of the Housing (Scotland) 1987 Act and the accompanying Statutory Instrument. These are included in appendix 1.

Prevention Commission principles

The views of those with lived experience of homelessness and those on the frontline are central to our proposals. The Commission emphasised that they wanted more specific help at an earlier stage so that they do not become homeless and do not have to make decisions in "crisis mode", but if they do, then there should be more flexibility in the assistance they receive, so that the duties are better balanced. Two themes in particular emerged from and underpinned all the discussions and work of the Prevention Commission:

- **Choice and control:** inflexible legal duties often address generic situations and leave

41 Pleace, N (2015) At what cost: An estimation of the financial cost of single homelessness in the UK. Crisis

42 Waugh et al (2018)

43 <https://www.crisis.org.uk/ending-homelessness/scotland-prevention-review-group/>

44 The initial intention was to publish the Group's finding in June 2020. However, the work of the Group was halted for four months from March as a result of the COVID pandemic. It recommenced in June 2020 meeting online.

45 <https://www.crisis.org.uk/ending-homelessness/scotland-prevention-review-group/>

people with no part to play in finding their own positive solutions. The problem with the legal position as it stands is that people have little choice and control in the process, and those in the greatest housing need often have fewest housing options. As far as possible the final decision maker should be the household facing homelessness so that the outcome reflects their priorities and needs.

- **Duties to ask and act:** Public bodies should work with people to identify when they are at risk of homelessness, and they should then act on that. For local authorities this should mean asking people what the assistance is that they need as part of the assessment process. For wider public bodies, such as the NHS services or community justice, this would be a requirement to routinely ask about housing, and then act on that information.

PRG principles

Early on in the Group's work we adopted the following principles, shaped by those of the Prevention Commission, and in line with the principles of the 2011 Christie Commission⁴⁶, with the intention of seeking the best outcomes for people at risk of homelessness by preventing their homelessness:

- Responsibility to prevent homelessness should be a **shared public responsibility** and not rely solely or primarily on the homelessness service.
- Intervention to prevent homelessness should **start as early as possible**. In many cases this will be before issues have escalated to a point where homelessness appears imminent.
- People facing homelessness should have **choice** in where they live and **access to the same range of housing outcomes as members of the general public, with appropriate**

protections to mitigate further risk of homelessness. Housing outcomes should be comparable across the prevention and homelessness duties.

What do we mean by homelessness prevention?

The Group has focused its attentions on preventing homelessness for groups at particular risk of homelessness, and for people who are at risk of losing their home in the near future – a period of months or weeks. This is in line with “targeted”, “crisis” and “recovery” prevention identified in a recent typology of homelessness prevention⁴⁷. We are not looking at prevention activity further upstream such as awareness work in schools or where there is a more universal application, such as welfare or anti-poverty measures.

At least 8% of the Scottish population has been through the homelessness system⁴⁸. Going through the system often requires multiple moves, especially where interim accommodation is necessary, which can be disruptive to family life, employment and social networks. At its worst it can be traumatising and stigmatising. Over a quarter of people who have ever been homeless become homeless again in the future, and the death rate for people who have used the homelessness system is around twice the rate of people from the poorest communities in Scotland⁴⁹.

The use of housing stock for temporary rather than permanent accommodation is inefficient and expensive to the public purse. It is not designed to facilitate choice, but to offer accommodation to someone in crisis, with a requirement on the local authority to make only one offer of accommodation, into rented accommodation either in the social or private sector.

46 <https://www.gov.scot/publications/commission-future-delivery-public-services/>

47 The full typology is: *Universal prevention* – preventing or minimising homelessness risks across the population at large; *Targeted prevention* – upstream prevention focussed on high risk groups, such as vulnerable young people, and risky transitions like leaving local authority care, prison or mental health in-patient treatment; *Crisis prevention* – preventing homelessness likely to occur within the next few months, usually defined as 56 days in line with current legislation across Great Britain on ‘threatened with homelessness’; *Emergency prevention* – support for those at immediate risk of homelessness, especially sleeping rough. *Recovery prevention* – prevention of repeat homelessness and rough sleeping. Latest figures from Scottish Government show that 15% of homeless applicants make another homeless application within five years. Fitzpatrick, S, Mackie, P, Wood, J (2019) Homelessness prevention in the UK: policy briefing <http://thinkhouse.org.uk/2019/cache0719a.pdf>

48 Waugh et al (2018) Health and homelessness in Scotland <https://www.gov.scot/publications/health-homelessness-scotland/>

49 Waugh et al (2018) Health and homelessness in Scotland

The Prevention Commission stressed that a “culture change [is] required to strike the balance between recognising homelessness legislation as essential, while aiming for it to be used more as the intended safety net than a default response for too many people”⁵⁰.

Therefore, we also consider that the process of having to go through the homelessness system, and especially into temporary accommodation, is something that should be avoided as far as possible for people who are either threatened with homelessness or who have statutory homelessness status but still currently have accommodation. Where loss of accommodation can be prevented, this will generally be a more humane approach and provide a better outcome for the household.

To minimise disruption and harm for individuals, and to maximise their dignity, choice and control, consideration should be given to what support can be put in place either to enable them to stay in their accommodation where this is appropriate, or to assist them to move to somewhere else which meets their needs and provides them with stability so there is no longer a risk of homelessness. Wherever possible we should avoid people having to lose accommodation altogether and go into temporary accommodation.

However, the protection of the duty on the local authority ultimately to secure them a home in the event of them having nowhere reasonable to live is critical. The strength of this duty for homeless people is unique to Scotland, and a guarantee that must always underpin any support for people facing the loss of their home.

In this way we intend to build on the existing strengths of homelessness rights in Scotland by empowering people to have more control and access to assistance when their home becomes at risk and avoiding homelessness crises as much as possible by building specific protection at an earlier stage.

The limits of proposals for statutory duties

The task of the Group is specifically to focus on legal duties. Statutory duties are a necessary tool to effect the kind of change needed to strengthen work to prevent people becoming homelessness in Scotland, and particularly to address the tension between housing options and the homelessness legislation⁵¹.

In most cases our recommendations are for statutory duties in primary legislation. In some cases, they may be more appropriate for secondary legislation or statutory guidance. The statutory measures we have proposed come as a package, which in our view works as a coherent whole. Implementing some aspects of our proposals and not others may have unintended consequences and risks undermining the integrity of the system as we envisage it, particularly with regard to reform of the homelessness legislation. Recommendations related to secondary legislation or statutory guidance are no less important than recommendations related to primary legislation.

However, statutory duties are not a sufficient tool by themselves. They must be accompanied by:

- Effective implementation. This must involve clear national guidance, training and a shift in culture amongst services, as well as join up with relevant ongoing work, including consideration of the timing and phasing of work.
- Appropriate resourcing.
- Monitoring of the operation of the system and outcomes for individuals through thorough and effective data collection about agreed outcomes, regulation and oversight.

There are a range of ongoing strands of work that complement the work of the Group, notably the development of the Housing Options Training Toolkit, work on a number of prevention pathways in relation to homelessness, and work on supporting people with complex needs beyond the homelessness sector. We have joined

50 All in For Change Prevention Commission meeting 4 and 5 report, April and May 2020

51 Bramley et al. (2019) Hard Edges Scotland: New conversations about severe and multiple disadvantage

up discussions on these pieces of work where possible. Effective integration with this and other related work will be crucial to achieve the sea change envisaged by the Group to prevent people losing their homes.

Equalities considerations

Equalities issues have been a theme throughout the work of the Group. It was a repeated theme throughout stakeholder engagement, and some stakeholders had a specific focus on aspects of equalities, including Engender and LGBT Youth Scotland, Rock Trust and Scottish Women's Aid. Fundamentally homelessness is an equalities issue which is rooted in poverty⁵². In addition, many people experiencing homelessness face other inequalities, including inequalities in health⁵³ and experience of crime⁵⁴.

There are significant differences in the experiences of different groups facing homelessness. In relation to gender, for example, men are much more likely than women to experience rough sleeping, to have dependency of drugs and alcohol, to become homeless from institutions, and if single, to have repeat experiences of homelessness. Women make up a significantly larger proportion of homeless applicants over the age of 25, are more likely to be lone parents, are more likely than men to have support needs related to mental health, and are disproportionately likely to become homeless as a result of domestic abuse.

White homeless applicants are more likely to have support needs than applicants of other ethnic backgrounds, and more likely to have slept rough. On the other hand, people from Asian backgrounds are at greater risk of homelessness as a result of a violent dispute in the household.

To develop and tailor effective homelessness prevention services to local need, consideration must be given to the specific population and needs of people at risk of homelessness locally, including how specific characteristics intersect, such as recognising the high prevalence of

homelessness due to domestic abuse among a particular community or a particular risk of homelessness for young people who identify as LGBT, and developing appropriate services accordingly.

Similarly, the reasonable steps and solutions to homelessness will be different for groups with different needs. For example, for a lone mother in a rural area whose children are approaching school age, an important factor in the location of settled accommodation may be the proximity of future job opportunities. A large household facing homelessness may prioritise the right size of accommodation to meet their needs, with location and tenure type. Ensuring that the voice of someone facing homelessness is at the centre of the process to address their situation will support people to get the assistance that meets their specific needs.

52 Fitzpatrick et al (2019) Homelessness Monitor Scotland 2019

53 Waugh et al (2018) Health and homelessness in Scotland

54 Sanders, B. & Albanese, F. (2016) *'It's no life at all': Rough sleepers' experiences of violence and abuse on the streets of England and Wales*. London: Crisis.



PART 1 Duties on wider public bodies and landlords

This section addresses the task of the Prevention Review Group to identify a duty or duties to prevent homelessness on services beyond homelessness and housing. This is key to successful homelessness prevention, so that people access support as early as possible and issues can be addressed before they approach crisis point.

The Group strongly recommends that requirements be incorporated into the legislation of the relevant body, and not be placed in legislation primarily affecting homelessness and housing options services. We believe this will be more effective in raising awareness of new responsibilities amongst the relevant bodies and support their integration into practice.

In this section, we set out some brief context for why change is needed, then summarise our recommendations. We have primarily set out our intentions as policy recommendations, and have drafted legislative proposals as exemplars in only two areas, contained in appendix 1. In the next section on the homelessness framework, we have presented draft amendments to homelessness legislation, and where this is relevant to this part of the report, we refer to the relevant section of that legislation in bold brackets. All legislative proposals are set out in appendix 1.

It should be noted that “homelessness prevention” is the language of homelessness services, and does not translate easily to other services, particularly those not directly involved in housing. Activities which prevent (or lead to) homelessness may not be immediately identified as such by other services. For instance, health and social care services have outcomes around supporting people to live at home but are more likely to interpret these in relation to preventing admissions into hospital or care than preventing homelessness. When discussing the role of other public bodies in homelessness prevention it will be important to consider language which is meaningful and relevant to that service.

Principles: Ask and act duties

Through discussions with stakeholders and the

Prevention Commission two principles emerged to underpin the role of other public bodies in preventing homelessness. These were to identify a risk of homelessness, and secondly to “act” upon that information. The Group has framed these as “ask” and “act” duties. In addition, it formulated the principle that no one should be discharged from Scottish institutions or evicted without somewhere to stay that night.

Each of the public bodies considered would need to identify whether the people they work with have a risk of homelessness, and then would have a different role and opportunities to act on this information. In some cases the action required would be a referral to the local authority, similar to the referral duty created on public bodies in England under the Homelessness Reduction Act 2017. In other cases, the public body may be in a position to take more in-depth action to prevent homelessness.

A further principle of the Group is that no one should be discharged from institutions without anywhere to sleep that night. In the words of the Prevention Commission, as far as possible, people should leave institutions “to go straight into their own safe, secure homes”⁵⁵. We want to see public bodies work together with homelessness and housing services to ensure that people have accommodation at the point of leaving an institution and that no one leaving their services becomes roofless. In practice, often the work to save accommodation may be best done at the beginning of entry into an institution.

Health and social care

A high proportion of homeless applicants have health and social care needs. Around 30% of people who have ever been homeless have experienced a mental health problem, much higher than comparative groups from the most and least deprived communities. 19% have had drug or alcohol related issues, very often combined with mental health issues⁵⁶. Statistics recorded by local authority homelessness services suggest that around one in ten homeless applicants have medical needs, 6% have physical

disabilities, and 3% have a learning disability⁵⁷.

People with experience of homelessness make up the majority of attendances at some health services, particularly more acute services including A&E (55%), acute hospital admissions (52%) and admissions to mental health specialities (80%) and drug and treatment assessments (90%). They also make up nearly half (49%) of outpatient appointments. People’s use of health services peaks just before they make their first ever homelessness application⁵⁸.

Mental health issues contribute to loss of accommodation for 25% of homeless applicants, and physical health issues for 9%. Drug or alcohol related issues contribute to loss of accommodation for 8% applicants. There is clearly an important role for health and social care services in preventing homelessness⁵⁹.

Yet, as noted above, there is evidence of a lack of co-operation between health and social care services and homelessness services to prevent homelessness. One contributor to the Group’s stakeholder discussion on health and social care described there being “a cohort whose homelessness is driven by a failure to access health interventions”.

In accordance with the Group’s principles for wider duties, we recommend that:

- **A statutory duty is placed on the Health and Social Care Partnership to identify the housing circumstances of patients, and where necessary work with partners to ensure that patients are assisted into suitable housing or that a risk of homelessness is prevented.** Often the point of entry will be a critical point to intervene, for example where someone is entering hospital for inpatient psychiatric assistance. Where the housing need is related to a lack of accommodation or housing support needs, this should be a referral to the local authority for Housing Options and homelessness assistance.
- **Where needs are more complex, to the extent that they cannot be supported in mainstream housing even with additional support, then**

primary responsibility for meeting those accommodation needs should sit with the Health and Social Care Partnership. This is intended to capture the needs of those who require highly specialist medical or other support. It is not intended to cover needs that might be met through Housing First provision.

- **Where a social worker or social care worker identifies a risk of homelessness, they should make a referral to the relevant part of the local authority. If they consider that there are unmet social care needs, a social care needs assessment should be carried out.**
- **Where it is identified that an individual may have health and social care needs as part of an assessment of homelessness or threat of homelessness, or an assessment of housing support needs (s30A or 30B of draft legislation), a statutory duty is placed on the health and social care partnership to co-operate with the local authority in planning to meet those needs.**
- By working with other partners, the local authority must ensure that the service for prevention and alleviation of homelessness is designed to meet the needs of people leaving hospital and people with mental illness or impairment (**s27A(4)**).
- The local authority must provide assistance to anyone who is going to be discharged from hospital in the next six months and is considered as threatened with homelessness (**s24**).

Effective strategic planning across health and social care and housing services will support the fulfilment of these duties. Our recommendations here are set out in more detail in a later section of the report.

A theme which emerged strongly from stakeholder discussions was the role of GPs. As a universal and non-specialist service they have a key role in supporting people in a wide range of circumstances. Research for the HRA in England found that GPs are one of the most common services that people access after a housing

55 All In For Change, Prevention Commission meeting 4 and 5, May and June 2020

56 Waugh et al (2018) Health and homelessness in Scotland

57 Scottish Government (2020) Homelessness in Scotland 2019/20

58 Waugh et al (2018) Health and homelessness in Scotland

59 Scottish Government (2020) Homelessness in Scotland 2019/20

issue has occurred, but before they have been to housing options. However GPs (who are not subject to the duty to refer) are one of the services least likely to refer to housing options. Crisis has called for GPs in England to be subject to the duty to refer⁶⁰. Some good practice emerged from stakeholder discussions to inform the PRG, and we recommend that **GP practices should be under a requirement to refer to the local authority where a housing need is identified.**

Case co-ordination for people with multiple or complex needs

Research looking at the numbers of people experiencing severe and multiple disadvantage in Scotland found evidence of around 5,700 people in one year experiencing a combination of offending, substance misuse and homelessness, while another 28,800 experience a combination of two of these disadvantages⁶¹.

Those with complex needs are at serious risk of falling through the cracks in mainstream service provision, including accessing normal housing options/homelessness services⁶². The Hard Edges Scotland research looking at the needs of this group found that homelessness services often “carry the can” and lead on cases with this client group, particularly in the absence of a court order. Nevertheless,

while homelessness services and Housing Options teams may seek to make referrals to addiction and mental health services for SMD (severe and multiple disadvantage) clients, they had no command over these resources, nor the necessary authority to coordinate timely multi-sectoral interventions for people with complex needs.

While 51% of homeless applicants now have at least one support need (including some which can be met through housing support), 19% have two or more support needs, suggesting a need for the involvement of other agencies.

The issue of prevention of repeated occurrences

of homelessness for people with complex needs emerged as a strong recurrent theme in almost every stakeholder consultation event, including the specific issues facing women with complex needs, particularly around domestic abuse, and the importance of specific services for this group.

We are aware that there is other work progressing on this area, including in relation to taking forward the Hard Edges research, and around assistance for people in prison who have health and social care needs. We have discussed our proposals here with stakeholders involved in those pieces of work, and we recommend that as each of these strands of work are taken forward, the proposals are brought together to ensure an integrated approach across services working with people with complex and multiple needs.

In relation to statutory duties, to prevent (further) homelessness for this population, the Group recommends that **for people with complex needs requiring input from two or more public services to support their health or wellbeing, or to facilitate community safety, a case co-ordination approach is put in place.** These needs would include, but not be limited to, risk of homelessness, substance misuse or involvement with criminal justice, including support and services that may be provided by the health board or integration authority, other parts of the local authority, community justice partners (see s13 Community Justice (Scotland) Act 2016) and relevant third sector partners.

The approach should consist of:

- a. **Identification of a professional to lead on contact with the individual and co-ordinate service provision**
- b. **A means for overseeing case co-ordination to**
 - i. **Identify and address gaps in service provision and co-ordination for such individuals**
 - ii. **Manage and prevent escalation of risk**

Some local areas have already adopted

60 Crisis (2019) Evidence to the Communities and Local Government Committee Inquiry into the HRA One Year On

61 Bramley et al. (2019) Hard Edges Scotland: New conversations about severe and multiple disadvantage

62 E.g. McDonagh, T (2011) Tackling Homelessness and Exclusion: Understanding Complex Lives, York: Joseph Rowntree Foundation; A. Ahmed, M. Wilding, A. Gibbons, K. Jones, M. Rogers, I. Madoc-Jones (2018). Post-implementation evaluation of Part 2 of the Housing Act (Wales) 2014: Final Report, Cardiff: Welsh Government, GSR report number 46/2018.

approaches like this. Some hold regular meetings to co-ordinate support for people with complex needs, or people who are on the threshold of adult support and protection. Other areas may identify individuals known across specific services such as homelessness, criminal justice and substance misuse and put in place co-ordinated approaches to working with these individuals. The intention is to allow flexibility for different local mechanisms. We are also cautious of defining complex needs too closely, to avoid creating the service boundaries that this group of people so often fall between.

Children's services

Around 27% of households making a homelessness application include children, with 10,129 applications in 2018-19, representing 14,043 children⁶³. Three quarters (76%) are single parent households, primarily headed by women: female single parents make up 17% of all homeless applicants⁶⁴. Female single parents are twice as likely to be homeless as a result of a violent or abusive dispute than homeless applicants as a whole (27% compared to 13%)⁶⁵.

Households with children are more likely to become homeless from the private rented sector (PRS), accounting for 48% of applicants from the PRS in 2018/19. Households with children are more likely to identify unmet need for support from housing, social work or health services as a factor in their homelessness, but they are less likely to have support needs such as mental health, substance issues or lack of independent living skills. Households with children spend longer in temporary accommodation, on average 219 days compared to 166 days for households without children⁶⁶.

Schools and health visitors have key roles in

supporting children and identifying factors that may present a homelessness risk, such as poverty or strain on relationships. Therefore, we recommend that **if a health visitor or head teacher identifies that there is a risk of homelessness for a family, they should make a referral to the homelessness service.**

Assistance for young people

Homelessness among young people is more than twice the rate for older people, with 15 applications per 1,000 population for 16-24 year-olds, compared to 7 per 1,000 for those over 24⁶⁷. Official homelessness statistics may classify young people between 16 and 18 as either children or adults, and in 2019/20 1,495 16 and 17 years classed as adults were involved in a homeless application, and an additional 620 16-18 year-olds who were considered as children. Young women are disproportionately affected, making up the greater proportion of applicants (unlike in other age groups), and one in five (21%) applicants in this age group have children.

There is clear evidence of particular risk factors, including experience of a range of adverse childhood experiences, running away, truanting or being excluded from school, or being a lesbian, gay, bisexual or transgender young person⁶⁸. Experience of homelessness at a young age increases the risk of later homelessness⁶⁹. This demonstrates the opportunities and urgency of preventing homelessness for young people.

Nevertheless, stakeholders and group members noted that a focus on youth homelessness has dissipated in recent years. They emphasised the importance of age-appropriate services for young people, with a strong relational focus, support to develop independent living skills, recognition of the challenges of isolation, loneliness and

63 This figure includes 620 16 – 18 year olds. 16-18 year olds may be classed as either children or adults in the homelessness statistics. Scottish Government (2019) Adults and children assessed as homeless 2014/15 to 2018/19

64 Scottish Government (2019) Homelessness in Scotland: Annual Publication 2018-19

65 Scottish Government (2019) Homelessness in Scotland: 2018 to 2019 – equalities breakdown

66 Scottish Government (2019) Homelessness in Scotland: 2018 to 2019 – equalities breakdown

67 There are 12.1 homelessness applications per 1000 population for 16-17 year olds and 16.0 per 1000 for 16-24 years, compared to 7.0 per 1000 for people aged over 24. Based on figures from *Scottish Government (2019) Homelessness in Scotland 2018-19 Equalities Breakdown and National Records for Scotland (2019) Projected Population of Scotland (2018-based)*

68 Glover J and Clewett N (2011) No fixed abode: The housing struggle for young people leaving custody in England, Essex: Barnardo's.

69 Mackie, P. and Thomas, I. (2014) Nations apart? Experiences of single homeless people across Great Britain, London: Crisis

managing on a low income, and tolerance of risk and mistakes.

They also noted that little attention is given to a coherent housing and support offer for young people and those setting up home for the first time, even while a lot of attention is given to housing pathways for older people. Stakeholder consultation emphasised the lack of housing options specifically for the younger age group and the variability of local provision and commissioning arrangements. In this context the work currently being undertaken to develop a youth homelessness prevention pathway led by the A Way Home coalition is urgently needed.

Under our proposals **local authorities should work with partners to ensure the service meets the needs of young people at risk of homelessness, see s27A(4h)**. As with other groups, services should be able to respond to the diversity of this group, including consideration of needs relating to ethnicity, gender, sexuality and so on.

Local authorities should ensure that they have family mediation available as part of their homelessness prevention offer (s30C(3a)).

16 and 17 year-olds

Stakeholders and group members noted that young people at risk of homelessness who are not in local authority care are often just as vulnerable as those in care, but with less support. 16 and 17 year-olds are twice as likely to have support needs relating to independent living and housing management skills compared to older homeless applicants⁷⁰. Young people in Scotland are considered to have legal capacity from age 16⁷¹ and can be allocated their own tenancy. However, this may not necessarily be the most appropriate or beneficial option, particularly given the high

rate of support needs. Under the Children and Young People (Scotland) Act 2014⁷², they are still considered children for the purposes of children's services.

Case law in England⁷³ has ruled that children's services should have primary responsibility for supporting and accommodating homeless 16 and 17 year-olds. The judgement states that even where homelessness services provide interim accommodation, the young person should be referred to children's services for an assessment of need. This has made a major difference in the assistance provided there to this group of young people. Resultant guidance places the responsibility to accommodate and assist primarily with children's services, including responsibilities to support the young person to transition to independent adult living⁷⁴.

Such a move in Scotland would bring assistance for young people facing homelessness more into line with the Children and Young People (Scotland) Act 2014 and with approaches for other young people facing particular vulnerabilities in Scotland, such as young people with learning disabilities or leaving care, for whom assistance extends to age 19 and 26 respectively⁷⁵.

The PRG recommends that **young people aged 16 and 17 at risk of homelessness must be treated as children under the law and should receive assistance from children's social work, who have expertise in the needs of this group. Primary responsibility for assisting homelessness 16 and 17 year-olds should sit with social work (s28A)**.

This approach was strongly supported by all social work stakeholders that we consulted with, while acknowledging the implications for resource and capacity this would have. Attention must be given to ensure accommodation is suitable and plans are

⁷⁰ Scottish Government (2019) Homelessness in Scotland 2018/19 Equalities breakdown

⁷¹ Age of Legal Capacity (Scotland) Act 1991

⁷² Section 97(1), <https://www.legislation.gov.uk/asp/2014/8/part/18/enacted>. Further clarification is given in Scottish Government (2014) National guidance for child protection in Scotland, particularly paragraphs 21-24.

⁷³ R (G) v London Borough of Southwark (2009)

⁷⁴ MHCLG / DfE (2010, revised 2018) Prevention of homelessness and provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation; Shelter (2009) Responding to youth homelessness following the G v LB Southwark judgment

⁷⁵ For example as a result of being in care (Part 10, Children and Young People (Scotland) Act 2014) or 19 year olds who have remained in school and have additional support needs (Scottish Government (2017) Supporting Children's Learning: Statutory Guidance on the Education (Additional Support for Learning) Scotland Act 2004 (as amended) Code of Practice (Third Edition) 2017

made with relevant services for ongoing support as young people approach 18.

Care leavers

Care leavers are known to be particularly vulnerable to homelessness. There has been significant work in recent years to address support for care leavers, including through the Staying Put guidance and the extension of aftercare for care leavers to age 26. More recently the youth homelessness pathway for care leavers was published in 2019⁷⁶ as a result of the recommendations of HARSAG, and the Independent Care Review produced its final report at the start of 2020.

It was clear from consultation with stakeholders that these initiatives need time to bed in, and there was not an appetite for reviewing legal duties around preventing homelessness for care leavers.

The PRG are agreed that the homelessness system is an inappropriate route to provide accommodation for young people leaving care. The local authority's responsibility as corporate parent to care leavers should be the primary duty, and we do not want to create a secondary duty which may confuse responsibilities.

Landlords

Social landlords

Social landlords are well placed to carry out work which prevents homelessness, indeed much good tenancy management practice may ultimately serve this function, especially work to address rent arrears and antisocial behaviour. However, 14% of homeless households were previously housed in social tenancies in 2019/20⁷⁷.

The Group intends to formalise these responsibilities as duties so that social landlords take action within their powers to identify and mitigate risk of homelessness as early as possible, including risks resulting from rent arrears, neighbour and relationship concerns, possible domestic abuse and risk to tenancy due to impending court action.

We therefore recommend that **where a social landlord identifies circumstances which may lead to a risk of homelessness**, including:

- Rent arrears or other financial difficulty which may give rise to risk of homelessness (i.e. before difficulties have led to impending homelessness, such as eviction action).
- Tenant behaviour or action which may give rise to risk of homelessness.
- Other circumstances, including domestic abuse, or court proceedings for example relating to criminal charges, which may give rise to a loss of accommodation due to remand or imprisonment.

That the **social landlord must take relevant reasonable steps to mitigate that risk**.

Reasonable steps would include

- Housing management practices to sustain tenancies.
- Engaging with the tenant to address relevant financial circumstances.
- Engaging the tenant to address behaviour.
- Putting in place protocols to address relevant circumstances and mitigate risk of homelessness at an early stage, including protocols relating to domestic abuse and where tenants face court proceedings.

Second, if the landlord considers the risk of homelessness for a tenant to require assistance beyond their powers, including where there is a growing risk of eviction, then they should **notify the local authority as early as possible that there is a risk of homelessness (s24A)**. This is similar to the existing section 11 duty under the 2001 Act but the intention is to ensure that the referral is as far upstream as possible and to have a clear process in place between the social landlord and the local authority so that no one is evicted from social housing without somewhere to stay that night.

Private rented sector (PRS)

The private rented sector has a role in both

⁷⁶ <https://www.rocktrust.org/youth-homelessness-prevention-pathway/>

⁷⁷ Scottish Government (2020) Homelessness in Scotland 2019/20

preventing homelessness and in resolving it once it has occurred. The PRS has grown significantly in the proportion of households it accommodates over the past 15 years, and 16% of homelessness applicants came from the private rented sector in 2019/20. While this proportion has fallen slightly over recent years, the Group seeks to prevent as much homelessness as possible from the PRS. In addition, under the Group's proposals the PRS will be more widely used to house people at risk of homelessness.

Local authorities should ensure that their service is set up to support people at risk of homelessness from the PRS so that homelessness is prevented where possible, and to ensure that the PRS can be used to discharge duties where appropriate. This will be achieved through the provision of advice and assistance to tenants and landlords, provision of housing support to tenants at risk of homelessness in the PRS where this is identified as a need (**s30B**), and by putting in place protections before a tenant is evicted. This might also include work to identify particular issues in relation to homelessness from private tenancies, including to identify where there is an issue with a particular landlord.

We recommend that:

1. The **pre-action requirements on private landlords in cases of rent arrears** which were created in the emergency coronavirus legislation⁷⁸, to provide information and put in place support for tenants in rent arrears, **should be made permanent**⁷⁹.
2. If the landlord agrees with tenants as part of the conversation around the pre-action protocol, or in any other circumstances, the **landlord may make a homelessness prevention referral to the local authority**, where they are concerned that there may be an emerging risk of homelessness. A local authority must

respond to a referral from a private landlord under section 28 about a possible case of homelessness.

3. If a local authority is assisting a person threatened with homelessness as a result of pending eviction from a private tenancy, the local authority should have a power to request that the First-tier Tribunal delay execution of an eviction order proceeding where a landlord has failed to co-operate (**appendix 1d**).
4. The **homelessness advice and assistance is designed to meet the needs of persons living in and seeking to access the PRS (s27A)**. In practice, this would include PRS access schemes, landlord liaison and rent deposit guarantee schemes.

Criminal justice

Prisons

In 2018/19, 1,822 (5%) homeless applications were recorded as having been from people leaving prison in 2018/19⁸⁰. However, the most recent available figures showed 9,775 liberations from prison sentences in a year, with an additional 8,033 released from remand⁸¹. Yet research shows that 49% of Scottish prisoners report losing their accommodation while they are in prison⁸², and that many people are released straight into homelessness⁸³. This suggests that the numbers of people approaching their council for homeless assistance following a prison sentence may be a significant underestimate. Other people may leave prison with arrangements in place which break down after a short period.

While finding and sustaining accommodation can be problematic for anyone leaving prison, evidence has highlighted four groups that face particular barriers⁸⁴: remand prisoners and those

78 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 <https://www.legislation.gov.uk/sdsi/2020/9780111046012/contents>

79 This is already planned in the updated Ending Homelessness Together Action Plan (2020)

80 Scottish Government (2019)

81 Scottish Prison Service (2014) Prison Statistics and population projections: 2013 – 14, Edinburgh:SPS. Due to technical difficulties the last available annual liberation rate available is for 2013 – 14.

82 Scottish Prison Service (2017) Prisoner Survey 2017, Edinburgh: SPS

83 Bramley et al. (2019)

84 Dore, E (2015) Insight: Prison Leavers and Homelessness, online: IRISS.

on very short-term sentences⁸⁵, women⁸⁶, young people⁸⁷, and those who were homeless on entering prison⁸⁸.

Assistance with housing needs to be provided as soon as possible in the prison process, and the intention should be that no one leaves prison without accommodation to go to. We welcome the SHORE standards (Sustainable Housing on Release for Everyone) developed by the Scottish Prison Service (SPS) and other partners⁸⁹, and particularly the data sharing agreements that have now been agreed between SPS and all Scottish local authorities, which will support our recommendations.

The PRG recommends that:

- **The Prisons and Young Offenders Institutions (Scotland) Rules 2011 are amended to ensure that**
 - **Prisoners are asked about their housing situation as soon as reasonably possible on going into prison.**
 - **If a prisoner is likely to need assistance to find housing for when they leave prison, a referral is made as soon as possible to the local authority identified by the prisoner for homelessness assistance.**
- **Where housing issues are identified, prisons work with partners including housing options and housing associations to address the issues.**
- **By working with other partners, local authorities must ensure that the service for prevention and alleviation of homelessness is designed to meet the needs of people leaving prison or youth detention accommodation, and anyone at risk of homelessness due**

to impending court proceedings (s27A(4)). Relevant partners should include the Scottish Prison Service and the Scottish Courts and Tribunal Service.

Although beyond the remit of statutory duties, we note the need for co-ordination and consistency of service across the country between prisons and local authorities, recognising the challenges of prisons working across multiple different local authority homelessness services, and the importance of the location of accommodation for many people leaving prison⁹⁰.

Courts service

The start of a custodial sentence or remand is a vital time to access housing advice, for both those facing court and for the wider family. People being held on remand are at particularly high risk of becoming homeless⁹¹. The average time spent on remand in Scottish prisons is 25 days⁹², although individuals can be held for far longer periods. Stakeholders highlighted that being remanded in custody can cause significant disruption and uncertainty regarding housing, even though someone may be later acquitted.

A family home may become at risk when someone goes into prison, particularly in cases where that person has been the tenancy holder or the main claimant of housing benefit/Universal Credit⁹³. The court may provide a particularly appropriate place to seek housing advice.

Stakeholder consultation suggested that there is a lack of housing options advice available within court settings. We note and welcome the intention to develop the Sustainable Housing On Release for Everyone standards to include sections including preventing homelessness on arrest and in court.

85 Loucks (2007). Gojkovic D, Mills A and Meek R (2012) Accommodation for ex-offenders: Third sector housing advice and provision, Southampton: Third Sector Research Centre

86 Commission on Women Offenders (2012) Final report, Edinburgh: Scottish Government

87 Glover J and Clewett N (2011) No fixed abode: The housing struggle for young people leaving custody in England, Essex: Barnardo's. Gojkovic et al. (2012).

88 Williams K, Poyser J and Hopkins K (2012) Accommodation, homelessness and re-offending of prisoners: Results from the Surveying Prisoner Crime Reduction (SPCR) survey, Ministry of Justice research summary 3/12, London: Ministry of Justice

89 <https://www.sps.gov.uk/Corporate/Publications/Publication-5363.aspx>

90 Dore (2015) IRISS

91 Loucks N (2007) Housing needs of offenders and ex-offenders, Glasgow: The Robertson Trust.

92 <https://www.theyworkforyou.com/sp/?id=2018-10-03.15.0&s=speaker%3A13982>

93 Loucks, N. (2015) Prison Without Bars: The Experience of Families Affected By Imprisonment, Online: Tayside Criminal Justice Partnership and Families Outside

We recommend that **local Housing Options services work with the Courts service to ensure housing options advice is easily accessible within a court setting (s27A(4g)).**

Police Scotland

The police may encounter people at risk of homelessness in range of situations, not least during domestic or neighbourhood disputes, as well as where people are likely to sleep rough that night. There may be appropriate points of contact with individuals where it is appropriate to ask about a risk of homelessness, including on arrest and in custody.

Support for a duty on police was expressed by police representatives at the criminal justice stakeholder group (especially in conjunction with a duty on the local authority to respond), and also in research presented by Shelter Scotland looking at a prevention duty on wider public bodies⁹⁴.

The PRG recommends that:

- **Where there is a reasonable belief that someone may be homeless, police should ask about the individual's housing circumstances. Specific circumstances may be identified in appropriate regulations or guidance, including someone rough sleeping, cases of domestic abuse or household dispute leading to possible homelessness.**
- **Where the police identify a risk of homelessness they should make a referral to the local authority** (with a corresponding responsibility on the local authority to act on the referral.)

Domestic abuse

In 2018–19 13% of homeless applicants named a violent or abusive household dispute as the main reason for their homelessness. Four in five (79%) of these applications were made by women and 43% (1,975) of the households included children. A violent or abusive dispute is the biggest trigger

of homelessness for women⁹⁵. The most recent equality analysis from Scottish Government suggests that showed that at national level women from Asian backgrounds are disproportionately likely to experience homelessness as a result of a violent dispute in the household⁹⁶. It is widely acknowledged that figures significantly underestimate the scale of homelessness caused by domestic abuse⁹⁷.

The PRG believes that anyone facing domestic abuse should not have to become homeless to address their situation; housing issues related to domestic abuse should be dealt with as early as possible through services working in partnership to identify and support individuals facing abuse. The role of dedicated domestic abuse services will be critical in such a specialist area, but there is also opportunity for a much wider range of partners in identifying risk and preventing homelessness resulting from domestic abuse, such as housing maintenance staff and lettings agents.

A focus on addressing homelessness for people experiencing domestic abuse has led to a default assumption that victims of domestic abuse will need to leave their accommodation and move away from the perpetrator. In line with the principle of choice and control, the default position needs to shift to one where the person experiencing domestic abuse is able to make the best choice for themselves about their housing situation, with appropriate support to enable that. This will require a shift in culture among some homelessness services. Stakeholders also highlighted the importance of services recognising that people may become homeless from all housing tenures. There can be particular challenges to owner occupiers who may not be able to access legal aid to get the necessary legal orders to give them safety because of assets tied up in a jointly owned property, and can struggle to find financial assistance to make their property more safe. We recommend that **people at risk of homelessness as a result of domestic abuse should be able to access free legal aid in order to get an exclusion order.**

94 Shelter (2020) Public bodies and homelessness prevention

95 Scottish Government (2019) Homelessness in Scotland: 2018/19; Scottish Government (2019) Homelessness in Scotland: 2018/19 – Equalities Breakdown

96 Scottish Government (2020) Homelessness in Scotland – equalities breakdown 2019/20

97 Scottish Government Communities Analytical Services (2010) Domestic abuse, housing and homelessness in Scotland: An evidence review

Our recommendations are intended to be complementary to current changes in law and policy including the Domestic Abuse Protection (Scotland) Bill going through Parliament at the time of writing, to create Domestic Abuse Protection Orders and allow the ending of a joint tenancy in the case of domestic abuse, and the development of a domestic abuse prevention pathway which is happening at the time of drafting.

Stakeholders also noted the importance of housing assistance for perpetrators of domestic abuse: this can be instrumental in ensuring someone feels able to leave an abusive relationship and not be drawn back into it.

Someone experiencing or at risk of abuse is considered to be statutorily homeless, and most of our recommendations in relation to domestic abuse are dealt with within homelessness legislation. To summarise our recommendations in relation to prevention of homelessness for people experiencing domestic abuse, we recommend that:

- **The definition of abuse within homelessness legislation is expanded to cover both the Protection from Abuse (Scotland) Act 2001 and the Domestic Abuse (Scotland) Act 2018 (S28(5,11)).**
- **Assistance from homelessness services to prevent homelessness must include support and security measures to enable applicants to remain in their homes safely where this is their preference (s30C(3e)).**
- **Homelessness prevention services should work with other partners to ensure they are able to meet the needs of people requiring housing assistance due to domestic abuse (s27A(4d)).** Such an approach should be coherent, including appropriate service planning, joint working across housing, homelessness and other services and training for staff. Local authorities should ensure that homelessness and housing services have effective protocols in place to identify signs of abuse as early as possible and assist people whose housing is at risk as a result of domestic abuse. In particular, close links should be built with specialist domestic abuse support services.
- **Local authorities support victims of domestic**

abuse to access exclusion orders.

- **People at risk of homelessness as a result of domestic abuse should be able to access free legal aid in order to get an exclusion order.**
- **When considering the suitability of accommodation offered to a perpetrator or victim of domestic abuse, consideration must be given to its proximity to the other party in the abuse.**
- **Social landlords should put in place protocols to address housing issues relating to domestic abuse,** based on the guidance produced in 2019 by CIH Scotland, ALACHO, SFHA, Shelter Scotland and Scottish Women's Aid⁹⁸. Consideration should be given to making elements of this guidance statutory if necessary.

Local authority duty to respond to referrals

Reflecting the “no wrong door” approach set out in the work of HARSAG and the subsequent national Ending Homelessness Together Action Plan, the Group intends that an individual will be able to access assistance regardless of where a risk of homelessness is first identified.

Where a public body identifies a risk of homelessness and the most relevant action is to refer to the local authority for assistance not prevent or alleviate homelessness, then we intend the local authority to be under a responsibility to act on that referral.

We recommend that **a local authority should accept a referral from a public body or landlord as a formal application, unless the individual states that they do not wish to make an application for assistance, or unless the local authority cannot contact the individual after making reasonable efforts (s28(3)).**

The Group discussed the issue of consent in relation to referrals by public bodies, and also asked the Prevention Commission to consider it. Without coming to a firm position, the Prevention Commission concluded that the key issue around consent is being able to build a trusted relationship with the professionals involved.

98 <https://womensaid.scot/wp-content/uploads/2019/08/Domestic-abuse-guidance-for-social-landlords-FINAL.pdf>

Consent

In accordance with the principles of choice and control, consent should be sought where possible, but the Group concluded that the issue of consent is one that is likely to vary depending on the circumstances and vulnerability of the individual concerned. There may be circumstances where the vulnerability of an individual means that a referral should be made regardless of consent, for example where someone is sleeping rough.

Joining up services through strategic planning

In addition to action to prevent homelessness in individual case, effective homelessness prevention requires services to work together and plan strategically to identify need and ensure structures and arrangements are in place to address issues which may eventually lead to homelessness as early as possible⁹⁹. Requiring a focus on homelessness prevention in planning across public services builds on the Fairer Scotland public sector equality duty to reduce inequalities of outcome as a result of socio-economic disadvantage, and will help to join up related strategic local priorities, such as child poverty, community justice, mental health, employment opportunities, addressing violence against women and girls, missing persons, etc. This was a recurring theme both through the Group's discussions and in discussions held with stakeholders, including COSLA, ALACHO and SOLACE. It supports recommendations in related sectors, including around improving housing and integration of services for disabled people¹⁰⁰, and also reflects developments in other parts of Britain, for example where there is increasing discussion of going beyond a requirement to simply refer to co-operating to prevent homelessness¹⁰¹.

Through its discussions and engagement with stakeholders, the PRG has identified the following

recommendations as key to strengthening strategic planning to prevent homelessness, which should be contained in statutory guidance:

- **Community planning partners¹⁰² should set out and establish in Locality Plans the impact of homelessness, emerging issues and joint working to address this. A community planning statement should be included within the Local Housing Strategy.**
- **Health and Social Care Partnerships should set out a clear statement of their contribution to preventing homelessness within the Local Housing Strategy.**

In addition, we note that a key driver of local outcomes is the National Performance Framework, which sets out the vision of what we want Scotland to look like. The last time homelessness was included in this framework was in the lead up to the ending on priority need, which created what was possibly the strongest statutory framework for people facing homelessness in the world at that time. But while focus on homelessness has increased as a result of HARSAG and the Action Plan, it has not had the strategic, cross-cutting focus provided by the National Performance Framework.

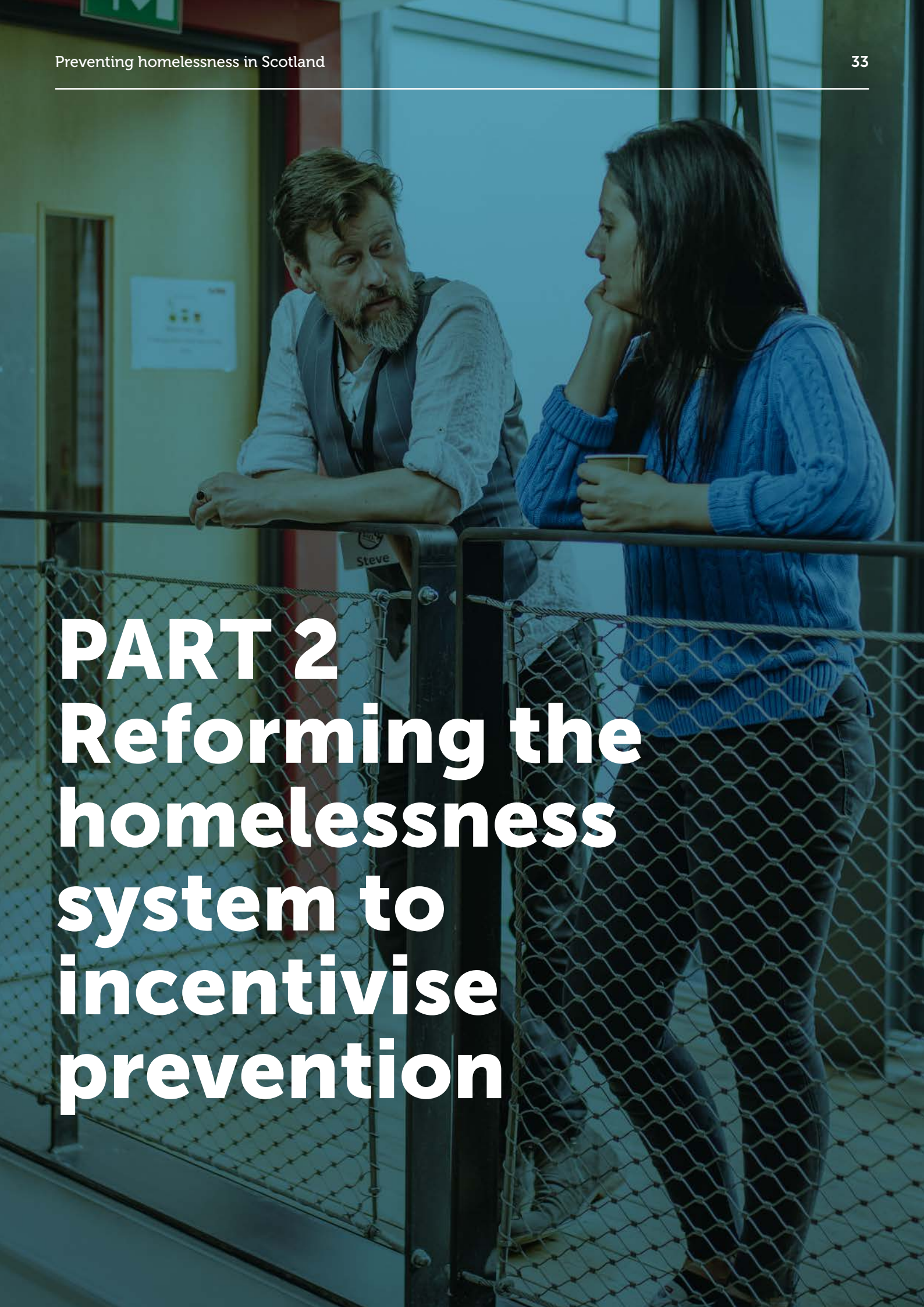
Including a focus on ensuring people are supported to live in homes that meet their needs would support an agenda of ending homelessness in Scotland, and help to ensure that a wide range of services work towards the best housing situations for people in Scotland, whether they are at risk of homelessness, experiencing financial and material deprivation or have health or social care needs relating to disability or age. Therefore we recommend that the next iteration of the National Performance Framework has an emphasis on housing which enables people to live in it successfully.

⁹⁹ This forms the second pillar of the Christie Commission on preventative public services. <https://www.gov.scot/publications/commission-future-delivery-public-services/>

¹⁰⁰ EHRC (2018) Housing and disabled people: Scotland's hidden crisis <https://www.equalityhumanrights.com/en/publication-download/housing-and-disabled-people-scotlands-hidden-crisis>

¹⁰¹ Fitzpatrick et al (2019) Homelessness Monitor England 2019; Local Government Association (2018) Duty to refer: an opportunity to cooperate to tackle homelessness Advice for local housing authorities

¹⁰² Under the Community Empowerment (Scotland) Act 2016, community planning partners include the local authority, police, health boards and integration joint boards, education providers, Skills Development Scotland and others. They must produce a Local Outcomes Improvement Plan to address inequalities of outcome resulting from socio-economic disadvantage within the area, and Locality Plans addressing issues within specific localities.



PART 2 Reforming the homelessness system to incentivise prevention

Principles for changing the current homelessness framework

This part of the report sets out the Prevention Review Group’s recommendations for a prevention duty on local authorities which would clarify and integrate the law on homelessness prevention within the current statutory framework set out in the Housing (Scotland) Act 1987.

These were strongly influenced by the first stakeholder consultation meeting to inform the Group’s thinking. 16 out of 32 local authorities accepted the invitation to this meeting, along with social housing representatives and others, and a clear consensus emerged on the need to reform legislation, formalising the role of Housing Options with clear steps to prevent homelessness as early as possible and clarity on discharging duties towards an individual.

The Group recommends that the current statutory framework for homelessness is amended to achieve the following:

- 1) Clarify, strengthen and extend a duty to prevent homelessness, and integrate it **within the main statutory framework**.
- 2) Prescribe a **range of reasonable steps to be used to prevent or alleviate homelessness**, based on the existing Housing Options framework, to be included in a **personalised and tailored housing plan that maximises applicants’ choice and control**.
- 3) Ensure the **service meets the needs of specific groups at risk of homelessness**, including those experiencing domestic abuse, and those leaving prison, care and other institutions, those facing a threat of homelessness living in the private rented sector.
- 4) Ensure people requiring assistance to prevent or alleviate homelessness are **assisted into accommodation which is stable and suitable to their needs**, again allowing them choice and control insofar as possible.

- 5) The system must be **clear and accountable**, providing people with appropriate and effective rights of reviews and challenge throughout the process.

The flow chart (overleaf) summarises the overall process the Group intends.

In light of the policy intentions recommended here, the Group has set out exactly how it envisages the 1987 Act would be amended at Appendix 1a¹⁰³. These are referenced in bold brackets throughout the report in relation to the relevant proposals.

Proposals in detail

An extended prevention duty

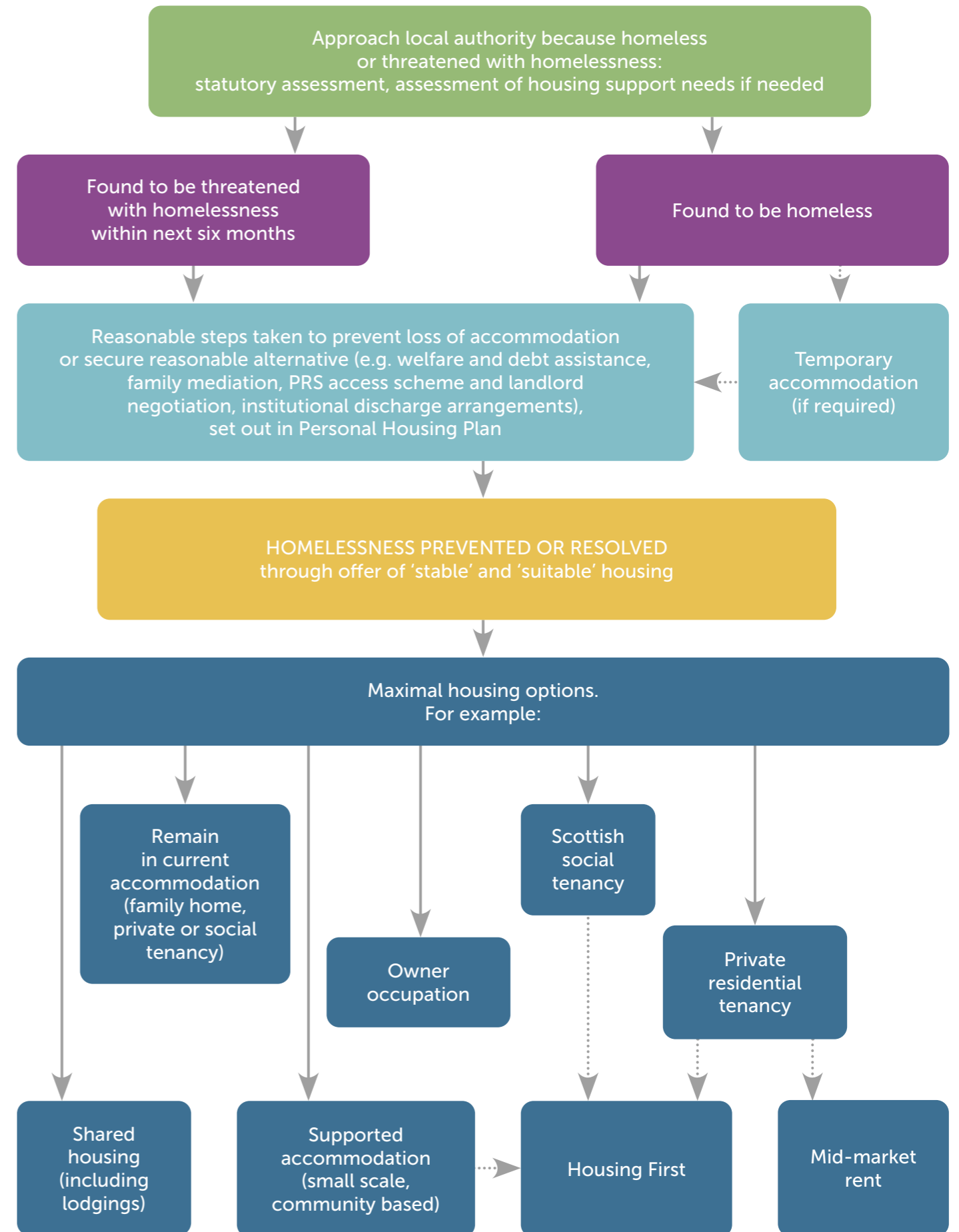
The Group expressed its intention at an early stage to ensure that prevention activity started as soon as possible when a risk has been identified. The current statutory threshold of 56 days seems arbitrary and too short, especially in light of the change to tenancy notice periods under the Private Housing (Tenancies) (Scotland) Act 2016¹⁰⁴, and local authority stakeholders argued that a longer time frame is needed to take action to prevent homelessness. The Prevention Commission concluded that the time “period needs to be longer than 2 months to allow enough time for people to be supported to make positive decisions when they are not in ‘crisis mode’”¹⁰⁵. Building on the discussions with the initial stakeholder event, the Group recommends that **a local authority must assist anyone threatened with homelessness within the next six months (s24(3-8))**. This timescale will encourage activity at an early stage, for example before financial difficulties or rent arrears have grown to the point when eviction is imminent, where relationships with a landlord are deteriorating, or well in advance of an individual being discharged from an institution.

A duty starting so early will require a cultural shift in homelessness services and across the

¹⁰³ These have been drafted on the basis that the test for intentionality is no longer in place, based on the recommendation by HARSAG which was accepted in principle through the Action Plan. If intentionality is not removed, then some changes would be needed to ensure that they work effectively. The Group does not see any role for a test for intentionality within a homelessness prevention framework.

¹⁰⁴ A Welsh Assembly committee has recently recommended that their definition should be extended from 56 to 84 days through the Renting Homes (Amendment) (Wales) Bill <https://senedd.wales/laid%20documents/cr-ld13547/cr-ld13547-e.pdf>

¹⁰⁵ All In For Change, Prevention Commission meeting 2, February 2020



local authority, assisting people to remain in their homes or to be rehoused rapidly without resort to temporary accommodation, and with a strong emphasis on integrated or co-ordinated working with other services (s27A(4)). Strategic planning across local services within and beyond the local authority is critical to the implementation of this duty. This is discussed later in the report, with specific recommendations.

Steps to prevent homelessness

The Group wants to draw on the best practice of housing options which has been developed in Scotland over the past ten years, and ensure a minimum consistency in the prevention assistance offered across the country, which local authorities can then build on according to local needs and priorities. This is similar to the legislative approach taken in Wales, and in accordance with the recommendations of stakeholders to put the preventative housing options approach on a more formal basis.

The minimum statutory framework to prevent someone losing their home (s30C Reasonable steps to secure that suitable accommodation is available, or does not cease to be available) should include:

- Housing options information, advice and advocacy
- Support for landlords and tenants in the private rented sector, including landlord negotiation and assistance, rent deposit guarantee schemes and other access schemes
- Welfare and debt advice and assistance
- Advocacy support
- Support for people experiencing domestic abuse to choose the best housing outcome, including assistance to remain safely in their own home where this is their preference
- Family mediation services
- Supply of furniture or similar goods

- Referral to other relevant agencies

In addition, where an applicant has housing support needs, the local authority must assess these and make provision to meet them (s30B). This should be irrespective of tenure, may include housing support associated with Housing First as well as lower level support.

This minimum offer should be underpinned by specific working arrangements between agencies, such as between the local authority and social landlords, prisons and other institutions, making housing options advice available for people in court settings, etc. (s27(3-4)).

The duty to take reasonable steps¹⁰⁶ would end in a range of circumstances, including by securing suitable and settled accommodation (discussed in more detail below), or where it becomes apparent that the situation cannot be resolved by taking such steps. In this case the applicant is to be owed the full duty for being rehoused. To ensure that reasonable steps are not attempted indefinitely, we have proposed that a maximum period to try reasonable steps of 56 days, after which the local authority must secure suitable and settled housing for the applicant (s30D, s31(1)).

We note that Shelter Scotland disagree with extending this duty to people who have statutory homelessness status.

Personal housing plans, applicants' views and support

Services should work in partnership with people who are facing potential homelessness, taking a person-centred approach. The Prevention Commission were clear that applicants need to feel that their needs and views are listened to. This should be the ethos that underpins the assessment process and be reflected in a jointly produced Personal Housing Plan.

The draft legislation states that a **local authority must take into account the applicant's views as part of the assessment, and try to reach**

agreement with the applicant on their housing needs, desired outcomes and what they advise the applicant to do to help resolve their circumstances (s30A(2e, 3)). This is intended to be a minimum statutory framework to underpin an approach where the local authority and the applicant work together to identify the barriers, desired outcomes and way forward to addressing the housing situation.

We therefore recommend that **the statutory assessment forms the basis of a Personal Housing Plan agreed between the local authority and the applicant.** We note the work that is underway between Shelter Scotland and Healthcare Improvement Scotland and that as learning emerges from this work it should be used to shape the implementation of this aspect of our proposals.

Co-production of solutions with applicants through the assessment and planning process to prevent homelessness is at the core of the new framework we envisage, to ensure that housing outcomes not only meet people's needs but as far as possible provide the solutions they believe would make the greatest difference to them.

Meeting the needs of specific groups

Certain parts of the population are at greater risk of homelessness than others. Those leaving particular institutions often find themselves without accommodation as they move on. Groups HARSAG identified included those leaving:

- Prison or youth detention accommodation
- The armed forces
- Hospital without suitable accommodation to go to

We recommend that **anyone leaving these institutions within the next six months with no accommodation arrangements in place should be considered as threatened with homelessness (s24).** We go on to discuss some of these groups in more detail in Part 2 below.

Some parts of the population may need particular forms of assistance to resolve issues that may lead to homelessness. As well as the groups above, this includes:

- Those experiencing domestic abuse

- Those going through legal proceedings which may result in the loss accommodation
- Those with mental health conditions or impairments
- Young people
- Those facing homelessness within the private rented sector

We recommend that **homelessness and housing options services must work with other services and voluntary sector partners to ensure that the service meets the needs of these groups, and any other that they specifically identify (s27A(4)).** As part of identifying specific groups, local authorities should look at different characteristics and issues within their local population. For example, they may have a high rate of youth homelessness in a particular part of their authority, or identify that certain landlords are responsible for a number of evictions into homelessness and take steps to adapt their service accordingly.

Local authorities should agree protocols and ways of working with relevant bodies such as social landlords, prisons, specialist domestic abuse services and other relevant services to support this work, and a revised Code of Guidance should contain explicit direction on how to do this.

In relation to domestic abuse specifically, we also make the following recommendations:

- **Assistance from homelessness services to prevent homelessness must include support and security measures to enable them to remain in their homes safely where this is the applicant's preference (s30C(3e)).**
- **The definition of abuse within homelessness legislation is expanded to cover both the Protection from Abuse (Scotland) Act 2001 and the Domestic Abuse (Scotland) Act 2018 (S28(5,11)).**
- **Homelessness prevention services should work with other partners to ensure they are able to meet the needs of people requiring housing assistance due to domestic abuse (s27A(4d)).** Such an approach should include appropriate service planning, joint working across housing, homelessness and other services and training for staff. Local authorities should ensure that homelessness and housing

¹⁰⁶ The language of "reasonable steps" is similar to that in relation to relief duties in England and Wales. Key differences however are that: a) Reasonable steps duties in England and Wales are to assist the applicant to secure accommodation, rather than to actively secure accommodation on behalf of the applicant; b) applicants are entitled to interim accommodation in Scotland if the local authority believe they are homeless (s29); and c) applicants must have an outcome of suitable and settled accommodation, either through reasonable steps or through the main rehousing duty. In England and Wales, where local authorities can discharge the duty after 56 days if they have taken reasonable steps even if that has not resulted in a housing outcome for the applicant. For further details, see table in appendix 2.

services have effective protocols in place to identify signs of abuse as early as possible and assist people whose housing is at risk as a result of domestic abuse.

- **Local authorities support victims of domestic abuse to access exclusion orders**

Further details relating to domestic abuse cases are set out in the Part 2.

Maximising housing options

Currently the homelessness duty can be discharged through housing people into either social or private tenancies. The vast majority (93%) of settled housing outcomes for unintentionally homeless households are in the social sector, with a further 7% discharged in to private tenancies. This means there is very little diversity of outcome and restricts choice.

While there has been significant investment in social housing in recent years, more is still needed in order to meet demand from both homeless and non-homeless households in housing need, especially in high demand areas, and access and availability continue to be barriers to addressing homelessness rapidly¹⁰⁷. Waiting times for social housing to become available can be extensive especially in high demand areas, resulting in the high use of temporary accommodation for lengthy periods and limited options when properties do become available. While in some parts of the country the private rented sector has been successfully used, it is not a widely used discharge option, with only 7% discharged into a Private Residential Tenancy¹⁰⁸.

In their second meeting, the Prevention Commission concluded that “specifying as broad a range of housing options as possible within the new duty would be a positive step forward, while also thinking carefully about a potential minimum time period that the housing needs to be available for. While this is important to maintain security, we need to be mindful of not creating something

arbitrary that negatively impacts flexibility and choice”¹⁰⁹.

In line with this recommendation, the Group wants to allow people who are facing potential homelessness the same range of accommodation options as are available to any member of the general public. This would allow applicants choice and control over where they live, either to remain in their current accommodation or to be rehoused as rapidly as possible and would minimise any stigma related to having received assistance under homelessness duties. There must be safeguards in place to ensure that the accommodation is stable and suitable for the household, to resolve any risk of homelessness, but it should not be limited to just social and private tenancies.

This was a strong theme in the discussions of the Prevention Commission, who noted people in the greatest housing need often had fewest housing options and felt that people should have the same options as other members of the public, whilst balancing this with safeguards to give people stability. They identified tenure as just one of eight factors which may influence people’s decisions regarding housing choice:

- Location (being near to family, work, childcare, schools etc.)
- Size and/or type of home (such as number of bedrooms, multi-storey, garden)
- Accessibility (wheelchair or other access issues, any other medical factors)
- Cost (thinking about rent, council tax, Housing Benefit/LHA, current or future employment)
- Security of tenure (consideration of the different tenancies available in the social or private rented sector)
- Safety/security (including issues such as domestic abuse, other violence and territorial issues, especially for people whose

107 SFHA, CIH, Shelter Scotland (2020) Affordable Housing Need in Scotland post 2021; Indigo House (2018) Scotland’s transition to rapid rehousing: Market area analysis, legislative and cultural review <https://social-bite.co.uk/wp-content/uploads/2018/06/RRTP-Analysis-and-Review-JUNE-2018-pubv1.pdf>

108 Comparing housing outcomes for homeless households with those of the wider population, overall just 23% of settled homes are in the social housing sector, with 15% in the private rented sector and the rest being owner-occupied. Scottish Government (2018) Housing statistics for Scotland 2018: key trends summary.

109 All In For Change, Prevention Commission Meeting 2, February 2020

homelessness is made harder by experiences such as addictions, trauma, mental ill-health)

- Time (taking account of how long you can wait to move or if you need somewhere right away)
- Other (pets, housemates and anything else that someone might identify)

Appropriate housing options should be discussed with households as part of their assessment: the household’s views must be considered, and an agreement should be sought as far as possible on the appropriate housing outcomes. We suggest that this framework provides a useful basis for exploring applicants’ housing options with them, as part of a housing planning process.

In facilitating a wide range of housing options to prevent homelessness, we do not want to create an incentive to disengage with prevention work in order to get priority access to social housing by becoming homeless. Therefore, equalising the housing options available whether someone is at risk of homelessness or has already lost their home would prevent any incentive to become homeless¹¹⁰.

We recommend that **the criteria for identifying appropriate housing options shifts to focus on the stability and suitability of the accommodation, with suitable safeguards**, as follows:

Stability: All accommodation must be expected to be available for a minimum period of 12 months.

Stable accommodation should be defined to include:

- A Scottish secure or short Scottish secure tenancy
- Owner occupation
- A Private Residential Tenancy, where there is an expectation that the accommodation will be available for at least 12 months, for example through receiving an assurance from the landlord that they are not intending to sell during that time

- Other forms of accommodation, for example with a parent or a friend, where the owner/ landlord has provided in writing their intention that the accommodation will be available for at least 12 months, and the local authority is satisfied with this reassurance

Suitability: All accommodation must be suitable to the needs of the household.

Suitability will cover grounds relating to the accommodation and those relating to the household including:

- Affordability (defined in relation to the household’s residual income after housing costs)
- The best interests of any children in the household, or for whom the individual has parental responsibility
- Location and access to relevant services, employment (including future prospects, for example where a lone parent is planning to return to work), caring responsibilities or education, family support and social networks
- Needs relating to health or disability
- Where abuse is a factor (domestic or otherwise), proximity to the perpetrator/victim

Social or private tenancy, or owner occupation should be considered as “standard” discharge options, subject to the above criteria, along similar lines to the current position. The explicit inclusion of owner occupation should facilitate consideration of this as an option, particularly for households who may benefit from relevant schemes such as the LIFT (Low Cost Initiative for First Time Buyers) scheme. Mid-market rent, a form of affordable private tenancy, should also be considered particularly for working people facing homelessness. Individuals may be discharged back into their current accommodation, as long as it meets the criteria for being settled and suitable.

Safeguards for non-standard housing options

Any other form of accommodation, such as lodgings with a resident landlord, may also be

110 Note the intention is to equalise the available housing options for those facing homelessness compared to the wider population, not to equalise the housing outcomes. In England, where social housing is not so prevalent as in Scotland, still 42% of homelessness prevention housing outcomes in the first year of the HRA were in the social sector. (MHCLG (2019) Homelessness statistics <https://www.gov.uk/government/collections/homelessness-statistics>)

considered for discharge. These “non-standard” options must be stable and suitable, as above, and must also meet the additional safeguards:

- The accommodation must have appropriate facilities for settled living, including
 - o 24-hour access
 - o adequate toilet and washing facilities
 - o access to kitchen facilities
 - o a private bedroom
 - o a statement of rights and responsibilities in relation to the accommodation.
- Applicants must give written consent to be discharged into a non-standard form of accommodation (i.e. they have a veto)

A draft statutory instrument containing these provisions is in appendix 1b.

We note that Shelter Scotland do not agree with the recommendation to widen housing options beyond social and private tenancies.

This proposal will have implications for social housing allocations policy. Under current policy someone who is homeless or threatened with homelessness should have reasonable preference for social housing if their housing needs cannot be met in other ways¹¹¹. The statutory assessment as we have proposed it will be a key point to identify what is the most appropriate and preferable housing option for the applicant. There must continue to be a strong preference within social housing allocations for those who are homeless or about to become homeless, so that where this is the appropriate option, they are able to access social housing which meets their needs. At the same time, other reasonable preference groups may meet the statutory criteria for homelessness or risk of homelessness, such as those living in unsatisfactory housing conditions, and so further thought should be given to how allocations policies may support homelessness prevention.

Enforcing people’s rights

Ensuring the system is transparent and can be held to account is important to ensure that the

system works effectively, and it can be challenged when it fails to work as it should. There should be a comprehensive right to review, and right to appeal to provide full accountability in a system which seeks to support and protect people in such a vulnerable situation as losing their home. We recommend extending the range of decisions that may be reviewed and allowing decisions to be challenged through the tribunal as set out below.

Right to review

There should be a right to review the following decisions (**s35A and B Right to request review of decision and Procedure on review**):

- Decision as to whether someone is homeless or at risk of homelessness
- Decision to refuse an application
- Decision as to whether any accommodation secured discharges the local authority’s duty to the applicant
- Decision to terminate interim accommodation pending an assessment or review
- A review of the accuracy of the assessment
- Any decision relating to a housing support needs assessment
- Decisions relating the reasonable steps a local authority may take to prevent or alleviate homelessness
- Decisions to end assistance to prevent someone’s homelessness
- Decisions to notify another local authority under local connection criteria

An applicant should still be able to request a review even if they have accepted an offer of accommodation, allowing them to challenge the offer of accommodation without putting themselves at further risk of homelessness.

Right to appeal

Where a decision is reviewed and the applicant is still not happy with the outcome, the Group

recommends that **applicants can challenge decisions through the Housing and Property Chamber of the First-tier Tribunal for Scotland. Appeal grounds should be on both points of law and the merits of a decision (s35C).**

Currently appeal to tribunal is not an option for people seeking to challenge decisions about homelessness. The only options available once the review process has been exhausted is to challenge a point of process or administration through the Ombudsman, or else to take the case to judicial review, a process that can be costly, difficult to access and legalistic¹¹². The absence of a right of appeal on the merits is anomalous in the context of social benefits which the state has a legal duty to provide. Our recommendation would widen access to remedies, and test implementation of the law and the intention behind it.

Regulation

The Scottish Housing Regulator has a critical role in how the homelessness system works. A clear framework of duties relating to homelessness prevention, including its interaction with statutory homelessness, will support effective regulation. Conversely, as has already been seen, where the framework is unclear it will undermine effective prevention work.

Regulation of the homelessness and homelessness prevention framework should ensure that early intervention and the dignity and control of the individuals affected by homelessness should be at the heart of the system, whilst also ensuring that where people do need a settled and suitable housing outcome they are able to achieve this with the minimum disruption and trauma to their lives. To facilitate this, we recommend that **the Scottish Housing Regulator reports annually on the experiences of households facing homelessness and the threat of homelessness, as it does currently for social tenants**. It may also be appropriate to consider in this context how regulators including the Scottish Housing Regulator, Care Inspectorate, Scottish Prisons Inspectorate and Audit Scotland may work together more closely to support homelessness prevention.

Strategic housing needs assessments

A local authority should have a clear picture of household support needs in its area as part of its strategic housing planning. This will inform its service development, its ability to plan services, and its work with other agencies to meet the needs of households at risk of homelessness. Although this used to happen regularly under the Supporting People programme, it does not happen regularly now. Within this, consideration should be given to the needs of different groups, including gender, age, income level, sexuality and disability, and the intersectionality between these groups¹¹³.

We recommend that **as part of the local authority Local Housing Strategy required under s89 of the Housing (Scotland) Act 2001 an assessment should be carried out of the need of persons in the area for housing support to retain their accommodation.**

¹¹² <https://scottishhousingnews.com/article/jon-kiddie-homelessness-judicial-review-a-missed-opportunity-for-reform>

¹¹³ Collection of income levels (amount or course) in particular will also support planning on affordable housing options, including for example the balance between social housing and other types of affordable housing.

Conclusion

Becoming homeless is one of the most damaging situations someone can find themselves in. There is a moral imperative to prevent homelessness, and it is often much easier to prevent than to fix.

As a nation, we have set out a vision where all people in Scotland are treated with kindness, dignity and compassion, where everyone has a home that meets their needs, and where homelessness is ended. The intention supporting that vision is that homelessness is prevented wherever possible; planning and resources join up to tackle homelessness; the response is quick and effective where homelessness does happen; and settled homes are prioritised for all¹¹⁴.

Over the past twelve months the Prevention Review Group consulted with a wide range of stakeholders to develop proposals for a clear and comprehensive legal framework that would substantially strengthen work to prevent homelessness in Scotland and ultimately support this intention.

Our proposals address the lack of clarity over statutory duties which has hindered local authorities' work to prevent homelessness. They set out a means to address the risk of losing one's home so that people do not have to live through an experience of homelessness, with all the disruption and indignity, trauma and stigma that may entail. In this the recommendations take learning from the prevention frameworks developed in England and Wales. But we go above and beyond those frameworks, so that people can access assistance at a much earlier stage. And we have built on the strengths of the Scottish framework, so that, unlike in those jurisdictions, everyone (eligible) who requires homelessness-related assistance will be entitled to accommodation which is stable and is suitable to their particular needs, regardless at what stage they enter the statutory homelessness system, with temporary accommodation available for anyone who requires it.

People facing homelessness have shaped our work and thinking throughout the journey of the Group, and the intention behind our proposals is to put people facing homelessness at the centre of the system. We want to empower them to have greater choice and control over their housing

options and at a much earlier stage, ultimately reducing the need for a crisis response. And so we have ensured that they have a strong voice in the process and are able to strongly challenge the system where this becomes necessary.

Beyond this, we have learnt from the duties to co-operate and refer on different public bodies in Wales and England, to develop recommendations on a wide range of public bodies which are much stronger, more specific and thoroughly integrated with each other, so that other agencies ask about homelessness and take the actions within their powers to resolve the situation. They identify an unprecedented strategic and operational focus on tackling homeless across public services.

In short, our recommendations set out a means to achieve the vision that everyone can have access to a home which meets their needs and homelessness is ended, because for anyone at risk of losing their home services work together to assist them, and they are able to access a meaningful right to settled housing which meets their particular needs.

Summary of recommendations

Overarching principles

- Responsibility to prevent homelessness should not rely solely or primarily on the homelessness service, but be a **shared public responsibility**.
- Intervention to prevent homelessness should **start as early as possible**. In many cases this will be before issues have escalated to a point where homelessness appears imminent.
- People facing homelessness should have **choice** in where they live and **access to the same range of housing outcomes as members of the general public**, with any necessary protections to mitigate further risk of homelessness. Housing outcomes should be comparable across the prevention and homelessness duties.

Part 1: Duties on other public bodies

Principles

- Duty on public bodies to “ask”: i.e. identify risk of homelessness
- Duty to “act” on that information to prevent people becoming homelessness
- (Duty on local authority to respond)
- No one should be discharged from institutions with nowhere to sleep that night

Health and social care

- Where it is identified that an individual may have health and social care needs as part of an assessment of homelessness or threat of homelessness, or an assessment of housing support needs, a statutory duty is placed on the health and social care partnership to co-operate with the local authority in planning to meet those needs.
- A statutory duty is placed on the Health and Social Care Partnership to identify the housing circumstances of patients, and where necessary work with partners to ensure that patients are assisted into suitable housing or that a risk of homelessness is prevented. Where the housing need is related to a lack of accommodation or housing support needs, this should be a referral

to the local authority for Housing Options and homelessness assistance.

- Where needs are more complex, to the extent that they cannot be supported in mainstream housing even with additional support, then primary responsibility for meeting those accommodation needs should sit with the Health and Social Care Partnership. This is intended to capture the needs of those with needs which require highly specialist medical or other support.
- Where a social worker or social care worker identifies a risk of homelessness, they should make a referral to the relevant part of the local authority. If they consider that there are unmet social care needs, a social care needs assessment should be carried out.
- By working with other partners, the local authority must ensure that the service for prevention and alleviation of homelessness is designed to meet the needs of people leaving hospital and people with mental illness or impairment.
- The local authority must provide assistance to anyone who is going to be discharged from hospital in the next six months and is considered as threatened with homelessness.
- GP practices should be under a requirement to refer to the local authority where a housing need is identified.

Case co-ordination for people with multiple or complex needs

- For people with complex needs requiring input from two or more public services to support their health or wellbeing, or to facilitate community safety, a case co-ordination approach is put in place
- The approach should consist of:
 - a. Identification of a professional to lead on contact with the individual and co-ordinate service provision
 - b. A means for overseeing case co-ordination to
 - i. Identify and address gaps in service provision and co-ordination for such individuals

- ii. Manage and prevent escalation of risk

Services for children and young people

Children's services

- if a health visitor or head teacher identifies that there is a risk of homelessness for a family, they make a referral to the homelessness service.
- Local authorities should ensure that they have family mediation available as part of their homelessness prevention offer.

Assistance for young people

- Local authorities should work with partners to ensure the service meets the needs of young people at risk of homelessness.

16 and 17 year-olds

- Young people aged 16 and 17 at risk of homelessness must be treated as children under the law and should receive assistance from children's social work, who have expertise in the needs of this group. Primary responsibility for assisting homelessness 16 and 17 year-olds should sit with social work.

Landlords

Social landlords

- Where a social landlord identifies circumstances which may lead to a risk of homelessness, including:
 - Rent arrears or other financial difficulty which may give rise to risk of homelessness (i.e. before difficulties have led to impending homelessness, such as eviction action).
 - Tenant behaviour or action which may give rise to risk of homelessness.
 - Other circumstances, including domestic abuse, or court proceedings for example relating to criminal charges, which may give rise to a loss of accommodation due to remand or imprisonment then the social landlord must take relevant reasonable steps to mitigate that risk.

Reasonable steps would include

- Housing management practices to sustain tenancies
- Engaging with the tenant to address relevant financial circumstances
- Engaging the tenant to address behaviour
- Putting in place protocols to address relevant circumstances and mitigate risk of homelessness at an early stage, including protocols relating to domestic abuse and where tenants face court proceedings
- If the landlord considers the risk of homelessness for a tenant to require assistance beyond their powers, including where there is a growing risk of eviction, then they should notify the local authority as early as possible that there is a risk of homelessness (earlier than an existing s11 duty).

Private landlords

- The pre-action requirements on private landlords in cases of rent arrears which were created in the emergency coronavirus legislation, to provide information and put in place support for tenants in rent arrears, should be made permanent.
- If the landlord agrees with tenants as part of the conversation around the pre-action protocol, or in any other circumstances, the landlord may make a homelessness prevention referral to the local authority, where they are concerned that there may be an emerging risk of homelessness. A local authority must respond to a referral from a private landlord under section 28 about a possible case of homelessness.
- If a local authority is assisting a person threatened with homelessness as a result of pending eviction from a private tenancy, the local authority should have a power to request that the first tier tribunal delay execution of an eviction order proceeding where a landlord has failed to co-operate (appendix 1d).
- The homelessness advice and assistance is designed to meet the needs of persons living in the PRS. In practice, this would include PRS access schemes, landlord liaison and rent deposit guarantee schemes.

Criminal justice

Prisons

- The Prisons and Young Offenders Institutions (Scotland) Rules 2011 are amended to ensure that
 - Prisoners are asked about their housing situation as soon as reasonably possible on going into prison.
 - If a prisoner is likely to need assistance to find housing for when they leave prison, a referral is made as soon as possible in the final six months of the sentence to the local authority identified by the prisoner for homelessness assistance.
- Where housing issues are identified, prisons work with partners including housing options and housing associations to address the issues.
- By working with other partners, local authorities must ensure that the service for prevention and alleviation of homelessness is designed to meet the needs of people leaving prison or youth detention accommodation, and anyone at risk of homelessness due to impending court proceedings. Relevant partners should include the Scottish Prison Service and the Scottish Courts and Tribunal Service.

Courts services

- Local Housing Options services should work with the Courts service to ensure housing options advice is easily accessible within a court setting.

Police Scotland

- Where there is a reasonable belief that someone may be homeless, police should ask about the individual's housing circumstances. Specific circumstances may be identified in appropriate regulations or guidance, including someone rough sleeping, cases of domestic abuse or other household dispute leading to possible homelessness.
- Where the police identify a risk of homelessness they should make a referral to the local authority (with a corresponding responsibility on the local authority to act on the referral.)

Domestic abuse

- Assistance from homelessness services to prevent homelessness must include support and security measures to enable them to remain in their homes safely where this is the applicant's preference.
- The definition of abuse within homelessness legislation is expanded to cover both the Protection from Abuse (Scotland) Act 2001 and the Domestic Abuse (Scotland) Act 2018.
- Homelessness prevention services should work with other partners to ensure they are able to meet the needs of people requiring housing assistance due to domestic abuse. Such an approach should be coherent, including appropriate service planning, joint working across housing, homelessness and other services and training for staff. Local authorities should ensure that homelessness and housing services have effective protocols in place to identify signs of abuse as early as possible and assist people whose housing is at risk as a result of domestic abuse.
- Local authorities support victims of domestic abuse to access exclusion orders.
- People at risk of homelessness as a result of domestic abuse should be able to access free legal aid in order to get an exclusion order.
- When considering the suitability of accommodation offered to a perpetrator or victim of domestic abuse, consideration must be given to its proximity to the other party in the abuse.
- Social landlords should put in place protocols to address housing issues relating to domestic abuse, based on the guidance produced in 2019 by CIH Scotland, ALACHO, SFHA, Shelter Scotland and Scottish Women's Aid. Consideration should be given to making elements of this guidance statutory if necessary.

Local authority duties to respond to referrals

- A local authority should accept a referral from a public body or landlord as a formal application, unless the individual states that they do not wish to make an application for assistance, or unless the local authority cannot contact the

individual after making reasonable efforts.

Strategic planning

- Community planning partners should set out and establish in Locality Plans the impact of homelessness, emerging issues and joint working to address this. A community planning statement should be included within the Local Housing Strategy.
- Health and Social Care Partnerships should set out a clear statement of their contribution to preventing homelessness within the Local Housing Strategy.
- The next iteration of the National Performance Framework has an emphasis on housing which enables people to live in it successfully.

Part 2: Reforming the current homelessness framework

Principles

1. Clarify, strengthen and extend a duty to prevent homelessness, and integrate it **within the main statutory framework**.
2. Prescribe a **range of reasonable steps to be used to prevent or alleviate homelessness**, based on the existing Housing Options framework, to be included in a **personalised and tailored housing plan that maximises applicants' choice and control**.
3. Ensure the **service meets the needs of specific groups at risk of homelessness**, including those experiencing domestic abuse, and those leaving prison, care and other institutions, those facing a threat of homelessness living in the private rented sector.
4. Ensure people requiring assistance to prevent or alleviate homelessness are **assisted into accommodation which is stable and suitable to their needs**, again allowing them choice and control.
5. The system must be **clear and accountable**, providing people with appropriate and effective rights of reviews and challenge throughout the process.

1. An extended prevention duty

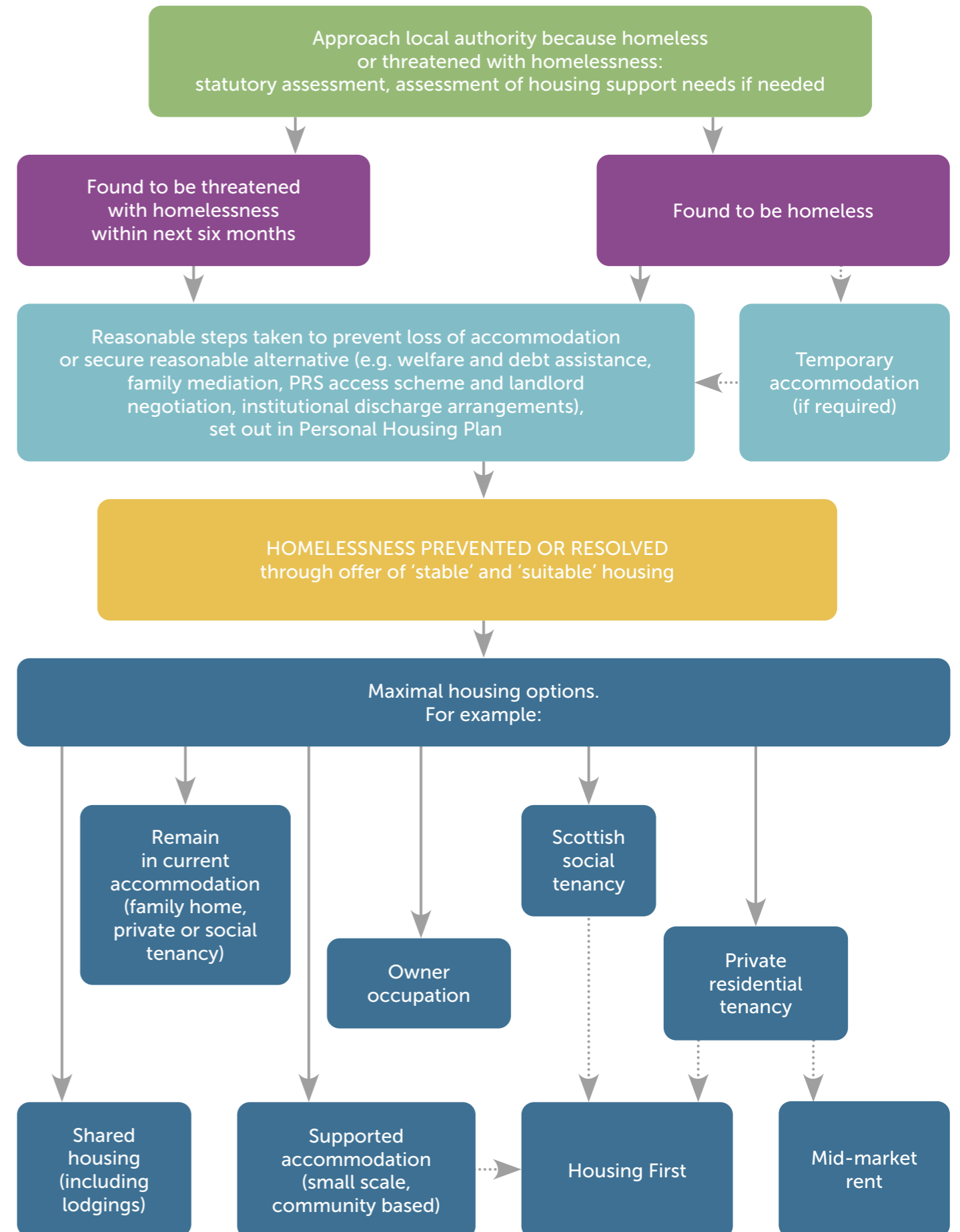
- A local authority must assist anyone threatened with homelessness within the next six months

2a. Steps to prevent homelessness

- The minimum statutory framework to prevent homelessness should include:
 - Housing options information, advice and advocacy
 - Support for landlords and tenants in the private rented sector, including landlord negotiation and assistance, rent deposit guarantee schemes and other access schemes
 - Welfare and debt advice and assistance
 - Advocacy support
 - Support for people experiencing domestic abuse to choose the best housing outcome, including assistance to remain safe in their own home where this is their preference
- Family mediation services
- Supply of furniture or similar goods
- Referral to other relevant agencies
- In addition, where an applicant has housing support needs, the local authority must assess these and make provision to meet them
- This minimum offer should be underpinned by specific working arrangements between agencies, such as between the local authority and social landlords, prisons and other institutions, making housing options advice available for people in court settings, etc

2b. Personal housing plans, applicants' views and support

- A local authority must take into account the applicant's views as part of the assessment, and try to reach agreement with the applicant on their housing needs, desired outcomes and what they advise the applicant to do to help resolve their circumstances
- The statutory assessment forms the basis of a Personal Housing Plan agreed between the local authority and the applicant



3. Meeting the needs of specific groups

- Anyone leaving prison, youth detention, the armed forces or hospital within the next six months with no accommodation arrangements in place should be considered as threatened with homelessness.
- Homelessness and housing options services must work with other services and voluntary sector partners to ensure that the service meets the needs of specific groups, and any other that they specifically identify, including:
 - Those experiencing domestic abuse
 - Those going through legal proceedings which may result in the loss accommodation
 - Those with mental health conditions or impairments
 - Young people
 - Those facing homelessness within the private rented sector

Note on care leavers: The Group has decided not to specify care leavers in the legislation. The local authority's primary responsibility to a care leaver up to the age of 26 is in relation to their role as corporate parent and we do not want to create conflicting duties. Stakeholders argued that current statutory provisions needed time to bed in.

4. Maximising housing options

- The criteria for identifying appropriate housing options should shift to focus on the stability and suitability of the accommodation, as follows:

Stability: All accommodation must be expected to be available for a minimum period of 12 months.

Stable accommodation should be defined to include:

- A Scottish secure or short Scottish secure tenancy.
- Owner occupation.
- A Private Residential Tenancy, where there is an expectation that the accommodation will be available for at least 12 months, for example through receiving an assurance from

the landlord that they are not intending to sell during that time.

- Other non-standard forms of accommodation, where there is an intention that the accommodation will be available for at least 12 months, for example through an occupancy agreement or permission to occupy.

Suitability: All accommodation must be suitable to the needs of the household.

Suitability will cover grounds relating to the accommodation and those relating to the household including:

- Affordability (defined in relation to the household's residual income after housing costs).
- The best interests of any children in the household, or for whom the individual has parental responsibility.
- Location and access to relevant services, employment, caring responsibilities or education, family support and social networks.
- Needs relating to health or disability.
- Where abuse is a factor (domestic or otherwise), proximity to the perpetrator / victim.

Additional safeguards should be in place for anyone accommodated in non-standard housing options, including the right to refuse these options.

5. Enforcing people's rights

- There should be a right to review on a range of specific decisions.
- An applicant should still be able to request a review even if they have accepted an offer of accommodation.
- Applicants can challenge decisions through the Housing and Property Chamber of the First Tier Tribunal for Scotland. Appeal grounds should be on both points of law and the merits of a decision.
- The Scottish Housing Regulator reports annually on the experiences of households facing homelessness and the threat of

homelessness, as it does currently for social tenants.

Strategic housing support needs assessments

- As part of the local authority Local Housing Strategy required under s89 of the Housing (Scotland) Act 2001 an assessment should be carried out of the need of persons in the area for housing support to retain their accommodation.

Appendices

Appendix 1: Proposed legislative changes

Appendix 1a: Draft amendments to Part II of the Housing (Scotland) Act 1987

Note:

1. Proposed amendments to the legislation are shown as tracked changes.
2. Amendments have been drafted on the basis that the test for intentionality is no longer in place, based on the recommendation by HARSAG which was accepted in principle through the Action Plan. If intentionality is not removed, then some changes would be needed to ensure that they work effectively. The Group does not see any role for a test for intentionality within a homelessness prevention framework.
3. The use of an ellipsis (“...”) indicates where language has been omitted from the current legislation for ease of reading, for example in s30 in relation to restricted persons.

Part II of the Housing (Scotland) Act 1987 (Homeless Persons and Prevention of Homelessness) with draft amendments

24.— Homeless persons and persons threatened with homelessness.

- (1) A person is homeless if he has no accommodation in the United Kingdom or elsewhere.
- (2) A person is to be treated as having no accommodation if there is no accommodation which he, together with any other person who normally resides with him as a member of his family or in circumstances in which the local authority consider it reasonable for that person to reside with him—
 - (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court, or
 - (b) has a right or permission, or an implied right or permission to occupy, or in England and Wales has an express or implied licence to occupy, or

- (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession.
- (2A) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.
- (2B) Regard may be had, in determining whether it would be reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the area of the local authority to whom he has applied for accommodation or for assistance in obtaining accommodation.
- (3) A person is also homeless if either of subsections (4) or (5) apply.
- (4) This subsection applies if the person has accommodation but—
 - (a) he cannot secure entry to it, or
 - (b) it consists of a movable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it; or
 - (c) it is overcrowded within the meaning of section 135 and may endanger the health of the occupants.
- (5) This subsection applies if the person (“B”) has accommodation but –
 - (a) it is probable that occupation of it will lead to abuse being suffered by B, or any other person who normally resides with him as a member of his family (“C”); or
 - (b) there is a risk that occupation of it will lead to B or C suffering abuse from a person (“A”) who resides at the accommodation, or who has previously resided with B or C;
 - (c) there is a risk that occupation of it will lead to B or C suffering abusive behaviour by a partner or ex-partner of either of them.

- (6) A person is threatened with homelessness if any of subsections (7), (8) or (9) apply to that person.
- (7) This subsection applies if it is likely that he will become homeless within 6 months.
- (8) This subsection applies if, in respect of the only accommodation the person has that is available for the person's occupation:
- (a) a valid notice has been given by the landlord under:
- (i) section 19 or 33(1)(d) of the Housing (Scotland) Act 1988;
- (ii) section 14(2) or 36(2) of the Housing (Scotland) Act 2001;
- (iii) section 62 of the Private Housing (Tenancies) (Scotland) Act 2016
- and that notice will expire within six months;
- (b) a notice to quit, or any other notice which is effective to terminate the tenancy or other contract under which the accommodation is occupied, has been given by the landlord or owner, and that notice will expire within six months;
- (c) proceedings have been raised under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970.
- (9) This subsection applies if the person is:
- (a) due to be released from prison or youth detention accommodation within the next six months, and has no arrangements in place for his accommodation, on release;
- (b) due to leave the regular armed forces within the next six months, and has no arrangements in place for his accommodation, on leaving;
- (c) due to leave hospital within the next six months, and has no arrangements in place for his accommodation, on leaving.
- (10) The Scottish Ministers may by order made by statutory instrument specify further circumstances in which a person is to be regarded as homeless, or threatened with homelessness, for the purposes of this Part.

(11) In this Part:

- (a) "abuse" has the meaning given by the Protection from Abuse (Scotland) Act 2001 (asp 14);
- (b) "abusive behaviour", "partner" and "ex-partner" have the meanings given by the Domestic Abuse (Scotland) Act 2018 (asp 5).

24A.— Notification by social landlord in case of possible homelessness or threatened homelessness

- (1) This section applies if a social landlord believes that a person occupying housing kept by the social landlord is, or may be, homeless or threatened with homelessness, for the purposes of section 24, and has not made an application to any local authority for accommodation or assistance under section 28 of that Act.
- (2) The social landlord shall ask the person to agree to the social landlord notifying a local authority of—
- (a) the belief mentioned in subsection (1), and
- (b) how the person may be contacted by the local authority.
- (3) If the person—
- (a) agrees to the social landlord making the notification, and
- (b) identifies a local authority to which the person would like the notification to be made,
- the social landlord shall notify that local authority of the matters mentioned in subsection (2)(a) and (b).
- (4) In this Part, "social landlord" means any registered social landlord, local authority landlord or a local authority which provides housing services.

[Section 25 (priority need) already abolished]

[Sections 26 (intentional homelessness) and 27 (local connection) are not changed in this draft,

but (I understand) are to be amended in due course).]

27A.— Duty to provide information, advice and assistance in accessing help

- (1) A local authority shall secure the provision, without charge, of a service providing—
- (a) information and advice relating to preventing homelessness, securing accommodation when homeless, accessing any other help available for people who are homeless or may become homeless, and
- (b) assistance in accessing help under this Part or any other help for people who are homeless or may become homeless.
- (2) In relation to subsection (1)(a), the service must include, in particular, the publication of information and advice on the following matters—
- (a) the system provided for by this Part and how the system operates in the local authority's area;
- (b) the advice and assistance that is available in the local authority's area for any person who is homeless or may become homeless (whether or not the person is threatened with homelessness within the meaning of this Part);
- (c) how to access the help that is available.
- (3) In relation to subsection (1)(b), the service must include, in particular, assistance in accessing help to prevent a person becoming homeless which is available whether or not the person is threatened with homelessness within the meaning of this Part.
- (4) The local authority shall, in particular by working with other public authorities, voluntary organisations and other persons, ensure that the service is designed to meet the needs of persons at risk of homelessness who are within the following groups:
- (a) persons aged 25 and under;
- (b) persons released from prison or youth

detention accommodation,

(c) former members of the regular armed forces,

(d) victims of abuse, or abusive behaviour from a partner or ex-partner,

(e) persons leaving hospital,

(f) persons suffering from a mental illness or impairment,

(g) persons living in accommodation in the private rented sector,

(h) persons at risk of losing the right to occupy their current accommodation as a consequence of any pending or ongoing legal proceedings;

(i) any other group that the authority identify as being at particular risk of homelessness in the authority's area.

(5) The authority may give to any person by whom the service is provided on behalf of the authority assistance by way of grant or loan.

(6) The authority may also assist any such person—

(a) by permitting the person to use premises belonging to the authority,

(b) by making available furniture or other goods, whether by way of gift, loan or otherwise, and

(c) by making available the services of staff employed by the authority.

(7) Two or more local authorities may jointly secure the provision of a service under this section for their areas; and where they do so—

(a) references in this section to a local authority are to be read as references to the authorities acting jointly, and

(b) references in this section to a local authority's area are to be read as references to the combined area.

28.— Inquiry into cases of possible homelessness or threatened homelessness.

- (1) If a person (“an applicant”) applies to a local authority for:

(a) accommodation; or

(b) assistance in

(i) obtaining accommodation, or

(ii) securing that accommodation does not cease to be available for his occupation,

and the authority have reason to believe that he may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves as to whether he is homeless or threatened with homelessness.

- (2) If the authority are so satisfied, they may, if they think fit, also make inquiries as to whether he has a local connection with the district of another local authority in Scotland, England or Wales.

- (3) Where a local authority receives notification from any public authority, social landlord, or private landlord, of:

(a) the landlord’s belief that a person is, or may be, homeless, or threatened with homelessness, and

(b) how that person may be contacted,

the local authority shall treat that person as having made an application under section 28(1), unless subsection (4) applies.

- (4) This subsection applies if:

(a) the local authority is unable to contact the person, having made reasonable efforts to do so;

(b) the person informs the authority that he does not wish to make an application under section 28(1).

- (5) In subsection (3):

(a) “public authority” means a person who has functions of a public nature; and;

(b) “private landlord” means a person who is the landlord of:

(i) a regulated tenancy under the Rent

(Scotland) Act 1984;

(ii) an assured tenancy under the Housing (Scotland) Act 1988;

(iii) a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016.

- (6) This section is subject to section 28A.

28A. – Provision of accommodation under section 25 of the Children (Scotland) Act 1995

- (1) Section 28 does not apply to any applicant for whom the local authority: –

(a) has a duty to provide accommodation, in terms of section 25(1) of the Children (Scotland) Act 1995; or

(b) has decided to provide accommodation under section 25(2) or (3) of the 1995 Act.

- (2) Where an applicant is a child or person who may be provided with accommodation under section 25(2) or (3) of the 1995 Act, the local authority shall firstly determine whether to provide accommodation under that section, before accepting an application under section 28 of this Act.

29.— Interim duty to accommodate

- (1) If the local authority have reason to believe that an applicant may be homeless they shall secure that accommodation is made available for his occupation—

(a) pending any decision which they may make as a result of their inquiries under section 28;

(b) where the applicant has, under section 35A, requested a review of a decision of the authority, until they have notified him in accordance with section 35B of the decision reached on review;

(c) where, by virtue of a decision referred to in paragraph (a) or (b), the authority have a duty under section 31 to secure that accommodation of a particular description becomes available for

the applicant’s occupation, until such accommodation becomes available.

- (2) This duty arises irrespective of any local connection which an applicant may have with the district of another local authority.
- (3) In subsection (1), “accommodation”, in the first place where the expression occurs, does not include accommodation of such description as the Scottish Ministers may, by order made by statutory instrument, specify.
- (4) Such an order may—
- (a) specify any description of accommodation subject to conditions or exceptions,
- (b) make different provision for different purposes and different areas.
- (5) A statutory instrument containing an order under subsection (3) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

30.— Notification of decision and reasons.

- (1) On completing their inquiries under section 28, the local authority shall notify the applicant of their decision on the question whether he is homeless or threatened with homelessness.

[Subsection (2) already repealed]

- (3) If they notify him that their decision is that he is homeless or threatened with homelessness, they shall at the same time notify him whether they have notified or propose to notify any other local authority under section 33 that his application has been made.

...

- (4) If they notify him—
- (a) that they are not satisfied that he is homeless or threatened with homelessness, or
- (b) that they have notified or propose to notify another local authority under section 33 that his application has been

made, they shall at the same time notify him of their reasons.

- (4A) They shall also notify him—

(a) that he may request a review of the decision and of the time within which such a request must be made, and

(b) of the advice and assistance that is available to him in connection with any such review.

...

30A.— Assessments

- (1) If the local authority are satisfied that an applicant is homeless or threatened with homelessness, they must make an assessment of the applicant’s case.
- (2) The authority’s assessment of the applicant’s case must—
- (a) specify the reasons why the applicant has become homeless or threatened with homelessness;
- (b) specify the housing needs of the applicant including, in particular, what accommodation would be suitable for the applicant and any persons with whom the applicant resides or might reasonably be expected to reside (“other relevant persons”);
- (c) where the authority have reason to believe that the applicant may be in need of housing support services, assess whether the applicant, and any other relevant persons, need such services;
- (d) seek to identify the outcome the applicant wishes to achieve with the authority’s assistance;
- (e) specify any steps the applicant is advised to take for the purposes of securing that the applicant and any other relevant persons have and are able to retain suitable accommodation;
- (f) specify the steps the authority are to take under this Part for those purposes including, in particular, the reasonable steps to be taken under section 30C; and

- (g) specify, in light of the reasons specified in subsection (2)(a), what steps, if any, might be taken in the future, to avoid the applicant becoming homeless or threatened with homelessness again.
- (3) In making its assessment, the authority must:
- (a) take the applicant's views into account;
- (b) try to reach agreement with the applicant as to the matters specified for the purposes of subsection (2)(b), (e), (f) and (g);
- (c) comply with section 30B, in respect of any assessment of the need for housing support services under subsection (2)(c); and
- (d) where subsection (4) applies, consider how best to co-ordinate the services being provided to the applicant, so as to enable the authority to discharge its duties under this Part.
- (4) This subsection applies where the applicant is receiving support or assistance from:
- (a) the authority in the exercise of any of their other functions as well as in the exercise of their functions relating to homelessness;
- (b) any Health Board;
- (c) an Integration Joint Board established under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014; or
- (d) any agency or organisation, charitable or otherwise, which provides support, assistance, advice or counselling to individuals with particular needs.
- (5) The authority must notify the applicant, by provision of a copy of assessment or otherwise, of the terms of the assessment.
- (6) Until such time as the authority consider that they owe the applicant no duty under any of the following sections of this Part, the authority must keep their assessment of the applicant's case under review.
- (7) If—
- (a) the authority's assessment of any of the matters mentioned in subsection (2) changes, or
- (b) the authority's assessment of the applicant's case otherwise changes such that the authority consider it appropriate to do so,
- the authority must notify the applicant, in writing, of how their assessment of the applicant's case has changed (whether by providing the applicant with a revised written assessment or otherwise).
- (8) A notification under subsection (5) or (7) must inform the applicant —
- (a) that he may request a review of whether the assessment made under subsection (2), or as changed under subsection (7):
- (i) accurately assesses the matters specified in subsection (2); and
- (ii) complies with subsection (3);
- (b) the time within which such a request must be made;
- (c) of the advice and assistance that is available to him in connection with any such review.
- 30B.— Assessment and provision of housing support services**
- (1) In carrying out such an assessment under section 30A(2)(c) the local authority must—
- (a) conduct inquiries of such type as may be prescribed; and
- (b) have regard to any prescribed matters.
- (2) Following such an assessment, the local authority must ensure that prescribed housing support services are provided to any person assessed as being in need of them.
- (3) The Scottish Ministers may by regulations made by statutory instrument make further provision about the provision of prescribed housing support services in pursuance of subsection (4) and may, in particular, specify—
- (a) the period for which services are to be provided;

- (b) matters to which a local authority are to have regard when ensuring provision of services.
- (4) Regulations made under this section may make different provision for different purposes and different areas.
- (5) Before making any regulations under this section, the Scottish Ministers must consult—
- (a) such bodies representing local authorities;
- (b) such bodies representing the interests of homeless persons; and
- (c) such other persons, as they think fit.
- (6) Regulations under this section may be made only if a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.
- (7) In this Part, "housing support services" includes any service which provides support, assistance, advice or counselling to an individual with particular needs with a view to enabling that individual to occupy, or to continue to occupy, residential accommodation as the individual's sole or main residence.
- 30BB.— Unmet Healthcare or Social Care Needs**
- (1) Where the authority, in making inquiries under section 28, or carrying out or revising an assessment under section 30A or 30B, forms the view that the applicant, or any person with whom the applicant resides or might reasonably be expected to reside ("other relevant person"), may have an unmet need for healthcare or social care provision, which is related to any of the matters it is required to assess under section 30A, it shall:
- (a) notify any Health Board, or an Integration Joint Board established under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014 of that view; and
- (b) request the board so notified to assess whether the applicant or another relevant person has an unmet need for healthcare or social provision, and if so, what should be done to meet that need.
- (2) Where the board, having made an assessment at the request of a local authority under subsection (1)(b), identifies that the applicant or another relevant person has an unmet need for healthcare or social care provision, or had such a need at the time of the local authority's notification under subsection (1)(a), it shall notify the local authority of that finding.
- (3) Where a notification is made to a local authority by the board under subsection (2), the local authority and the board shall together plan how best to co-ordinate:
- (a) the board's efforts to meet the need for healthcare or social care provision identified under subsection (2); and
- (b) and the authority's discharge of its duties under this Part.
- 30C.— Reasonable steps to secure that accommodation is available, or does not cease to be available.**
- (1) Where a local authority are satisfied that an applicant is homeless or threatened with homelessness, they shall take reasonable steps to secure that stable and suitable accommodation is available, or does not cease to be available, for the applicant's occupation.
- (2) Reasonable steps under subsection (1) may include —
- (a) arranging for a person other than the authority to provide something;
- (b) the authority itself providing something;
- or
- (c) providing something, or arranging for something to be provided, to a person other than the applicant.
- (3) The following are examples of reasonable steps that may be taken under subsection (1)—
- (a) mediation, including family mediation;

- (b) payments by way of grant or loan;
- (c) guarantees that payments will be made;
- (d) support in managing debt, mortgage arrears or rent arrears;
- (e) support and security measures for applicants at risk of abuse, or abusive behaviour from a partner or ex-partner;
- (f) advocacy or other representation;
- (g) information and advice, including, but not limited to, the information and advice described in section 27A;
- (h) referral to individuals, professionals, or other bodies capable of assisting the applicant; and
- (i) other services, goods or facilities.
- (4) In any case in which:
- (a) the applicant is threatened with homelessness, and
- (b) steps taken under this section have not secured that stable and suitable accommodation is available for the applicant's occupation,
- provision under subsection (3)(a) or (b) may include the authority securing that accommodation becomes available for the applicant which is stable and suitable.
- (5) The local authority must ensure that they have arrangements in place to take any of the steps mentioned in subsections (4) and (5), in any case where it is reasonable to do so, to secure that suitable accommodation is available, or does not cease to be available, for occupation by an applicant.
- (6) In deciding what steps they are to take, the authority must have regard to their assessment of the applicant's case under section 30A.
- (7) Nothing in this section shall affect any right of a local authority to secure vacant possession of accommodation, whether by virtue of a contract or of any enactment or rule of law.

30D.— Circumstances in which the duty in

section 30C ends

- (1) The authority must give notice to the applicant bringing the duty under section 30C to an end, where:
- (a) the applicant is homeless, or has become homeless, and
- (b) the steps taken under section 30C have not, within the relevant period, secured that stable and suitable accommodation is available for the applicant's occupation.
- (2) For the purposes of subsection (1)(b), the "relevant period" is the period that the authority consider to be reasonable in the circumstances, but which shall be no longer than 56 days from the date of notification of the terms of the assessment, under section 30A(5).
- (3) If any of the circumstances mentioned in subsection (4) – (6) apply, the authority may give notice to the applicant bringing the duty under section 30C to an end.
- (4) The circumstances are that the authority are satisfied that:
- (a) the applicant is no longer homeless or threatened with homelessness, and
- (b) there is stable and suitable accommodation available to the applicant which is likely to continue to be available for the applicant's occupation, for at least 12 months from the date of the notice.
- (5) The circumstances are that the authority are satisfied that the applicant, having been notified in writing of the possible consequences of refusal or acceptance of the offer, has refused an offer of accommodation which is both stable and suitable, including an offer made under section 30C(4).
- (6) The circumstances are that the authority are satisfied that the applicant has withdrawn the application mentioned in section 28.
- (7) Notice given under this section must—
- (a) specify which of the circumstances in subsections (1), (4), (5) or (6) apply;
- (b) inform the applicant that he has a right

- to request a review of the authority's decision to bring the duty under section 30C to an end and the time within which such a request must be made; and
- (c) of the advice and assistance that is available to him in connection with any such review.

31.— Duties to persons found to be homeless.

- (1) This section applies where the authority has given notice to the applicant under section 30D(1).
- (2) The local authority shall, unless they notify another local authority in accordance with section 33 (referral of application on ground of local connection), secure that accommodation becomes available for the applicant's occupation which is both stable and suitable.

[Existing subsections (2) and (3) fall to be repealed, on the abolition of intentional homelessness. Subsection (4) has already been repealed]

31A.— Accommodation with housing support services

[Existing 32 "Duties to persons found to be threatened with homelessness" is deleted in this draft.]

- (1) This section applies where:
- (a) a housing support services assessment under section 30B has concluded that the applicant or any other person residing with that applicant currently requires a level of housing support services which makes the provision of accommodation with housing support services under this section appropriate; and
- (b) accommodation with housing support services has been offered to the applicant:
- (i) which is suitable; and
- (ii) has been accepted by him.

- (2) The Scottish Ministers shall by regulations:
- (a) specify—
- (i) matters to be taken into account in determining, for the purposes of this section, whether the accommodation with housing support services offered to an applicant is suitable for the applicant;
- (ii) conditions which must be fulfilled, in order for the authority to determine that the accommodation with housing support services offered to an applicant is suitable for the applicant;
- (b) specify the circumstances in which accommodation with housing support services is stable;
- (c) require that accommodation with housing support services is to be stable, except in circumstances specified in the regulations:

32.— Stability and suitability of accommodation

The Scottish Ministers shall by order made by statutory instrument specify —

- (a) accommodation which is stable for the purposes of this Part;
- (b) matters to be taken into account in determining, for the purposes of this Part, whether accommodation is suitable for a person; and
- (c) conditions which, in respect of any type of accommodation, or a particular type of accommodation, must be fulfilled, in order for the authority to determine that the accommodation is suitable for a person, for the purposes of this Part.

[32A.— "Power of the Scottish Ministers to modify application of sections 31 and 32" deleted in this draft. See note to s 31(2). S32B now S30B]

[Sections 33, 33A, 33B and 34 concern local connection, and the referral of applications to other authorities. These will be amended/ repealed in the future. They are not included in

this draft]

35.— Supplementary provisions.

- (1) A local authority may perform any duty under section 31 or 34 (duties to persons found to be homeless to secure that accommodation becomes available for the occupation of a person)—
- (a) by making available accommodation held by them under Part I (provision of housing) or under any other enactment,
- (b) by securing that he obtains accommodation from some other person, or
- (c) by giving him such advice and assistance as will secure that he obtains accommodation from some other person.
- (2) Without prejudice to section 210(1), a local authority may require a person to whom they were subject to a duty under section 29, 31 or 34 (interim duty to accommodate pending inquiries and duties to persons found to be homeless)—
- (a) to pay such reasonable charges as they may determine in respect of accommodation which they secure for his occupation (either by making it available themselves or otherwise), or
- (b) to pay such reasonable amount as they may determine in respect of sums payable by them for accommodation made available by another person.

35A.— Right to request review of decision

- (1) Where an applicant requests a review of a decision to which subsection (2) applies, the local authority concerned shall review the decision.
- (2) This subsection applies to the following decisions of a local authority—
- (a) any decision to refuse an application made under section 28;
- (b) any decision as to whether the applicant is homeless or threatened with homelessness;

(c) where accommodation is secured for the applicant under section 29, 31, or 34, any decision as to whether the provision of that accommodation discharges the authority's duty to the applicant under that section;

(d) any decision to terminate the provision of interim accommodation under section 29;

(e) any decision made under section 30B, including a decision whether or not to carry out an assessment under that section, and as to what prescribed housing support services are provided to any person assessed as being in need of them;

(f) any decision as to the steps that it is reasonable for the authority to take, for the purposes of fulfilling the duty under section 30C;

(g) any decision that the duty owed to the applicant under section 30C has ended;

(h) any decision to notify another authority under section 33(1).

(3) A request for a review of a decision mentioned in subsection (2) shall be made before the end of the period of 28 days beginning with the day on which the applicant is notified of the decision or such longer period as the authority may allow.

(4) The applicant's acceptance of an offer of accommodation secured under section 29, 31, or 34, or his occupation of that accommodation, does not affect his entitlement to request a review under subsection (2)(c).

(5) The applicant may also request a review of whether: an assessment made under section 30A(2), or as changed under section 30A(6), accurately assesses the matters specified in section 30A(2)..

(6) A request for a review of the matters specified in subsection (5) shall be made before the end of the period of 28 days beginning with the day on which notification under section 30A(2) or (6) was given, or such longer period as the authority may allow.

- (7) There is no right to request a review of a decision reached on review.

complied with.

...

35B.— Procedure on review

- (1) A review under section 35A shall:
- (a) in the case of a review under section 35A(2), be carried out by a person senior to the person who made the decision being reviewed and who had no involvement in the making of that decision;
- (b) in the case of review under section 35A(5), be carried out by a person senior to the person who carried out the assessment under section 30A(2) (or changed the assessment under section 30A(6)) and who had no involvement in the making or changing of the assessment.
- (2) The authority, or as the case may be either of the authorities, concerned shall notify the applicant of the decision reached on review.
- (3) If, in respect of a review under section 35A(2), the decision is—
- (a) to confirm the original decision on any issue against the interests of the applicant, or
- (b) to confirm a previous decision—
- (i) to notify another authority under section 33(1), or
- (ii) that the conditions are met for referral of his case,

the authority shall also notify him of the reasons for the decision.

- (4) The authority shall notify the applicant of the reasons for any decision it reaches, on an application for review under section 35A(5).
- (5) In any case they shall inform the applicant of his right to appeal to the First-tier Tribunal under section 35C, and of the period within which such an appeal must be made.
- (6) Where subsection (3) or (4) applies, notice of the decision shall not be treated as given unless and until the relevant subsection is

35C.— Right of appeal to First-tier Tribunal

- (1) If an applicant who has requested a review under section 35A is dissatisfied with the decision on the review, he may appeal to the First-tier Tribunal.
- (2) An appeal must be made before the end of the period of 21 days beginning with the date of notification of the decision.
- (2A) The Tribunal may give permission for an appeal to be brought after the end of the period allowed by subsection (2), but only if it is satisfied—
- (a) where permission is sought before the end of that period, that there is a good reason for the applicant to be unable to bring the appeal in time; or
- (b) where permission is sought after that time, that there was a good reason for the applicant's failure to bring the appeal in time and for any delay in applying for permission.
- (3) On appeal the Tribunal may make such order confirming, quashing or varying the decision as it thinks fit.
- (4) Where the authority were under a duty under section 29, 31 or 34 to secure that accommodation is available for the applicant's occupation they must secure that accommodation is so available—
- (a) during the period for appealing under this section against the authority's decision, and
- (b) if an appeal is brought, until the appeal (and any further appeal) is finally determined.

35D.— Notification

A notification given to the applicant under any of sections 30, 30A, 30D and 35B shall be given in writing and shall, if not received by the applicant, is

to be treated as having been given to the applicant if it is made available at the authority's office for a reasonable period for collection by or on behalf of the applicant.

[Sections 36 to 41 may require slight modification to reflect changes to section numbers etc. They are otherwise unaffected.]

Appendix 1b: Draft regulations for settled and suitable accommodation

THE HOMELESSNESS (STABILITY AND SUITABILITY OF ACCOMMODATION) (SCOTLAND) ORDER 2021

Made:

Laid before the Scottish Parliament: Coming into force:

The Scottish Ministers make the following Order in exercise of the powers conferred on them by section 32 of the Housing (Scotland) Act 1987 and all other powers enabling them to do so.

Citation and Commencement

1. This Order may be cited as the Homelessness (Stability and Suitability Of Accommodation) (Scotland) Order 2021 and comes into force on [Date]

Interpretation

2. In this Order –
 - “the 1987 Act” means the Housing (Scotland) Act 1987, and any reference to a numbered section is a reference to a section of that Act;
 - “the 2001 Act” means the Housing (Scotland) Act 2001;
 - “the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004;
 - “the 2006 Act” means the Housing (Scotland) Act 2006;
 - “the 2016 Act” means the Private Housing (Tenancies) (Scotland) Act 2016;
 - “applicant” has the same meaning as in section 28(1) of the 1987 Act;
 - “authority” means the relevant local authority which owes a duty to a homeless person under part II of the 1987 Act;

“abuse” has the meaning given by the Protection from Abuse (Scotland) Act 2001;

“household” means the applicant and any person who resides, or might reasonably be expected to reside, with the applicant;

“interim accommodation” means accommodation offered to an applicant under section 29 of the 1987 Act;

“minimum accommodation safety standards” includes standards specified in an enactment for accommodation in relation to health and safety, hygiene, fire, furniture and electrical equipment;

“private residential tenancy” has the meaning given by the 2016 Act;

“Scottish secure tenancy” has the meaning given by the 2001 Act;

“short Scottish secure tenancy” has the meaning given by the 2001 Act;

“the repairing standard” means the repairing standard in section 13 of the 2006 Act.

Application of this Order

3. This Order applies to an authority's determination of whether accommodation (other than interim accommodation) is stable or suitable, under part II of the 1987 Act.

Accommodation which is stable

4. For the purposes of sections 30D and 31, accommodation is stable if any of paragraphs 5, 6, 7 or 8 applies.
5. This paragraph applies if the accommodation is:
 - (a) secured by a Scottish secure tenancy; or
 - (b) where paragraph 1, 2 or 2A of schedule 6 to the Housing (Scotland) Act 2001 (asp10) is satisfied in relation to the applicant, secured by a short Scottish secure tenancy.

6. This paragraph applies if the accommodation is secured by a Private Residential Tenancy, provided that the landlord has given confirmation to the authority, and the applicant, in writing, that it does not intend to serve, within 12 months of the commencement of the tenancy, a notice to leave under section 62 of the 2016 Act, relying on any of the grounds in part 1 (“Let Property Required for Another Purpose”) of schedule 3 to that Act.

7. This paragraph applies if the accommodation is accommodation of which the applicant is the sole, or part, owner.

8. This paragraph applies to any form of accommodation other than that specified in paragraphs 4-7 above, in relation to which the following additional conditions are fulfilled:

- (a) the local authority are satisfied that it is likely that the accommodation will be available for occupation by the applicant for at least 12 months, from the date on which the applicant, and his household, take up occupation,
- (b) it is accommodation which the applicant wishes to occupy, and has confirmed that wish, in writing;
- (c) the owner or landlord has provided confirmation to the authority, and the applicant, in writing, that it intends the accommodation to be available to the applicant for at least 12 months, from the date on which the applicant, and his household, take up occupation; and
- (d) in the case of accommodation to be occupied by the applicant under a contract, the applicant, and the owner or landlord as the case may be, have entered into a written agreement which specifies their rights and obligations, including, in particular, the circumstances in which the contract may be terminated.

Matters to be taken into account in determining whether accommodation is suitable

- 9.** In determining whether accommodation is suitable for the applicant, the authority must take into account whether or not the accommodation is affordable for the applicant.
- 10.** Where the applicant's household includes dependent children, the authority shall, in determining whether accommodation is suitable for the applicant, consider whether occupation of that accommodation is consistent with the best interests of those children.
- 11.** In determining whether accommodation is suitable for the applicant, the authority must take into account:
- (a) the views of the applicant
 - (b) the assessment made by the authority under section 30A; and
 - (c) any assessment it has made under section 30B.
- 12.** In determining whether accommodation is suitable for a person there must be taken into account, where appropriate, the following matters relating to a person who is either the applicant, or who is a member of the applicant's household—
- (a) the specific health needs of the person;
 - (b) any disability of the person, and the effects of that disability;
 - (c) the proximity and accessibility of family support and social networks;
 - (d) the proximity and accessibility of the accommodation to local services, amenities and transport which are, or might reasonably be expected to be, used by a member of the household;
 - (e) the proximity and accessibility of medical facilities, and other support services

which—

- (i) are currently used by or provided to the person; and
 - (ii) are essential to the well-being of the person;
- (f) where the accommodation is situated outside the area of the authority, the distance of the accommodation from the area of the authority;
- (g) the significance of any disruption which would be caused by the location of the accommodation to the employment, caring responsibilities or education of the person; and
- (h) the proximity of:
- (i) alleged perpetrators of abuse against the person; or
 - (ii) victims of abuse perpetrated by the person.

Conditions which must be fulfilled, in order for the authority to determine that the accommodation is suitable for a person

- 13.** Accommodation is not to be regarded as suitable where:
- (a) its condition may endanger the health of occupants;
 - (b) if it is overcrowded within the meaning of section 135 of the 1987 Act, or would be overcrowded within the meaning of that section, on occupation by the applicant's household;
 - (c) it does not meet minimum accommodation safety standards; or
 - (d) it is not suitable for visitation by a child who is not a member of the applicant's household and in respect of whom a member of the household has parental rights.
- 14.** Accommodation to which paragraph 8 applies is not to be regarded as suitable unless it is accommodation which:

- (a) has, within the accommodation, adequate toilet and personal washing facilities for the use of the applicant's household;
 - (b) has adequate bedrooms for the exclusive use of the household;
 - (c) is accommodation within which the household has the use of adequate cooking facilities and the use of a living room;
 - (d) is usable by the household for 24 hours a day.
- 15.** Where the accommodation is let (or will be let) under Scottish secure tenancy or a short Scottish secure tenancy, it may only be regarded as suitable where the authority is satisfied that:
- (a) the accommodation is wind and watertight, and in all other respects reasonably fit for human habitation; or
 - (b) will be put into that condition, at the commencement of the tenancy.
- 16.** Where the accommodation is let (or will be let) under a tenancy of a house, to which chapter 4 of part 1 of the 2006 Act applies, it may only be regarded as suitable where the authority is satisfied that the landlord:
- (a) is complying with the duty, under section 14(1)(b) of the 2006 Act, to ensure that the house meets the repairing standard, at all times during the tenancy; or
 - (b) will comply with the duty, under section 14(1)(a) of the 2006 Act, to ensure that the house meets the repairing standard, at the start of the tenancy.
- 17.** Where the accommodation is let by a landlord who is a "relevant person" for the purposes of section 83 of the 2004 Act, it may only be regarded as suitable if the landlord has been entered in the register of landlords maintained, under part 8 of the 2004 Act, by the local authority for the area in which the tenancy is situated.
- 18.** Where the accommodation is within a house in multiple occupation subject to licensing under part 5 of the 2006 Act, it may only be regarded as suitable if the house is licensed.
- 19.** Where the accommodation will be let under a Private Residential Tenancy, it may only be regarded as suitable where the landlord has provided to the authority a copy of the document which sets out all of the terms of the tenancy, and the specified information, which will be provided to the tenant under sections 10 and 11 of the 2016 Act.

Appendix 1c: Proposed amendment to schedule to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

16B Representations by the local authority in possession and eviction cases

- (1) This rule applies where:
- an application is made for an order for possession under rule 65, 66, 77, or an eviction order under rule 109;
 - the respondent, or any person residing at the property to which the application relates, has sought accommodation or assistance from a local authority, under section 28 of the Housing (Scotland) Act 1987;
 - the authority has decided that the respondent or any person residing at the property, is threatened with homelessness because section 24(4) or (6) of that Act applies;
 - the authority is taking steps to secure that suitable accommodation is available, or does not cease to be available for the applicant or that person, under section 30C of that Act.
- (2) The authority may make written representations to the First-tier Tribunal, asking it to order a delay in the execution of an order for possession, or an eviction order, under rule 16A(4), on the ground that the authority is taking steps under section 30C of the 1987 Act.
- (3) Where written representations are made to the First-tier Tribunal under paragraph (2), it shall consider the written representations before making an order for possession, or an eviction order.

- (4) In deciding whether to order a delay in the execution of an order for possession, or an eviction order, the First-tier Tribunal shall have regard, in particular, to the extent to which the applicant¹¹⁵ has co-operated, or failed to co-operate, with the steps taken by the authority under section 30C of the 1987 Act.

¹¹⁵ Here the applicant is the person seeking the eviction order (i.e. the landlord).

Appendix 2: Current and proposed duties in Scotland, Wales and England

	WALES ¹¹⁶	ENGLAND ¹¹⁷	SCOTLAND (CURRENT) ¹¹⁸	SCOTLAND (PROPOSED)
Duty to prevent homelessness	<ul style="list-style-type: none"> To take reasonable steps to help to secure that suitable accommodation does not cease to be available Where there is a risk of homelessness in the next 56 days. Reasonable steps set out in law No test for priority need, local connection or intentionality 	<ul style="list-style-type: none"> To take reasonable steps to help the applicant to secure that accommodation does not cease to be available Where there is a risk of homelessness in the next 56 days. Steps set out in guidance but not in law No test for priority need, local connection or intentionality 	<ul style="list-style-type: none"> To take reasonable steps so that accommodation does not cease to be available Where there is a risk of homelessness in the next 56 days. Reasonable steps not set out in law or guidance No test for priority need or local connection. Intentionality test at LA discretion. 	<ul style="list-style-type: none"> Take reasonable steps to secure that accommodation is available or does not cease to be available Where there is a risk of homelessness in the next 6 months. Steps set out in law No test for priority need, intentionality, local connection suspended.
Ending of prevention assistance duty	<ul style="list-style-type: none"> Retain current accommodation, or Move to new accommodation, minimum 6 months If become homeless, further assistance through relief duty If refuse offer of accommodation LA can discharge duty to applicant Can discharge duty if applicant fails to co-operate with reasonable steps 	<ul style="list-style-type: none"> Retain current accommodation, or Move to new accommodation, minimum 6 months If not resolved, further assistance through relief duty If refuse offer of accommodation, applicant can move to relief duty Can discharge duty if applicant deliberately and unreasonably refuses to co-operate with reasonable steps 	<ul style="list-style-type: none"> No longer threatened with homelessness, or Become statutorily homeless, triggering duty to secure accommodation (social or private tenancy) (N.B. definition of statutory homelessness is very wide so very often will still be occupying original accommodation but either no longer have a right or permission to do so (e.g. asked to leave family home) or it is not currently reasonable for them to reside there (e.g. victim of domestic violence) (No requirement on individual to co-operate with reasonable steps) <p><i>Unclear how this interacts with full rehousing duty</i></p>	<ul style="list-style-type: none"> Reasonable steps result in retaining current accommodation which is suitable and settled (min 12 months), or Move to new settled and suitable accommodation (min 12 months) If not resolved via reasonable steps, duty to secure settled and suitable accommodation (min 12 months) No requirement on applicant to co-operate with reasonable steps (in any case housing outcomes are same whether homeless or threatened with homelessness)

¹¹⁶ Statistics from <https://statswales.gov.wales/Catalogue/Housing/Homelessness/householdsforwhichassistancehasbeenprovided-by-outcome-householdtype> unless stated otherwise

¹¹⁷ Statistics from <https://gov.wales/homelessness-april-2019-march-2020> and <https://www.gov.uk/government/statistical-data-sets/live-tables-on-homelessness> Data for Q2 2019 to Q1 2020 unless stated otherwise

¹¹⁸ Statistics from Scottish Government (2020) [Homelessness in Scotland 2019/20](#); Scottish Government (2020) [Housing Options statistics \(PREVENT 1\) 2019-20](#)

	WALES ¹¹⁶	ENGLAND ¹¹⁷	SCOTLAND (CURRENT) ¹¹⁸	SCOTLAND (PROPOSED)	
Outcome of prevention duty	<ul style="list-style-type: none"> 48% of those seeking homelessness assistance require prevention duty 67% have homelessness prevented (2019/20) 3% found not to have co-operated with reasonable steps and therefore ineligible for further assistance 	<ul style="list-style-type: none"> 51% of those seeking homelessness assistance require prevention duty 58% have homelessness prevented (65% of these into new accommodation) 0.3% found to have refused to co-operate with reasonable steps and therefore ineligible for further assistance 	<ul style="list-style-type: none"> 5% of homeless applicants threatened with homelessness (may not be recorded accurately). Separate outcomes data for prevention not reported 		
Interim accommodation duty	Provide interim accommodation prior to assessment for main duty (not prior to relief), if there is reason to believe the applicant may be homeless, eligible and has a priority need	Provide interim accommodation prior to assessment, if there is reason to believe the applicant may be homeless, eligible and has a priority need	Provide interim accommodation prior to assessment, if the LA has reason to believe the applicant may be homeless. No test for priority need.	Provide interim accommodation prior to assessment, if the LA has reason to believe the applicant may be homeless. No test for priority need.	
Duty to provide assistance if homeless	<p>Relief duty:</p> <ul style="list-style-type: none"> Take prescribed reasonable steps to help the applicant to secure that suitable accommodation becomes available Accommodation must be available for at least six months. Can discharge duty if individual fails to co-operate with reasonable steps No test for priority need or intentionality. Test for local connection Ends after 56 days <p>Full rehousing duty (after prevention/relief duties have ended):</p> <ul style="list-style-type: none"> Rehouse in social tenancy or 6 month PRS tenancy Subject to priority need, intentionality and local connection tests 	<p>Relief duty:</p> <ul style="list-style-type: none"> Take reasonable steps to help the applicant to secure that suitable accommodation becomes available Accommodation must be available for at least six months. Can discharge duty if individual deliberately and unreasonably refuses to co-operate with reasonable steps No test for priority need or intentionality. Test for local connection Ends after 56 days <p>Full rehousing duty (after prevention/relief duties have ended):</p> <ul style="list-style-type: none"> Rehouse in social tenancy or suitable 12 month PRS tenancy. Subject to priority need, intentionality and local connection tests 	<ul style="list-style-type: none"> Secure that accommodation becomes available – either social or PRS tenancy Not subject priority need test. Subject to local connection test, intentionality test at LA discretion 	<ul style="list-style-type: none"> Take reasonable steps to secure that suitable and settled accommodation become available Accommodation must be available for at least 12 months No requirement on individual to co-operate with reasonable steps If after a maximum of 56 days these are unsuccessful, secure that accommodation becomes available which is suitable and settled (min 12 months) No tests for priority need or intentionality. Local connection test suspended 	

	WALES ¹¹⁶	ENGLAND ¹¹⁷	SCOTLAND (CURRENT) ¹¹⁸	SCOTLAND (PROPOSED)
Outcome	<ul style="list-style-type: none"> 31,420 outcomes (including non accommodation outcomes) 59% drop in number of rehousing duty acceptances after legislation introduced (2016/17) 41% relief cases secured accommodation 5% of relief cases and 2% of full duty cases found not to have co-operated – duty discharged 36% relief cases not entitled to further assistance to address homeless (56 days ends, not in priority need) 	<ul style="list-style-type: none"> 305,680 initial assessments 46% drop in number of rehousing duty acceptances after legislation introduced (2018/19) 58% prevention cases secure accommodation 42% relief cases secured accommodation 0.3% of relief cases refused to co-operate – duty discharged 98,300 households in temporary accommodation 33% relief cases not entitled to further assistance to address homeless (56 days ends, not in priority need) 	<ul style="list-style-type: none"> 41,475 approaches to Housing Options and 36,855 applications for assistance due to homelessness or threat of homelessness (includes duplication) Numbers of Housing Options approaches have been decreasing over time, while homelessness applications have increased slightly 11,665 households in temporary accommodation 82% of unintentionally homeless households rehoused into settled accommodation 93% social tenancy, 7% private tenancy 	<ul style="list-style-type: none"> All eligible applicants entitled to settled and suitable housing outcome
Duty to other bodies to prevent homelessness	<ul style="list-style-type: none"> No duty to refer Duty to co-operate on RSLs and social work authorities 	<ul style="list-style-type: none"> Duty to Refer on specified public bodies to notify housing authority of individuals they consider may be homeless or threatened with homelessness within 56 days LA should respond to referral No duty to co-operate on other public bodies 	<ul style="list-style-type: none"> General duty to co-operate on social work, social landlords and other landlords Duty on social and private landlords and mortgage lenders to notify local authority when evicting/repossessing (s11) Requirements on social landlords to accept nominations of homeless households (s5) 	<p>As left, and in addition:</p> <ul style="list-style-type: none"> Duty on specified public bodies to ask about housing circumstances and refer to LA Duty on LA to treat referral as application for assistance Duty on health and social care partnership to co-operate in planning to meet the needs of homelessness applicants where relevant Specific duty on social landlords to take reasonable steps to prevent homelessness Duty on LA to consider how to co-ordinate services for homeless applicants in receipt of services from multiple agencies Duty on health and social care partners to co-operate with planning to meet the needs of homeless applicants with health and social care needs Duty on health and social care partnerships and community planning partnerships to make contribution to local housing strategies regarding homelessness prevention

Appendix 3: List of stakeholders consulted

Organisation(s)

1. Aberdeen Cyrenians
2. Aberdeenshire Council
3. Aberdeenshire Health & Social Care Partnership
4. Action for Children
5. ALACHO
6. Angus Council
7. Assist
8. Barnardo's Scotland
9. Blue Triangle Housing Association
10. British Association of Social Workers
11. Care Inspectorate
12. Cedar Network – for children and young people
13. CELCIS
14. Circle
15. Clackmannanshire Council
16. Coalition of Care and Support Providers in Scotland
17. Community Justice Scotland
18. COSLA
19. Criminal Justice Social Work network
20. Criminal Justice Voluntary Sector Forum
21. Crossreach
22. Cyrenians
23. Cyrenians Scottish Centre for Conflict Resolution
24. Department for Work and Pensions
25. Domestic Abuse Housing Alliance
26. Dumfries and Galloway Council
27. Dundee Womens Aid
28. East Ayrshire Council
29. East Lothian and Midlothian Public Protection Office
30. East Lothian Council
31. East Lothian Housing Association
32. East Renfrewshire Council
33. Edinburgh Access Practice/Deep End GP/Royal Edinburgh
34. Edinburgh Council
35. Edinburgh Health and Social Care Partnership
36. Education Scotland
37. Engender
38. Falkirk Council
39. Families Outside
40. Fife Council
41. Frontline Fife
42. Glasgow & West of Scotland Forum of Housing Associations
43. Glasgow City Council
44. Glasgow Health & Social Care Partnership
45. Health Homelessness Housing Advisory Group
46. Healthcare Improvement Scotland
47. HMP Edinburgh
48. Inverclyde Council
49. Inclusive Edinburgh
50. LGBT Youth
51. Life Changes Trust
52. Midlothian Council
53. MoveOn
54. Multiple Complex needs – Scottish Government and Scottish Health in Justice Network
55. National Prison Care Network / Scottish Health in Justice Network | National Services Division (NSD) NHS National Services Scotland
56. NHS Fife
57. NHS Health Scotland
58. NHS Healthcare Improvement Scotland
59. NHS Lanarkshire
60. North Ayrshire Council
61. North Lanarkshire Council
62. Parkhead Housing Association
63. Phoenix Futures Scotland
64. Police Scotland
65. Policy Scotland
66. Public Health Scotland
67. Renfrewshire Council
68. Renfrewshire Council – Time to Mend
69. Rock Trust / A Way Home Scotland
70. Royal College of GPs
71. Royal College of Physicians and Surgeons
72. Royal College of Psychiatrists
73. SACRO
74. Safe Lives
75. Scotland's Housing Network
76. Scottish Association of Landlords
77. Scottish Borders Council
78. Scottish Community Safety Network
79. Scottish Courts and Tribunals Service
80. Scottish Federation of Housing Associations
81. Scottish Government – Healthcare Quality and Improvement Directorate
82. Scottish Government – Health and Justice Collaboration Improvement
83. Scottish Government – Housing Support and Homelessness Unit
84. Scottish Government – Children and Families Directorate
85. Scottish Government – Private Housing Services
86. Scottish Government – Private Rented Sector
87. Scottish Government – Population Health Directorate
88. Scottish Government – Violence Against Women and Girls & Barnahus Justice Unit
89. Scottish Government – Mental Health Directorate
90. Scottish Government – Community Justice Division
91. Scottish Government – Children's Rights Unit
92. Scottish Government – Safer Communities Directorate
93. Scottish Government – Learning Directorate
94. Scottish Housing Regulator
95. Scottish Mediation
96. Scottish Prison Service
97. Scottish Women's Aid
98. Shelter Scotland
99. Simon Community Scotland
100. Social Work Scotland
101. Social Work Scotland Justice Committee
102. SOLACE
103. South Ayrshire Council
104. South Lanarkshire Council
105. Turning Point Scotland
106. West Dunbartonshire Council
107. Who Cares Scotland?
108. Ypeople

Appendix 4: PRG terms of reference and membership

Terms of reference

1. Background

Crisis has been invited by the Scottish Government to convene an expert working group to take forward the recommendation in the Scottish Government's Homelessness Action Plan:

We will work with public bodies, housing providers and other partners to develop a new duty on local authorities, wider public bodies and delivery partners for the prevention of homelessness.¹¹⁹

This comes on the back of recommendations made by the Homelessness and Rough Sleeping Action Group in June 2018. This includes:

- *Legislate for a new prevention duty that brings the "Housing Options" approach into the heart of the statutory homelessness framework – so that outcome orientated preventative practice can be better regulated, and also encouraged, as local authorities engaging in good preventative work will no longer be exposed to legal challenge.*
- *Extend robust preventative duties to other public bodies, Housing Associations and other organisations commissioned by public bodies to deliver homelessness and associated services.*¹²⁰

A range of other HARSAG recommendations related to the work of wider public bodies, including public duties relating to the Child Poverty (Scotland) Act 2017 (rec 8, final report) and the Fairer Scotland Duty (rec 27, final report).

This piece of work also takes forward the recommendations for the ideal homelessness legislation in Crisis' Plan to End Homelessness to have a strengthened prevention duty on local authorities in Scotland and a duty on other public bodies to work with local authorities to tackle homelessness.

Principle 1: *For those who face the imminent threat of homelessness (within 56 days), a set of robust prevention duties should be in place.*

Principle 6(b): *Other public bodies should have robust duties to both prevent homelessness (see Principle 1) and to cooperate with local housing authorities in relieving homelessness. For example, by providing relevant health and social care support services.*

The prevention duty will draw on learning from prevention duties in England and Wales. Initial findings suggest these have made a significant difference for many people who need help to prevent them becoming homeless. However, this piece of work will go further than these as it aims to place responsibilities on a range of public bodies.

2. Task

The working group will develop recommendations to the Scottish Government for a legal duty or duties on Scottish local authorities and wider public bodies to prevent homelessness. The group will also provide advice on how to ensure the recommendations are successfully implemented in the context of wider reforms to homelessness provision in Scotland.

3. Membership

Chair: Professor Suzanne Fitzpatrick

Core working group members:

- Cllr Elena Whitham, East Ayrshire Council / COSLA
- John Mills, Fife Council / ALACHO
- Susanne Millar, Glasgow City HSCP
- Matt Downie, Crisis
- Gordon MacRae, Shelter Scotland (*later replaced by Jess Husbands, Adam Milne*)
- Sally Thomas, SFHA (*later replaced by Jeremy Hewer*)
- Callum Chomczuk, CIH

119 Scottish Government / COSLA (2018) Ending Homelessness Together Action Plan, p23

120 Recommendation 2, Transforming the use of Temporary Accommodation in Scotland An interim report on the activity of the Homelessness and Rough Sleeping Action Group

- Maggie Brunjes, Homeless Network Scotland
- Tom Mullen, University of Glasgow
- Ruth Whatling, Scottish Government
- Kathy Cameron, CoSLA (*later replaced by Katey Tabner, Laura Caven*)

4. Working approach and logistics

- Crisis will act as secretariat for the group
- The working group will meet seven times, starting in November 2019 and reporting in summer 2020.
- Meetings of the core working group will have the following focuses:
 - Introduction, purpose and overview
 - Prevention duty on local authority housing departments
 - Health and social care
 - Offenders and prison leavers
 - Domestic abuse
 - Children, young people and families
 - Contextual issues and review
- Prior to each meeting of the group Crisis will issue papers for consideration, including further developed proposals for reform as the review progresses
- Prior to working group meetings focused on specific themes (meetings 2 to 6), Crisis will convene preparatory consultation meetings with key stakeholders and experts relevant to the theme to identify key issues and opportunities and inform the working group meetings. The working group will provide input into the agenda in advance of each consultation meeting and will receive a report following each consultation meeting.
- People with lived experience of homelessness will be invited to relevant preparatory discussion meetings. Crisis will also work with partners to commission consultation with people with lived experience of homelessness to inform the work of the group.

- Crisis will produce a report reflecting the conclusions of the review, including suggested legal reforms.
- Meetings will be held under Chatham House rules. Minutes and relevant papers will be published on a webpage hosted by Crisis following each meeting.

5. Principles

- Proposals should integrate effectively with other changes to the homelessness statutory framework currently underway as part of work on the Scottish Government / COSLA Ending Homelessness Together Action Plan
- The group will bring together their different viewpoints with the evidence and input of stakeholders and experts to form joint recommendations. The group will operate by joint consensus where possible, but where significant differences of opinion are held, these can be noted within the final report.
- Individual organisations on the working group will not be held to the final conclusions of the review.

Appendix 5: Relevant HARSAG recommendations

The original HARSAG recommendations were set across four reports¹²¹. The most relevant ones are stated here. (The numbering refers to the report and recommendation number from that report).

Recommendations for prevention statutory duty

Recommendation 2:14 Ensure legislation provides sufficient support for shift to significantly greater levels of prevention – Scottish Government should examine the case for introducing a comprehensive homelessness prevention duty on local authorities and other public bodies, learning from and building on recent experience in Wales and England.

This was subsequently strengthened to:

Recommendation 3:2 Legislate for a new prevention duty that brings the “Housing Options” approach into the heart of the statutory homelessness framework – so that outcome-orientated preventative practice can be better regulated, and also encouraged, as local authorities engaging in good preventative work will no longer be exposed to legal challenge. Extend robust preventative duties to other public bodies, Housing Associations and other organisations commissioned by public bodies to deliver homelessness and associated services.

Recommendations for support from wider public bodies

Recommendation 4: 23 Social Landlords, both housing associations and local authorities, to use all opportunities to support housing sustainment:

- Ensuring there is ongoing support for all tenants re-housed after homelessness, to ensure that appropriate preventative action is taken at the earliest signs of difficulties, such as anti-social behaviour or rent arrears, to deliver a focussed approach on prevention through tenancy sustainment
- Initiatives to address the issues of loneliness and social isolation

- All social landlords to have clear policies on domestic abuse, and ensuring that experience of abuse or violence does not lead to someone losing their tenancy – for example, arrangements should be put in place so that tenancies can transfer seamlessly to the person who has experienced abuse, and reciprocal arrangements should be put in place to ensure people who experience domestic abuse can move to a safer place and have continuity of tenancy
- Preventing evictions through more effective management of rent arrears, including early intervention such as financial health-check for new and other vulnerable tenants
- Reviewing the Regulatory Framework around rent arrears in relation to social landlords, and reviewing pre-action protocols so that evicting into homelessness is avoided

Recommendation 3: 6 Support and enable people to maintain tenancies

- Support for households in groups known to be particularly at risk of homelessness, through ongoing support to sustain tenancies, especially at times of potential rent arrears or at times of relationship breakdown. This includes taking steps to ensure victims of domestic abuse are able to maintain their tenancy if this is their choice;
- Maintaining tenancies for people who are going to be absent from the property while in prison (particularly those on short-term remand) or in a hospital or other health institution. Much of this can be reinforced in a legislative prevention duty for public providers of housing and housing associations;
- Tenancy sustainment schemes tailored to the Private Rented Sector, such as the scheme previously run by the UK Government’s Department for Communities and Local Government (DCLG) known as the Private Rented Sector Access Development Scheme, which supports local ‘Help to Rent’ schemes to support homeless people and landlords and rent deposit bond schemes. Local

Authorities have a duty to provide a rent deposit scheme within their area, but steps need to be taken to ensure these are fully accessible and comprehensive.

Recommendations related to specific groups at risk of homelessness

Recommendation 3:5 Ensure plans are always agreed – or agreed as quickly as possible – to prevent homelessness for the groups who are predictably at highest risk of rough sleeping – Scottish Government and all public bodies should respond to evidence of which groups constitute the highest proportion of people resorting to rough sleeping to clearly articulate the pathways and interventions needed to prevent this outcome for particular groups. Evidence suggests this would include:

- People leaving public institutions such as prison, mental health services, armed forces;
- People with previous experience of public institutions such as prison, mental health services, armed forces;
- Groups with particular needs such as people who have experienced domestic abuse, migrants, asylum seekers, refugees, people experiencing relationship breakdown, LGBT groups and people with experience of the care system or on leaving the care system;
- People who have experienced or are experiencing poverty and/or adverse childhood experiences; and
- Those facing potential eviction from the private rented sector, or the social rented sector including particular approaches on rent arrears.

Where this exists (e.g. SHORE standards for prisoners) SG and others should ensure that the pathways are implemented; and where this does not yet exist for key groups as above, SG and others should ensure pathways are developed and implemented.

Recommendations related to strategic planning

Recommendation 4: 8 At a local level, there is helpfully a duty on local authorities and health boards to demonstrate action to tackle child

poverty. Local authorities, health boards and their Community Planning Partners should recognise child poverty as a primary driver of homelessness and demonstrate action to tackle child poverty in Local Child Poverty Action Reports as required through the Child Poverty (Scotland) Act 2017, as well as in Local Outcome Improvement Plans and Children’s Services Planning. This would be expected to include:

- Education and health as key public services well placed to identify and offer help when there are early warning signs of homelessness
- Introducing homelessness and housing as a component of GIRFEC training
- Ensuring that all aspects of the housing system, from planning and building supply to nominations and allocations policies place GIRFEC at the heart of decision-making
- The provision of whole-family asset-based supportive interventions to help struggling families

Recommendation 4: 12: Across their full range of delegated responsibilities Health & Social Care Partnerships should work in a collaborative way with Local Authorities, Housing Associations and the Voluntary Sector to prevent and tackle homelessness. Local Rapid Rehousing Transition Plans as part of the Local Housing Strategies to be fully integrated into Health & Social Care Partnership strategic plans. These should be included in the Housing Contribution statement to ensure they are part of the planning framework.

Recommendation 4: 27 The Fairer Scotland Duty places a legal responsibility on particular public bodies in Scotland to actively consider (‘pay due regard to’) how they can reduce inequalities of outcome caused by socioeconomic disadvantage when making strategic decisions. Guidance already makes specific reference to homelessness, and prevention of homelessness should be considered as a key part of the implementation phase.

121 <https://www.gov.scot/groups/homelessness-and-rough-sleeping-action-group/>



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