

Options for an improved homelessness legislative framework in Wales

A report to inform the review of homelessness legislation in Wales

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Section One

Introduction and research methods

Introduction

This report presents a summary of the findings of stakeholder perspectives on possible improvements to the legislative framework in Wales and following analysis of this qualitative data and author interpretation, it sets out three broad options for future directions of homelessness legislation in Wales.

The main body of this report is split into two key sections: i] a summary of stakeholder perspectives; and ii] options for future directions of homelessness legislation in Wales.

Research methods

Three methods were used to elicit the ideas and perspectives of stakeholders in Wales: three regional engagement events open to all interested stakeholders; an online survey open to all interested stakeholders; and in-depth interviews and focus groups with a sample of key stakeholders.

Stakeholder engagement events

In total, 120 individuals attended a stakeholder engagement event, with the vast majority attending in Cardiff (76 people) and the remainder attending in Wrexham (30 people) and Aberystwyth (14 people). At each event stakeholders were presented with the findings of two early reports; the first was an analysis of international homelessness policy and the second was an assessment of the impacts of the existing homelessness legislation in Wales. Stakeholders were then split into small discussion groups where they made reference to the findings of these two reports in order to develop ideas for an improved legislative framework in Wales. Table 1 lists the organisations that were represented at these events.

Table 1. Organisations of attendees at stakeholder engagement events

Organisation		
General housing & homelessness – Wales wide organisations		
Welsh Government	Shelter Cymru	CiH
WLGA		
General housing & homelessness – local authority specific organisations		
Powys County Council	Carmarthenshire County Council	Ceredigion County Council
Vale of Glamorgan County Council	Pembrokeshire County Council	Merthyr Tydfil County Council
Cardiff YMCA	Newport County Council	Monmouth shire County Council
Blaenau Gwent County Council	Caerphilly County Council	Flintshire County Council
Anglesey County Council	Conwy County Council	Wrexham County Council
Gwynedd County Council	Swansea County Council	Bridgend County Council
RCT County Council		
Tai Ceredigion	Caer Las	Pen yr Enfys
Coastal Housing	United Welsh Housing Association	Taff Housing
Gwalia	Newport City Homes	Tai Clwyd
NWHA	Clwyd Alyn	NPT Homes
The Wallich	Cyrenians	Huggard
Housing related support		
Cymorth		
Cross-cutting service areas / Particular needs groups		
Barnardos	Mind Cymru	Llamau
Islamic Social Services Association Wales	Gofal	Advocacy Works
NOMS	Probation	Gwent Police
Flying Start	Prison Link	

Interviews, focus groups and the online survey

Table 2 lists the organisations and the number of individuals who were either interviewed or responded to the online survey. Notably some of these individuals also attended the stakeholder engagement events, whilst others were contributing to the study for the first time. A copy of the broad interview framework is attached in Appendix A.

Table 2. Organisations of interviewees and respondents to online survey

Organisation	Department/Specific group	Number of respondents
<i>General housing & homelessness – Wales wide organisations</i>		
Welsh Government	Housing	10 (Group)
Chartered Institute for Housing		1
National Homeless Network		4 (group)
Shelter Cymru		1
AWCHOP		1 (Group)
Welsh Tenants Federation		1
CHC		5 (group)
WLGA	Housing	4 (Group)
Rough Sleepers Cymru		1
National Landlords Association		1
<i>General housing & homelessness – local authority specific organisations</i>		
Wrexham Council	Homelessness	1
Monmouthshire Council	Housing options	1
Local Authority	Housing	1
Carmarthenshire Council	Housing Options	4
Wrexham Council	Homelessness Officer	1
Tai Ceredigion	Chief Exec	1
<i>Housing related support</i>		
Supporting People Information Network		2 (group)
Cymorth Cymru		1
<i>Cross-cutting service areas / Particular needs groups</i>		
Llamau	Young people / Domestic violence	1
UNCRC Monitoring Group	Children's Rights	1
Welsh Government Social Care Services & Children's Services	Children and Adults in need	5 (Group)
Swansea Council Children's Services	Children in Need	1
Welsh Government Youth Justice	Young Offenders	2
National Offender Management Service	Prison leavers	1
Welsh Government	Substance Misuse	1
NLIAH (Healthcare)	Healthcare	1
Welsh Government	Mental Health and Vulnerable people Group	2 (Group)
Welsh woman's Aid	Domestic violence	2
Tai Pawb	Equality strands	1
Welsh Refugee Council	Refugees and asylum seekers	1
Save the Children	Gypsies and Travellers	1
Total number of respondents		61

Section Two

A summary of stakeholder perspectives

Introduction

This section of the report summarises stakeholder perspectives on the future direction of homelessness legislation in Wales. The findings are discussed in relation to the following key elements of the existing framework: The definition of homelessness; Early intervention and prevention; The prioritisation of homeless people's needs; Intentionality; Migration of homeless households and local connection; Accommodation duties; Supporting homeless households; Implementation and enforcement of legislation.

The definition of homelessness

Maintain the current broad definition of homelessness

- There was considerable support for keeping the current broad definition of homelessness.
- A small number of comments were made about the definition of homelessness as it relates to young people. There is concern that it is frequently determined that it is reasonable for a young person to continue to occupy the parental home, whereas this may not be the case from the perspective of the young person. A minority of interviewees therefore suggested that further consideration should be given to the definition of 'reasonable to occupy'.

Raise the threshold for homelessness

- Several local authorities raised concerns regarding recent Ombudsman decisions that households should be defined as homeless where there is low level antisocial behaviour. Local authorities are concerned that this would put a considerable strain on services if a homeless application must be taken for all such households, even where they do not wish to be considered as homeless. Several local authorities subsequently indicated that the threshold for being defined as homeless needs to be raised.

Extend the definition of threatened with homelessness from 28 days to 2 months

- There was widespread agreement that the definition of threatened with homelessness should be extended to two months as it would allow for more time to prevent homelessness and is more compatible with the repossession period and the assured shorthold tenancy notice in the PRS.
- Some interviewees suggested that the definition could be even more flexible than two months – focussing on the circumstances of the individual rather than a set period of time.

Early intervention and prevention

General support for a greater emphasis on early intervention with all households

- There is considerable support for strengthening early intervention work amongst all households, although there is some disagreement about whether legislation should be used to strengthen this type of intervention.

Some support for strengthened guidance on early intervention but not introducing a legislative duty

- A minority of interviewees felt that early intervention should be improved but this should be achieved through guidance rather than a legislative duty.
- The major concern about introducing new legislation on prevention is that existing flexibility and innovation would be lost, it would result in legal challenges, and it would become process rather than solution driven.

A duty to take reasonable action to prevent homelessness

- Many interviewees supported the introduction of some form of early intervention/prevention duty that all homeless households would have a right to access.
- Several interviewees suggested that the duty should be 'to take reasonable action to prevent homelessness' as they recognise that prevention of homelessness is not possible for all households.
- A small number of interviewees suggested that service users should be required to engage in the homelessness prevention work and if they do not the duty could be discharged.

- Several interviewees suggested that the duty to take reasonable action to prevent homelessness should be a corporate duty as they believe homelessness is not solely a housing issue and should therefore be addressed by a range of local authority services.

The incorporation of other service providers in an early intervention/prevention duty

- Several interviewees advocated that the duty to take reasonable action to prevent homelessness should also extend beyond the local authority and should include a wider range of service providers such as RSLs, health, youth justice, the prison service, social work
- Generally it was perceived that this would improve outcomes for homeless households but it was also felt that a duty would require organisations to work together more closely and therefore reduce the existing overlap in service provision

Prevention activity will need to be improved, be more diverse and retain flexibility

- Interviewees commented that with a greater emphasis on homelessness prevention, current approaches would need to be improved and expanded, for example in relation to mediation, prison leavers, people fleeing domestic violence and mortgage repossession
- There is clear support for retaining and enhancing the diversity of prevention activity and the flexibility of local authorities to be innovative.

Difficulties monitoring homelessness prevention outcomes

- A small number of interviewees commented that, irrespective of whether there is a homelessness prevention duty or simply a heightened emphasis on prevention, it will be extremely difficult to monitor the outcomes of prevention activity – this will be an important consideration for any amendments.

The prioritisation of homeless people's needs

End priority need

- Many interviewees claimed that further assistance is required for those households currently found to be non priority need.
- Many interviewees suggested that the priority need test should be phased out as in Scotland. For this to be effective it was suggested that greater use would need to be made of the PRS and the duty owed to homeless households may need to be changed, with a greater focus on homelessness prevention.

The implications of ending priority need would be detrimental – the existing test should be retained

- In contrast to those interviewees who support the end to the priority need test, a similar proportion of interviewees claimed that ending it within the current legislation would undermine the housing system as there is an insufficient supply of settled accommodation. In short, they suggested the Scottish model was undesirable in Wales and that existing priority need groups should be retained.

Widen the existing priority need groups to be more inclusive

- A small proportion of interviewees suggested that the existing priority need groups should be retained and widened slightly to include two additional groups, namely; young people under the age of 25 and rough sleepers.
- A small number of interviewees suggested that the vulnerability test must ensure that households with significant needs are recognised as a priority and are given appropriate assistance as currently many vulnerable households fall through this test.

Prison leavers

- The homeless prison leaver priority need group was the focus of much attention amongst interviewees. It was generally claimed that in the public eye there was a lack of understanding why this group of individuals should be a priority need group.

- Many interviewees suggested that the English model should be adopted where prison leavers must be also be vulnerable on release from prison.
- A small number of interviewees supported retaining the prison leaver priority need category. They explained that the principles of their priority status are correct but the assistance they receive must focus on prevention and must not lead to long periods of time in temporary accommodation.

A fundamental shift towards assessing individual need rather than determining client group

- Several interviewees suggested that assisting individuals on the basis that they belong to a particular group is ineffective and this approach should be replaced by a needs-based system which focuses on the needs of individuals and delivers assistance appropriately.

Intentionality

Retain the intentionality test

- Very many interviewees were in favour of retaining the intentionality test because they felt it was necessary to avoid people taking advantage of the system.

Revise the intentionality test

- Whilst most interviewees were in favour of retaining the intentionality test, many suggested that several revisions might improve outcomes for homeless people.
- Firstly, it was recognised that the test is often misinterpreted and applied differently between local authorities. Consequently, it was proposed that the wording of the legislation should be revised to ensure that it can only be interpreted as an attempt to take advantage of the system.
- Several interviewees suggested that the test should remain but it should not be applied to particular groups such as; young people, gypsies and travellers, people with mental health issues and prison leavers.
- Several interviewees suggested that the test should no longer be a duty and should instead be a power of the local authority.

Create a duty to support where a household is found to be intentionally homeless

- A significant number of interviewees suggested that assistance and support should be provided to anyone who is found to be intentionally homeless.

Remove the intentionality test

- There is considerable disagreement with regards to the direction that should be taken on the intentionality test. In addition to the many interviewees who supported retaining the test, at least in some form, many other interviewees called for the outright end to the test.

Migration of homeless households and local connection

Remove the local connection test

- Many interviewees suggested that the local connection test should be removed from the homelessness legislative framework because it reduces the mobility of homeless households, therefore disadvantaging them, for example in seeking employment.
- It was suggested that greater regional working would provide the opportunity to remove the local connection test and would more accurately reflect the movement of individuals.

Retain the test of local connection

- Many interviewees felt that the local connection test should be retained as there are concerns that some, particularly urban local authorities, would face considerable numbers of homeless applications if the test were to be removed.

- One interviewee commented that there was no need to remove the test as it is not problematic for local authorities who tend to cooperate in the majority of cases.

Strengthen the local connection test

- Several interviewees not only supported the retention of a local connection test but they also believe the test should be strengthened by increasing the amount of time a person must either be resident or working in an area. This perception was particularly strong in rural local authorities.

Accommodation duties

Flexibility of the accommodation duty owed to homeless households

- Many interviewees suggested that the homelessness duty should no longer be seen as an automatic route into social housing.
- There was overwhelming support for local authorities to have much greater flexibility in the accommodation and wider solutions that they should be able to use to discharge their duty to a homeless household.
- Furthermore, it was stated that greater flexibility would enable local authorities to focus on the needs of individuals rather than a process.
- One specific approach discussed by some interviewees was the possible further use of the Housing First Approach and similar approaches that avoid a staged and often long transition through temporary accommodation.

An emergency accommodation duty

- Several interviewees suggested that a new emergency accommodation duty should be introduced to ensure that no individual has to sleep rough.

Discharging the homelessness duty into the Private Rented Sector

- The overwhelming majority of interviewees supported the idea of enabling local authorities to discharge their accommodation duty into the PRS without having to seek the consent of the homeless household. It was perceived that this would increase the stock available and potentially improve the locations of the stock.
- Whilst interviewees were supportive of making greater use of the PRS, they were also concerned that suitability standards would need to be met, which could be tied into any amendments to the regulation of the PRS.
- A minority of interviewees suggested that more may need to be done to incentivise and support landlords to offer tenancies to homeless households

A stronger homelessness duty on Registered Social Landlords?

- There was some discussion about the possibility of introducing a duty on RSLs to accommodate homeless households. Mixed views were expressed with some in support and others clearly against the prospects of additional duties in line with the Scottish model.

The suitability of accommodation for homeless households

- In addition to discussions about the potential suitability of PRS accommodation, interviewees were concerned that some of the temporary accommodation provided to homeless households is not suitable.
- Particular issues were raised about decisions relating to the suitability of accommodation for homeless gypsies and travellers.
- Several interviewees commented that there are particular groups of homeless households who can be particularly difficult to accommodate due to their high support needs and perceived risks. These groups include high risk offenders and vulnerable young people.

Supporting homeless households

General acceptance that many homeless households require some form of support

- There was a general acceptance amongst interviewees that many homeless households will require some form of support.
- Several interviewees highlighted the support needs of particular groups of people such as prison leavers, young people and those with substance misuse issues or mental health issues.

A legislative duty to support homeless households?

- Several interviewees commented that whilst support may be required by many homeless households, a legislative duty to provide support is not required. It appears that this opinion is generally formed on concerns that it could not be resourced and it would be difficult to enforce.
- A small number of interviewees suggested that a duty to undertake a support needs assessment and develop a housing pathways plan would be sufficient and preferable to a duty to deliver support.
- Very many interviewees suggested that local authorities should be subject to a duty to provide support to homeless households, largely because they recognise that if the support needs are not addressed the household may become homeless again.
- Several interviewees recognised that a support duty may have resource implications and they raised concerns about how a support duty would be discharged. In particular, there were concerns about households who may refuse support.
- Some interviewees suggested that a duty to provide support to homeless households should extend beyond the housing department and should be a corporate duty. Others suggested that the duty should be extended even further and should include all those organisations who might engage with homeless households.

Implementation and enforcement of legislation

Inconsistent implementation of homelessness legislation

- Throughout the research concerns have been raised about the lack of consistency of assistance provided to households across Wales. This was perceived to be a fundamental problem as it affects the outcomes for homeless people.
- A small number of interviewees commented on an increasing shift towards regional working. Whilst some suggested that this may improve consistency, others commented that it would do little to drive improvements.

A housing and homelessness inspectorate for Wales?

- There was considerable support amongst interviewees for some form of independent inspectorate of housing and homelessness services in Wales in order to ensure high standards of service and to address problems of inconsistency
- Significantly, it was suggested that suitable outcomes must be measured in any inspection – not process.
- Several interviewees felt that an inspection of services would utilise a lot of resources and would not be effective and should therefore be avoided.
- For some interviewees it was felt that increased peer scrutiny and assessment should either supplement any external inspection or be introduced instead of such a monitoring body.

Local authority guidance and training

- A minority of interviewees commented that better and more succinct guidance should accompany the legislation, along with much wider dissemination of good practice and improved training of front-line homelessness staff.

The voice of service users

- Several interviewees suggested that local authorities should be required to engage with its service users in order to drive forward service improvements.
- The importance of advocacy services was highlighted in order to ensure that service users are able to access their rights and express their views.

Homelessness Data Monitoring

- In order to be able to monitor the outcomes of services for homeless people a small number of interviewees commented that homelessness data collection must be improved.

Conclusion

A significant volume and depth of opinion was expressed by stakeholders on the possible future direction of the homelessness legislative framework in Wales. This summary of their perspectives highlights the clear differences of opinion that exist in relation to each element of the legislation and it is quite clear that there is no single solution that can be put forward. However, the next stage of the report will draw upon these perspectives, the findings of earlier impact assessment, and the international review of homelessness policy in order to develop possible options for an improved legislative framework.

Section Three

Options for an improved homelessness legislative framework in Wales

Introduction

In this section of the report we set out three approaches that the Welsh Government could consider in developing an improved homelessness legislative framework in Wales. Whilst most stakeholders engaged in this research had given consideration to specific elements of the legislative framework (i.e. priority need or intentionality), we have attempted to integrate these discrete concerns into a set of principles that may be operationalised through a coherent legislative framework. As noted above, some suggested amendments generated broad consensus amongst stakeholders, whilst other proposals were highly contested, and this is reflected in our framing of the potential models for change.

Analysis of stakeholder perspectives, together with author judgement, has led to the development of three broad models of change for homelessness legislation in Wales. Models 2 and 3 in particular have been developed as integrated frameworks and any deviation would need to be evaluated in order to ensure that all possible implications are explored. These three models have been given the working titles of:

1. 'Minor Amendments'
2. 'Breaking the Link'
3. 'Housing Solutions'

‘Minor Amendments’

The Minor Amendments model would accommodate a relatively small number of ‘stand-alone’ amendments to the existing statutory framework that commanded relatively broad consensus amongst stakeholders.

Definition of homelessness

- The definition of homelessness would remain the same but the definition of threatened with homelessness is extended from 28 days to 56 days (i.e. from one month to two months).

Priority need

- The existing priority need groups would be amended in one specific respect only: to reflect the position in England whereby a prison leaver is deemed in priority need only if they are considered to be ‘*vulnerable as a result of having been in custody or detention*’.

Intentionality

- Assessing whether or not an applicant has become homeless ‘intentionally’ should become a *power* rather than a *duty* of the local authority (thus enabling local authorities that do not wish to routinely undertake a test of intentionality to target such activity).
- Consideration will need to be given to the requirements of the Rights of Children and Young Person (Wales) Measure 2011, which may require that children aged 16-17 years cannot be found intentionally homeless.

Accommodation duties

- In addition to the existing means of discharging the main homelessness duty (i.e. via a secure or assured tenancy, or an assured shorthold tenancy with applicant consent) local authorities will also be able to discharge their duty by means of a suitable offer of an assured shorthold tenancy in the private rented sector without requiring the consent of the applicant. We would recommend that a range of specific parameters be set as to the duration, quality and affordability of such assured shorthold tenancies in order for a relevant offer to constitute a valid discharge of duty that does not require applicant consent:
 - i] In terms of duration, such tenancies should be for a minimum 12 month period.
 - ii] Parameters in relation to quality might comprise a requirement for the property/landlord to meet the standards required by a national or local accreditation scheme and
 - iii] In relation to affordability, the local authority would need to give consideration to the Local Housing Allowance rate.
- This is by far the most significant of the ‘stand-alone’ changes, and carried widespread support, but its practical impact will vary significantly depending on local private rental markets.

Strengths	Weaknesses
<p>Local authorities would have a marginally greater opportunity to prevent households becoming homeless as the definition of threatened with homelessness would be extended.</p>	<p>Homelessness prevention activity would continue to sit uncomfortably with the statutory homelessness framework, leaving local authorities exposed to legal challenge where such activities precede consideration of statutory entitlements.</p>
<p>The perceived ineffectiveness and unfairness of accepting all prison leavers as statutorily homeless would be eliminated. This should encourage greater involvement & responsibility for homeless prison leavers within NOMS.</p>	<p>Many homeless households would continue to lie outside the statutory homelessness framework and be given little if any material assistance.</p>
<p>Local authorities would be able to exercise discretion in applying the intentionality test, reducing the substantial administrative burden associated with assessing intentionality and targeting use of this criterion to circumstances where there are grounds for believing that the legislation is being deliberately manipulated.</p>	<p>The focus would often continue to be on the ‘process’ of statutory homelessness assessments rather than on pro-active problem solving and achieving the best available housing solution at the earliest possible stage.</p>
<p>Any perceived incentive to use the statutory homelessness ‘route’ as a means to gain unfair priority in social housing allocations would be blunted by the possibility of compulsory discharge of duty into assured shorthold tenancies within the private rented sector.</p>	
<p>The legislation would continue to provide a safety net linked to a settled housing outcome for homeless households in priority need.</p>	

‘Breaking the Link’

There was a demand from some quarters to ‘break the link’ entirely between the statutory homelessness framework and access to secure tenancies in the social rented sector. The principle of this radical ‘Breaking the Link’ model is that *all* eligible homeless households should be provided with *temporary accommodation* but this should be *disconnected* from the *allocation of social housing*.

There are two principal possibilities for achieving discharge of the temporary accommodation duty within this radical model (assuming that an indefinite duty to provide temporary accommodation without any means for discharge would be considered undesirable by all relevant parties): a time-limited duty; and a duty that can be discharged only via the offer of a private sector tenancy.

Time-limited temporary accommodation duty

- The local authority would have a duty to provide temporary accommodation to homeless households for a time-limited period only. This time limited period could reflect the current arrangements for intentionally homeless households (i.e. 28 days) or a longer period (such as two years). On the expiry of the relevant period, the household (including families with children) would be ejected from temporary accommodation regardless of whether or not they had alternative accommodation.
- In order to be ‘true’ to this model, such a time-limited duty would have to be strictly enforced and could not be allowed to recur. Otherwise the temptation would be to extend stays in temporary accommodation until such time as social housing was available for relevant households (especially families with children), with a strong incentive for local authorities to prioritise such households’ access to social housing in order to minimise stays in temporary accommodation, thus defeating the objective of breaking the link with social housing allocations. In other words, a time-limited but recurring temporary accommodation duty would in practice be little different from the current arrangements.

Temporary accommodation duty discharged via private sector tenancies

- An alternative, and less draconian, ‘Breaking the Link’ model would involve discharge of the temporary accommodation duty into the private rented sector only (overwhelmingly to assured shorthold tenancies). This is the model that most Breaking the Link advocates had in mind. However, it does beg the question of how duty is to be discharged in those areas, or for those groups, for whom suitable private sector accommodation cannot be sourced. Bear in mind that, by definition, it would *not be permissible* to discharge duty via the offer of a social tenancy in this model. If social housing offers were a permitted means of discharge, alongside suitable private tenancies, then this model would take us full circle to precisely the current statutory arrangements (once one allows for the compulsory discharge of duty into the private sector noted above). It would thus entirely defeat the aim of breaking the link with social housing allocations, as again local authorities would be incentivised to give such households priority access to social housing in order to minimise temporary accommodation stays.

In either case, in order to fully break the link with access to social housing, statutory homelessness would have to be removed as a category for whom ‘reasonable preference’ must be given in social housing allocations. However, local authorities may be inclined to reinstate the link between statutory homelessness and social housing allocations in order to manage the likely rise in temporary accommodation numbers. Hence, to make this model ‘work’ it may be necessary to specify that a households’ statutory homelessness status is a factor which *must not be taken into account* in allocations. Such households may of course have reasonable preference under other criteria, and very often will do.

Strengths	Weaknesses
All homeless households would be able to access temporary accommodation, at least for a period of time.	The time-limited option is likely to be viewed as unacceptably draconian, at least for families with children.
Any perceived incentive to use the statutory homelessness 'route' as a means to gain unfair priority in social housing allocations would be eliminated.	With the prospect of discharge of duty via social housing removed, many households are likely to spend longer in temporary accommodation, particularly in those areas with limited private rented stock available for low income households.
Fewer resources would be spent on assessing entitlements under the statutory homelessness system.	The cost of temporary accommodation would be likely to increase significantly, relative to the existing legislative framework.

‘Housing Solutions’

There was strong support amongst stakeholders for a more preventative approach towards homelessness and this forms the basis of the ‘Housing Solutions’ model. This model would also mark a radical shift from existing homelessness legislation, but this time by focusing the relevant duties on solutions-focussed interventions that would precede the assessment of entitlements under the statutory homelessness system, thus reinforcing the latter’s role as a ‘safety net’.

Definition of homelessness

- The definition of homelessness would remain the same but the definition of threatened with homelessness is extended from 28 days to 56 days.

Housing solutions

- There would be a new duty *to take all reasonable steps to achieve a suitable housing solution for all households which are homeless or threatened with homelessness*. This duty would be owed to all eligible homeless households, with no account taken of priority need, intentionality or local connection at this stage.
- In taking the required reasonable steps, the local authority must consider the range of possible mechanisms to enable the individual to sustain their existing accommodation or to move to a suitable alternative (or if the individual is without accommodation, to enable them to acquire suitable accommodation). In so doing, the local authority must have due regard to:
 - i] Local housing market conditions;
 - ii] Any support needs of the applicant/household
 - iii] The views and preferences of the applicant; and
 - iv] Any relevant legislation enacted by the National Assembly for Wales or guidance issued by the Welsh Government.
- The local authority would have a duty to provide *interim accommodation* while these housing solutions were being sought if, and only if, the individual has nowhere safe to stay. This would therefore extend the existing interim accommodation duty in two respects:
 - i) bringing it forward to the prevention activities stage, and
 - ii) extending it beyond the priority need groups

But this extension to the interim duty would be limited to those circumstances where there was nowhere safe for the household to stay during the investigation of potential housing solutions.

- The duty to seek a suitable housing solution can be discharged in one of two ways; 1) if a qualifying housing solution is achieved, or 2) in instances where a qualifying housing solution cannot be achieved, a statutory homelessness application is accepted (There would also have to be the usual arrangements for the duty to cease if contact was lost, applicant wanted to withdraw from process, etc). A qualifying housing solution is achieved if:
 - i] the individual is able to remain in their existing accommodation or move to suitable alternative accommodation;
 - ii] an individual without accommodation acquires suitable accommodation.
- Secondary legislation/guidance would need to include the following:
 - i] A *minimum* set of mechanisms that a local authority must consider in its attempts to provide a housing solution, e.g. family mediation, social lettings and other mechanisms for facilitating access to the private rented sector, mortgage rescue, sanctuary schemes, supported housing etc (the full list would need to be developed with local authorities). A minimum set of mechanisms would need to be

available for deployment by all local authorities, though they may be developed at regional level where appropriate.

- ii] In giving due regard to local housing market conditions, the local authority must consider the affordability, quality and supply of accommodation across all tenures.
 - iii] To demonstrate that the individual's support needs have been considered, an **initial** basic support needs assessment must have been undertaken by the local authority or other relevant body and referrals must have been made where a support need is identified. An agreed list of support issues to be considered should be identified in Legislative Guidance and in order to comply with the Rights of Children and Young Person (Wales) Measure 2011, should include the age of the applicant.
 - iv] To demonstrate that the views and preferences of the individual have been considered, the local authority must provide: a description of the individual's circumstances, a record of the options considered, a record of the discussion with the individual and the views they expressed, and the local authority decision which makes reference to how the individual's preferences have been considered.
- Where having taken all reasonable steps to achieve a suitable housing solution, a local authority determines that this cannot be achieved within a period of 6 months, it can bring its housing solutions duty to an end by accepting a statutory homelessness application. If a period of 6 months expires without a housing solution being achieved, the local authority must accept a statutory homelessness application.
 - In principle, the priority need, intentionality and local connection tests could stay as they are at the moment within this model, but we offer some suggestions below as to how the Housing Solutions may render some desirable amendments to the procedure for assessing a homelessness application.

Priority need

- There are three primary options in relation to the priority need test:
 - i] **Status quo:** The existing priority need groups could be retained (with the exception of the prison leavers amendment as noted above).
 - ii] **Expansion:** The existing priority need groups could be expanded slightly to include two additional groups: 'verified' rough sleepers; and young people under 25 years old.
 - iii] **Gradual phasing out:** given that the Housing Solutions model has the potential to reduce significantly the number of households who proceed to a statutory homelessness assessment, this raises the possibility of a gradual expansion and eventual elimination of the priority need test, if the numbers reduce sufficiently to render this manageable for local authorities. The statutory system would therefore become a genuine safety net for all those who are homeless and without feasible alternatives. Such an expansion would have to be predicated on robust monitoring and assessment of the impacts of the Housing Solutions model in reducing 'statutory demand'. One possible approach would be for the necessary legislation to be passed, but not brought into force until such time as the full impact of Housing Solutions was clear and commanded confidence with respect to the feasibility of phasing out of priority need. It may also be linked to a stronger requirement on RSLs to assist in the discharge of homelessness duties (see below). This process could be managed via Ministerial statements on progress at specified intervals, linked to robust monitoring and evaluation frameworks.

Intentionality

- There are two primary options in relation to the intentionality test:
 - i] **From duty to power:** Assessing whether or not an applicant has become homeless 'intentionally' would become a power rather than a duty of the local authority (thus enabling local authorities that do not wish to routinely undertake a test of intentionality to target such activity). This proposed amendment to the intentionality test is supported by the vast majority of stakeholders, although many

of these would prefer the test to be abolished entirely. Intentionality would not be relevant at the Housing Solutions stage.

As any incentive to use the homelessness legislation as a means to gain priority in social housing allocations would be severely blunted within the Housing Solutions model, we could expect the intentionality test to be applied even less frequently than at present (and guidance could encourage local authorities to use it only in exceptional circumstances).

Consideration will need to be given to the requirements of the Rights of Children and Young Person (Wales) Measure 2011, which may require that children aged 16-17 years cannot be found intentionally homeless.

- ii] **Abolition:** Many stakeholders felt that the intentionality test should be abolished, whilst many others felt that it should be retained, at least as a power. Given these sharp differences of opinion, very careful consideration should be given to the possibility of abolishing the intentionality test. Such a development would have to be predicated on robust monitoring and assessment of the impact of the housing solutions model in effectively addressing any existing incentives to 'take advantage' of the statutory homelessness system.

Local connection

- Local authorities would continue to be able to refer an individual to another local authority under the existing local connection powers. If local authorities did not have this power there would be a significant risk of some local authorities becoming significant net recipients of homeless households to whom a main duty would be owed.
- An individual's connection to the local authority area would not be considered at the Housing Solutions stage.

Accommodation duties

- The local authority's interim accommodation duties would be extended as outlined above.
- Where a statutory homelessness assessment is undertaken and the main homelessness duty applies, this could be discharged in the following three ways:
 1. The offer of a secure social tenancy or an assured tenancy (as at present)
 2. The offer of a suitable assured shorthold tenancy for a minimum of 12 month duration (without the need for applicant consent) or a minimum of 6 months (with applicant consent). We would recommend that a range of specific parameters be set as to the quality and affordability of such assured shorthold tenancies in order for a relevant offer to constitute a valid discharge of duty:
 - i] Parameters in relation to quality might comprise a requirement for the property/landlord to meet the standards required by a national or local accreditation scheme and
 - ii] In relation to affordability, the local authority would need to give consideration to the Local Housing Allowance rate.
 3. The offer of suitable supported accommodation (again with an agreed minimum term, which should be consulted upon)

Review and/or appeal

- A review and/or appeal mechanism will need to be in place to enable households to challenge whether or not a local authority has acted in compliance with the duty to take all reasonable steps to achieve a housing solution.
- Consideration will have to be given to appropriate review and/or appeal mechanisms, and the location, format and scope of such mechanisms.

Strengths	Weaknesses
All homeless households would be able to access interim accommodation if they had nowhere safe to stay while an appropriate solution is sought.	Resources would be required to ensure that interim accommodation is available for all households with nowhere safe to stay.
Prevention, early intervention and active problem solving in homelessness would be foregrounded and incentivised, with local authorities able to maximise the full range of alternative options to the statutory homelessness system without risk of acting unlawfully.	If the priority need criterion is not gradually phased out, many households will continue to be excluded from material assistance if an initial housing solution cannot be found.
Any incentive to use the statutory homelessness 'route' as a means to gain unfair priority in social housing allocations would be severely blunted by the requirement to engage in early intervention options and the possibility of compulsory discharge of duty into assured shorthold tenancies.	
Homeless individuals would have a greater say in identifying appropriate solutions to their housing problems.	
Local authorities would have to give greater consideration to the support needs of individuals.	
There is the potential for all homeless households to have a suitable housing solution if the priority need test is ended.	

Cross-model amendments

Two key areas for improvement relate to all three of the models put forward; the strengthening of responsibilities across different departments within local authorities and across sectors and the importance of improved monitoring and inspection in Wales.

Cross departmental and sectoral responsibilities

- The existing legislation requires housing associations to co-operate with local authorities in exercising their homelessness duties. In addition, the legislation provides for co-operation between social services and housing departments, e.g. in respect of applicants with children who are intentionally homeless or ineligible for assistance.
- Our first recommendation is a point of clarification; the homelessness duty, although currently worded as a duty on the local housing authority, is in fact a duty upon the entire local authority. Stakeholders were concerned that homelessness is seen as the sole responsibility of the housing department, despite the responsibilities of other departments to provide assistance. Beyond the local authority there was also concern that some other bodies were not effectively intervening to address homelessness. In response to these concerns, we propose that the following two amendments should be considered:
 1. A corporate duty should be placed upon the local authority to give due regard to the prevention of homelessness. The driver for this pervasive addition to the legislation is the wish for homelessness to be viewed as more than a housing issue and for relevant actions to prevent homelessness to be undertaken by all relevant departments/teams within local authorities. Relevant departments/teams could include adult services, children's services, housing benefit, private sector enforcement and community safety. It is anticipated that this change to the legislation would bring about a change in institutional culture, re-envisioning the prevention of homelessness as the responsibility of the entire local authority.
 2. The bodies required to co-operate with the *Local Authority* when they are exercising their homelessness duties (and in particular taking steps to achieve an early housing solution), should be widened to include Local Health Boards, Police, Probation and Prisons (a full list would need to be developed with relevant bodies).

Monitoring and inspection

There is currently unacceptable variation in the implementation of homelessness legislation across Wales. Some variation in local delivery is entirely appropriate given differences in local housing markets and other resources available, but significant differences in responses to changes to secondary legislation and accepted good practice are not. We can expect that such differences will continue in the context of amended homelessness legislation whichever model is adopted.

The role of monitoring and scrutiny of homelessness services therefore needs exploration, in particular in how it can support local authorities and their partner organisations to effectively implement new legislation. The following will need to be considered:

- The introduction of some form of monitoring and inspection of homelessness services in Wales.
 1. The Scottish model of inspection would be one model to consider. This involves a regular programme of inspection by the Scottish Housing Regulator of local authority homelessness functions against homelessness Performance Standards. Local authorities are graded excellent, good, fair or poor. Whilst we recognise that such a focused programme of inspection is not commonplace in Wales in the current context of public service reform (and that the preference of many is for peer scrutiny rather than inspection), we consider that it would form a crucial part in supporting the implementation of new legislation; this view is supported by the Scottish experience of the role of inspection in the context of major changes to the homelessness legislation.

2. An alternative to the Scottish model of inspection would be to charge the Care and Social Services Inspectorate Wales with the responsibility of inspecting homelessness services.
- Alongside, or as part of, a monitoring and inspection framework, good practice must be promoted. Local authorities will also require support to implement such practice. This might be achieved by funding an 'expert' adviser to work with local authorities during the implementation of the changes (as has been done in the past with reference to the homelessness prevention agenda and developing appropriate joint responses to 16 and 17 year olds who are homeless or threatened with homelessness).
 - A set of national performance indicators that operate to support the intent of the legislation and which do not create perverse incentives are needed. Indicators should focus on outcomes and the experience of service users.
 - Alongside any changes, improvements are required to the way that homelessness data is collected and reported on across Wales. The experience of undertaking this review indicates that there are major variations between local authorities in respect of what data is collected and how. The WHO12 and associated statistical returns would need to be revised to reflect new legislation. It would be advantageous for data to be available at the level of the individual to enable analysis of who has been assisted and in what ways to be undertaken. The suitability of data collection processes should be monitored as part of the monitoring and inspection framework.

Conclusion

Drawing on the opinions of approximately 180 individuals and organisations in Wales, as well as author interpretation, this report set out three broad directions for the future of homelessness legislation in Wales; a 'Minor Amendments' model, a 'Breaking the Links' model, and a 'Housing Solutions' model. There is still a significant degree of uncertainty about the potential impacts and challenges of implementing the proposed changes. The final report of this homelessness legislation review will include an assessment of the likely impacts of the homelessness legislation and is due to be published in July 2012.

Section Four

Appendices & acknowledgements

Appendix A – Stakeholder interview agenda

The Welsh Government commissioned Cardiff University and partners to lead on a review of homelessness legislation in Wales. A key part of the review is to gather stakeholder views on possible changes to the way homelessness is addressed, the resource implications of such changes and any unintended consequences that might result. In addition to a series of events being held between 18th-20th January 2012, we will be holding individual interviews and small group discussions with targeted individuals and groups who have a particular knowledge or interest in the issue. Prior to the interview/discussion you might like to visit the project website (www.cplan.cf.ac.uk/homelessness) for more information. The interview/discussion will explore:

Strengths and weaknesses of the existing legislation

Our review of the impacts of homelessness legislation in Wales revealed a range of positive impacts, as well as some key deficiencies.

1. *From your perspective, what are the main strengths and weakness of the Welsh homelessness framework?*

The definition of homelessness

Legislation currently defines someone as homeless if; a] There is no accommodation that they are entitled to occupy; or b] They have accommodation but it is not reasonable for them to continue to occupy this accommodation. Moreover, a person is threatened with homelessness if it is likely that they will become homeless within 28 days. Our international review found that this definition is very broad and inclusive relative to other countries. However, in Scotland households are defined as threatened with homelessness if they will become homeless in 2 months, making the Scottish definition slightly wider.

2. *What amendments, if any, should be made to the definitions of homeless and threatened with homelessness?*

Homelessness advice and prevention

Our review of the impacts of homelessness legislation in Wales showed that a lot of time is spent on homelessness prevention (ranging from advice to finding alternative accommodation, mediation etc) and yet much of this activity lies outside of any statutory duty.

3. *What role should the law play, if any, in homelessness prevention?*

The prioritisation of homeless people's needs

Our review of the impacts of homelessness legislation in Wales found that most households owed a fully duty are households with dependent children. Prioritising the needs of these households has resulted in many homeless families being accommodated. By contrast, many single adults, mostly men, are not prioritised for accommodation. A proportion of these single adults have substance and alcohol misuse and mental health issues. Priority need status is given to single men who are homeless on leaving prison but the review suggests that many of these individuals become homeless again or they re-enter prison.

Our international review found that in Scotland priority need groups will be abolished by 2012. Consequently, single men now constitute a large and growing proportion of households accepted as statutorily homeless. Lower proportions of social housing stock makes the Scottish 'universal assistance' approach difficult to deliver in many other parts of the UK. Even in Scotland, demand pressures resulted in a considerable increase in use of temporary accommodation. Furthermore, over half of new local authority lettings are now absorbed by statutorily homeless households and one third (34%) of new housing association lettings are also now made to this group.

4. *Who should be supported under homelessness legislation and what would be the likely resource and wider implications of any change?*

Intentionality

Our review of the impacts of homelessness legislation in Wales concluded that relatively few households are found to be intentionally homeless. However, there is general consensus that being found intentionally homeless is detrimental to the household. Our international review found the Scottish legislation provides for a softening of the intentionality test (from a duty to a power) and a requirement to provide support to the household. This change is yet to be implemented.

5. *What changes, if any, should be made to the intentionality test and what would be the likely resource and wider implications of any change?*

Migration of homeless households and local connection

Our review found that only a proportion of authorities witness significant levels of homeless applications from recent migrants. Direct access hostel data showed that high proportions of vulnerable single adults, not currently accessing statutory services, are migrating when homeless.

6. *What changes, if any, should be made to the local connection test and what would be the likely resource and wider implications of any change?*

Duties to provide suitable accommodation and support

Our international review found that outside of the UK, enforceable legal rights to settled accommodation are seldom used as a mechanism for meeting the long-term housing needs of homeless people. In countries where such rights are inexistent there is evidence that social landlords routinely exclude low-income and vulnerable households.

Our review of the impacts of homelessness legislation in Wales found that households who are in priority need tend to spend relatively long periods of time homeless and in temporary accommodation before they secure settled accommodation. This largely results from a staircase model of accommodation provision. The review also found that where local authorities have a duty to provide accommodation, there is limited flexibility in the type of accommodation that can be offered.

Currently in Wales, some particularly vulnerable households are found to be in priority need, whilst many others are not. Whilst these households are often supported very effectively, the homelessness legislation does not place a duty on local authorities to meet the support needs of these households.

7. *What housing and support duties should there be when someone is homeless and who should be responsible for meeting these duties?*

Implementation and enforcement of legislation

Our review of the impacts of homelessness legislation in Wales showed that local authorities often interpret and enforce the legislation in different ways. Whilst this might be positive as it enables authorities to be flexible in meeting people's needs, the review also found that significant resources are allocated to challenging local authority decisions.

8. *What changes, if any, should be made to the ways in which legislation is applied and enforced?*

What happens with your comments?

The findings of this discussion will be combined with results from stakeholder engagement events and an online survey to help the research team develop proposals for improvements to the homelessness legislation in Wales. An impact assessment will then be undertaken on these proposals with the full project report due to be published in July 2012.

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Disclaimer

All views and any errors contained in this report are the responsibility of the authors. The views expressed should not be assumed to be those of the Welsh Government.