

Prevention of Homelessness Duties - A Joint Scottish Government and COSLA Consultation

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PREVENTION OF HOMELESSNESS DUTIES – JOINT SCOTTISH GOVERNMENT/COSLA CONSULTATION

Foreword



**Shona Robison MSP,
Cabinet Secretary for Social Justice,
Housing and Local Government**



**Councillor Kelly Parry,
COSLA Spokesperson on
Community Wellbeing**

Ending homelessness is everyone's business.

We are proud of the progressive housing rights we have for people in Scotland experiencing homelessness. This is a foundation on which we can build further. This consultation on introducing prevention of homelessness duties is the next important step in our journey. The new prevention duties are designed to ensure that people get the help they need much sooner and will be the most significant change to Scotland's homelessness legislation since we changed the law to remove 'priority need' in 2012.

While the right to safe, affordable housing for those facing homelessness will continue to be central to our response, the experience of homelessness is often a traumatic and unsettling experience that can have a profound impact on the lives of those involved, including children. By intervening at an earlier stage, and encouraging services to work together to respond to people's needs, we can ensure fewer people and families are faced with having to re-build lives affected by homelessness.

Following a recommendation from the Homelessness and Rough Sleeping Action Group to create new duties to prevent homelessness, the Prevention Review Group was established. It provided a thoughtful and compelling set of proposals which have helped inform this consultation.

We must seize this chance so that every single case that can be prevented is prevented. This should reflect our no 'wrong door' approach to those facing homelessness so that the risk of homelessness is identified and acted on regardless of the service first approached. This is a historic opportunity to make sure that there are no missed chances and to ensure homelessness is prevented at a much earlier stage.

We know that there is already some very good work happening across the country to prevent homelessness, following the focus on housing options approaches in recent years. This is our opportunity to go much further and set a new standard in preventing homelessness.

We would like to encourage all those in the housing sector, wider public bodies and those with experience of homelessness to take part and help shape Scotland's future in preventing homelessness. We hope you will help us identify what will work best in preventing homelessness so that Scotland can continue to be a world leader in tackling and ultimately ending homelessness.

Section 1: Introduction

Imagine a world where homelessness is rare, brief and unlikely to happen again. It might be difficult to imagine, but it is not impossible. In most cases, homelessness is preventable.

Scotland has strong housing rights for those experiencing homelessness, but we know that experiences of homelessness can go beyond the need for housing and can involve a range of unmet needs. It has been identified that we can do more at an earlier stage to prevent someone reaching a housing crisis that results in the trauma and indignity of homelessness. That is what the proposals in this consultation intend to address, underpinned by new legal duties on public bodies for the prevention of homelessness, which we intend to take forward through a Housing Bill introduced in year two of this Parliament.

Much of the early intervention and prevention work addressed in this consultation can be undertaken with people who do not have high or complex support needs to help ensure they do not reach the crisis of homelessness. We do know however, that there is often increased contact with health services before homelessness occurs and that struggles with mental health and addictions, experience of the criminal justice system and other factors are common 'routes in' to homelessness for those facing severe and multiple disadvantage. People experiencing homelessness may have experienced poverty and trauma, including higher prevalence of adverse childhood experiences (ACEs).

We recognise that legislation alone cannot do all we need to do to prevent homelessness. We need to use the evidence of the triggers of homelessness and acknowledge and support activities that are further upstream to the places and opportunities where, with the right support, events which otherwise might be the trigger to homelessness have a very different outcome.

This consultation about legislation creates an opportunity for a wider consideration about what all of us can do to be involved in, and support early intervention, and the prevention of homelessness long before it might happen.

Background to this consultation

In September 2017, the First Minister set out a new commitment to eradicate rough sleeping, transform the use of temporary accommodation in Scotland and end homelessness. Ministers subsequently established the Homelessness and Rough Sleeping Action Group (HARSAG) to make recommendations on how these changes could be achieved.

HARSAG produced a comprehensive set of recommendations aiming to secure strategic changes at both national and local level, and which would help support delivery on the front-line. In November 2018, the Scottish Government and Convention of Scottish Local Authorities (COSLA) responded with the Ending Homelessness Together action plan (updated in October 2020) which sets out the actions we will take in partnership with others to end rough sleeping and

homelessness. A key action in Scotland's new homelessness strategy was to develop wide-reaching prevention duties.

At the request of Scottish Government, Crisis convened the Prevention Review Group (PRG), chaired by Professor Suzanne Fitzpatrick to develop recommendations for legal duties on Scottish local authorities and wider public bodies to prevent homelessness, and how these might be best implemented.

The recommendations in the final report of the Prevention Review Group, [Preventing Homelessness in Scotland](#) published in early 2021, provide the framework for this consultation document. Background information on homelessness in Scotland including the work of the Prevention Review Group and its final report is included at Annex A, and the membership of the Prevention Review Group is included at Annex B.

Points about this consultation

In this consultation we are asking questions based around the full package of proposed recommendations from the PRG, in the spirit with which the recommendations were made.

While you are encouraged to respond to all of the questions, we recognise that not all contributors will wish to respond to each question. We have endeavoured to make it clear where input from specific contributors is encouraged, for example, those working in health and social care, those with lived experience of homelessness, etc.. However, in light of the presentation of a package of proposals mentioned above, it may be helpful to consider when responding whether you believe this feels like the right package of proposals, as most will be dependent on the delivery of the whole package or at least on other specific recommendations being implemented. Questions on the whole package of proposals can be found at section 4.

You will see references to 'stable' and 'suitable' accommodation throughout the consultation and recommendations in this regard are explained more fully in section 3. These are terms used in the Prevention Review Group recommendations, and you may wish to give consideration to the policy intentions behind these terms in responding to the package of proposals.

In the same spirit, it is worth noting that the PRG recommendations were drafted on the basis of further legislative change beyond the scope of this consultation. The Homelessness etc. (Scotland) Act 2003 (Commencement No. 4) Order 2019 was commenced on 7 November 2019, introducing discretion for local authorities in assessing homelessness applications for intentionality.

There was limited consensus in a 2019 consultation about the option of removing intentionality entirely and work will continue with partners, lawyers and other stakeholders to consider next steps. As intentionality has been discretionary since November 2019, local authority reporting data will be used to understand the impacts of this change to inform next steps. A review of the legislation following commencement is in progress.

With such a wide range of proposals, presented as a package, we recognise that there may be concerns about any ‘unintended consequences’ of certain recommendations, and we have sought to draft the questions in a way that will allow feedback on those aspects of the recommendations.

It is also worth highlighting at this stage that, while making recommendations around a number of specific groups that may be at risk of homelessness, including children and young people, the PRG made a point of not providing specific recommendations for those who have experienced the care system, as it was considered by the PRG that recent initiatives – the youth homelessness prevention pathway (Improving Care Leavers’ Housing Pathways, 2019) and the Independent Care Review’s reports, 2020 – still need time to bed in.

Aims of the consultation

Our aim is to introduce legislation in the upcoming Housing Bill in year two of this Parliament, which leads to system change and person centred and trauma-informed service responses to meet individual needs to better prevent homelessness, while providing greater choice and control for those at risk of homelessness. The intention is that this legislation should strengthen the level of housing rights, and not result in any deterioration (the principle of non-regression).

Housing to 2040¹ sets out a vision for what the Scottish Government wants homes and communities to look and feel like for the people of Scotland, and a draft Rented Sector Strategy consultation will also be launched in December 2021. Ensuring that everyone has a warm, safe, secure home that meets their needs is central to the visions set out in these documents – and is central to the aim of this consultation too.

We know that earlier intervention by public bodies, landlords and local authorities, who are the focus of the proposed recommendations in this homelessness prevention consultation, and by the wider community can help prevent people being forced to experience the trauma of homelessness.

As well as protecting people from this experience and promoting better outcomes for individuals and families, homelessness prevention makes economic sense, with public bodies, landlords, local authorities and the wider community no longer facing the cost of homelessness and repeat homelessness, and increased use of temporary accommodation etc.

There is already much good practice by local authorities, wider public bodies and landlords and the third sector that takes place in preventing homelessness, including through joint working with their partners. This joint working has been enhanced in some areas through responses to COVID-19 since March 2020. This consultation offers the chance to give views on how we can improve practice around joint working on prevention through legislative change to ensure consistency of delivery across Scotland, while recognising local circumstances and decision making. It also asks for reflections on how new duties would change organisational practice, and what the resource implications of that may be.

¹ [Housing to 2040 - gov.scot \(www.gov.scot\)](https://www.gov.scot)

We want to ensure that this consultation and any future legislative proposals are informed by considerations of equality and diversity and human rights. People who face social, income and health inequalities are disproportionately impacted by homelessness and may face further inequalities related to their age, race, disability, sex, sexual orientation or other protected characteristics.

This consultation paper invites your views in two broad areas:

1. Introducing new duties (through a Housing Bill expected in 2023) on a range of public bodies and landlords to prevent homelessness, particularly by asking and acting on a risk of homelessness, as well as responsibilities relating to strategic and joint planning.
2. Changing existing homelessness legislation to ensure homelessness is prevented at an earlier stage, including a proposal to extend the duty to take reasonable steps to prevent homelessness up to six months before, to maximise the housing options available to people and to prescribe what reasonable steps may include.

Sections 2 and 3 of this document highlight the recommendations of the Prevention Review Group, followed by a short background section on the specific proposed recommendations and our consultation questions on those recommendations.

We would encourage you to respond to any or all of the questions in sections 2 and 3. Questions on the full package of proposals, potential resources and monitoring required for the implementation of any new duties are included at section 4.

We have also produced questions to ensure a wide range of views including of those with lived or living experience of housing crisis, homelessness or risk of homelessness are captured as part of this consultation. These questions are available at section 5 of this consultation.

The consultation paper contains seven sections:

Section 1: Introduction

Section 2: Proposed recommendations by the Prevention Review Group and consultation questions on duties to prevent homelessness on wider public bodies and landlords.

Section 3: Proposed recommendations by the Prevention Review Group and consultation questions on reforming homelessness legislation to prevent homelessness.

Section 4: Questions on the package of proposals, resources and monitoring.

Section 5: Questions on the PRG proposals on prevention of homelessness duties for people with lived or living experience of housing crisis, homelessness or risk of homelessness.

Section 6: How to respond – contains information on how to respond to the consultation and a copy of the respondent information form.

Section 7: Annexes

Section 2: Proposed recommendations by the Prevention Review Group and consultation questions on duties to prevent homelessness on wider public bodies and landlords

Introduction

This section firstly (a) focuses on the principles that guided the Prevention Review Group (PRG) approach and secondly (b), on the duties on wider public bodies and landlords.

The proposed recommendations in this consultation focus on those public bodies identified by the Prevention Review Group as having a potential role in preventing homelessness. The PRG made proposals in the following areas: health and social care; children's services, including assistance for young people and 16 and 17 year olds; criminal justice (prisons, courts and Police Scotland). These proposals include recommendations for case co-ordination for people with multiple and complex needs; people at risk of homelessness as a result of domestic abuse; and joining-up services through strategic planning.

The PRG also proposed recommendations on social landlords and the private rented sector.

2 a) Principles of the PRG

Overarching 'foundational principles'

- **The Prevention Review Group (PRG) set out the following overarching 'foundational principles'** in guiding its approach to providing recommendations for legislative changes on the prevention of 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.

Question

Q1. Do you agree that these are the right foundational principles?

Q2. Are there any other principles that should be included? If so, why?

The principle of 'ask and act' duties

The principle of 'ask and act' emerged from the Prevention Commission, a group of people with lived and frontline experience of the homelessness system, working with

the PRG. Each of the public bodies considered would need to identify whether the people they work with have a risk of homelessness or are experiencing housing problems, and then they 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.

The reference to ‘public bodies’ in the PRG report and in this consultation should be read as those public bodies outside of local authority housing departments that can play a role in preventing homelessness. More broadly, the basis for recognising public bodies is clarified in the national directory:

<https://www.gov.scot/publications/national-public-bodies-directory/>

- **PRG proposal:** Public bodies in their role to prevent homelessness should identify a risk of homelessness, and “act” upon that information: **“ask” and “act” duties.**

Questions

Q3. Do you agree with the proposals to introduce new duties on public bodies to prevent homelessness?

Q4. Do you agree that public bodies should be required to ‘ask and act’ to prevent homelessness?

Q5. Which public bodies do you think a new duty to prevent homelessness should apply to and why?

The principle 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”. The intention is to see public bodies work together with homelessness and housing services to ensure that people have a seamless transition into settled accommodation at the point of leaving an institution and that no one leaving their services becomes homeless. In practice, often the work to save accommodation may be best done at the beginning of entry into an institution. The approach being considered is that anyone leaving an institution within the next six months with no accommodation arrangements should be considered as threatened with homelessness.

The policy intention is that no one should unnecessarily become homeless due to entering an institution, and public bodies should collaborate closely to ensure people can return to previous housing or move to new, suitable housing on leaving the institution in a planned manner. As an example, prisons cannot hold people beyond their liberation date and would therefore benefit from early collaboration with local authorities to ensure that no one is discharged into homelessness.

- **PRG proposal:** No one should be discharged from institutions without anywhere to sleep that night.

Questions

Q6. Do you agree to introducing a statutory duty on public bodies to prevent homelessness for anybody leaving an institution within six months?

Q7. What would help public bodies to meet this requirement and how might it work in practice?

2 b) Duties on wider public bodies and landlords

Prevention Review Group proposed recommendations for Health and Social Care

- **PRG proposal:** A statutory duty is placed on the Health and Social Care Partnership (HSCP) to identify the housing circumstances of service users, and where necessary work with partners to ensure that service users are assisted into suitable housing or that a risk of homelessness is prevented.

The PRG highlighted that people with experience of homelessness have a much higher interaction with health services than those who do not. A health and homelessness data linkage project² showed that, of the study population, the third which had experienced homelessness made up the majority of associated attendances at some health services. In particular, more acute services including accident and emergency (A&E) (55% of attendances associated with the study population), acute hospital admissions (52%), admissions to mental health specialities (80%), and drug and treatment assessments (90%). The third of the study population experiencing homelessness also made up nearly half (49%) of outpatient appointments. This study also showed that people's use of health services peaks just before they make their first ever homelessness application.

The PRG identified that there is evidence of a lack of co-operation between health and social care services and homelessness services to prevent homelessness. Often the point of entry to health and social care services will be a critical point to intervene in preventing homelessness, for example, where someone is entering hospital for inpatient psychiatric assistance. The intention is that 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 and homelessness assistance. In some areas of Scotland, these services are brought together in the Health and Social Care Partnership.

Please note that the PRG recommendations mentioned new duties on Health and Social Care Partnerships (HSCPs). However, Integration Authorities represent partnerships between Local Authorities and Health Boards for delivering health and social care services and integration of budgets. They are governed by the Public Bodies (Joint Working) (Scotland) Act 2014, and are the bodies through which community health and social care services are planned to provide care for individuals in their community, or in a homely setting and avoid unnecessary admissions to hospital. A Health and Social Care Partnership is an umbrella term to refer to the range of professionals working to deliver community health and social

² [Waugh et al \(2018\) Health and Homelessness in Scotland](#)

care services under the direction of the Integration Authority. This distinction is reflected in the questions below.

Questions

Q8. Do you agree with the proposal that Integration Authorities should identify the housing circumstances of people using health and social care services, and where necessary work with partners to ensure that service users are assisted into suitable housing or prevent the risk of homelessness?

Q9. Do you agree that a new legislative duty on Integration Authorities to identify housing circumstances of patients is the best way to prevent homelessness?

- **PRG proposal:** 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.

The policy intention of this proposal is to capture the needs of those who require highly specialist medical or other support in supported accommodation. It is not intended to cover needs that might be met through Housing First provision, which is provided in mainstream settled accommodation with intensive support.

The PRG highlighted that those with complex needs are at serious risk of falling through the cracks in mainstream service provision, including accessing housing options/homelessness services. The Hard Edges Scotland research³, published in 2019, looked at the needs of this group and found that homelessness services often “carry the can” and lead on cases with this client group, particularly in the absence of a court order.

Questions

Q10. Do you agree that the Integration Authority should have primary legal responsibility for meeting accommodation and support needs where cases are so complex that they cannot be met in mainstream accommodation even with support?

Q11. How would the Integration Authority having primary legal responsibility where cases are so complex work in practice?

Q12. Do you think a duty on the Integration Authority would positively impact on preventing homelessness for people with a range of more complex needs?

- **PRG proposal:** 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.

³ [Hard Edges Scotland full report – Lankelly Chase](#)

Question

Q13. Do you agree with the proposal for a social worker or social care worker to have a duty to 'ask and act' about housing issues or the risk of homelessness?

- **PRG proposal:** 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.

This was highlighted as a priority recommendation in the PRG report and relates to the homelessness assessment process and requiring co-operation to provide assistance from health and social care to meet any underlying health and social care needs.

The intention is that effective strategic planning across health and social care and housing services will support the fulfilment of these duties. Since the PRG made its recommendations, the Scottish Government has had a consultation⁴ on establishing a new National Care Service which ended on 2 November 2021, and any potential legislative changes as a result of this will need to be considered in progressing any proposals.

Question

Q14. Do you agree that a duty to co-operate on the Integration Authority is the best way to ensure that people who are homeless or at risk of homelessness as a result of unmet health or social care needs, get the support they need from Health and Social Care services? If not, please explain how this might be addressed.

- **PRG proposal:** 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.

Question

Q15. What changes to existing practice do you think local authorities and relevant health and social care services would have to make, to ensure they meet the needs of those leaving hospital and those with mental illness and impairment?

- **PRG proposal:** 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.

Questions

Q16. Do you agree with the proposal that the local authority must provide assistance to anyone who is going to be discharged from hospital? What is the main difference this statutory change would make to those in hospital and at risk of homelessness?

⁴ [A National Care Service for Scotland - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.citizen.gov.scot/consultations/national-care-service-for-scotland)

Q17. What would be the main challenges of introducing a statutory duty on local authorities to house those due to be discharged from hospital within the next six months?

- **PRG proposal:** GP practices should be under a requirement to refer to the local authority where a risk of homelessness is identified.

A theme which emerged during the work of the PRG was the role of GPs (GP practices are only public bodies for some purposes). As a universal service, GPs treat patients in the widest range of circumstances. In England there is a duty to refer under prevention legislation, but not for GPs, and the PRG noted that GPs are one of the services least likely to refer to housing.

This may raise concerns about GP practices being asked to intervene in patient's lives where not requested by patients and for a non-immediately clinical reason. For information, a network of Community Link Workers are deployed to (rather than employed by) some GP practices in Scotland to address some of the non-medical issues of patients.

Questions

Q18. Do you agree with the proposal that GP practices are required to refer to local authorities where there is a risk of homelessness identified?

Q19. Are there any additional approaches that could be adopted by GP practices to better identify and respond to housing need?

Prevention Review Group proposed recommendations for case co-ordination for people with multiple or complex needs

- **PRG proposal:** 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 section 13 Community Justice (Scotland) Act 2016) and relevant third sector partners.

Following the publication of the evidence highlighted in the Hard Edges Scotland report, there has been increased recognition across the homelessness sector of the need for better joined-up person centred and trauma-informed services to address the range of needs and severe and multiple disadvantage which some people experience. The intention of this proposal is to ensure this approach is consistent across Scotland, through providing a statutory basis for the involvement of a range of appropriate partners needed to help prevent homelessness.

Questions

Q20. Do you agree with the proposal that a statutory duty to put a case co-ordination approach in place for people requiring input from two or more public services is the

right approach? If you disagree, please say how public services can best work together to prevent homelessness for people with more complex needs.

Q21. If this statutory duty is established, how would it work in practice? What challenges would it present and how could these be best addressed?

- **PRG proposal:** The approach to case co-ordination for people with multiple or complex needs 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.

The PRG noted that some local areas already have approaches similar to this which has improved further in response to the COVID public health emergency. 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.

For under 18's, it may also include children's and families services within the local authority. The intention is to allow flexibility for different local mechanisms. The PRG were also cautious of defining complex needs in detail, to avoid creating the service boundaries that this group of people so often fall between.

Question

Q22. What difference would a case co-ordination approach make to people experiencing homelessness or at risk of homelessness who have more complex needs?

Prevention Review Group proposed recommendations for Children's Services

- **PRG proposal:** If a health visitor and head teacher identifies that there is a housing issue or a risk of homelessness for a family, they should make a request for assistance to the local authority's homelessness service.

The PRG noted that around 27% of households making a homelessness application include children, with 10,129 applications in 2018-19, representing 14,043 children. Households with children spend longer in temporary accommodation, on average 219 days compared to 166 days for households without children. Schools and health visitors were identified as having key roles in supporting children and identifying factors that may present a homelessness risk, such as poverty or relationship breakdown.

In preparing the local Children's Services Plan, the local authority and health board will work with relevant partners to ensure local services and support meet the needs of children, young people, and families at risk of homelessness.

Question

Q23. Do you agree with the proposal to establish a duty on health visitors or head teachers to identify a housing issue or risk of homelessness to a local authority?

Q24. How would a duty on health visitors or head teachers to identify a housing issue or risk of homelessness to a local authority work in practice? At what stage should a request for assistance be made to the local authority?

Prevention Review Group proposed recommendations for young people

- **PRG proposal:** Local authorities should work with partners to ensure the service meets the needs of young people at risk of homelessness. Services should be able to respond to the diversity of this group.

Under section 57 of the Children and Young People (Scotland) Act 2014 'young people' are those who have reached the age of 16, but are under the age of 26. The PRG noted that 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 person. Experience of homelessness at a young age is associated with the risk of later homelessness.

There was a suggestion from PRG members and stakeholders that a focus on tackling youth homelessness may have lessened in some areas in recent years, and that there was a lack of coherent housing and support offers for young people and those setting up home for the first time.

Question

Q25. How can we ensure a homelessness prevention service is designed to meet the needs of young people at risk, in partnership with other relevant services?

- **PRG proposal:** Local authorities should ensure that they have family mediation available as part of their homelessness prevention offer.

The establishment of a family mediation service as part of a minimum statutory framework to prevent homelessness is also referred to in section 4 of this consultation under potentially prescribed 'reasonable steps' for the local authority to take.

Mediation will only be applicable where appropriate and safe. Mediation is not appropriate in some circumstances e.g. domestic abuse.

Question

Q26. Do you agree that a local authority, possibly in partnership with others, should have a family mediation service as part of its legislative duties to prevent youth homelessness?

Prevention Review Group proposed recommendations for 16 and 17 year-olds

- **PRG proposal:** 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.

Young people in Scotland are considered to have legal capacity from age 16 and, if they qualify, have a right to their own tenancy, but are considered children for the purposes of children's services up to the age of 18 under the Children and Young People (Scotland) Act 2014. Some young people, including those that have experienced the care system, can access additional support beyond the age of 18 (please note the PRG did not make any specific recommendations on those that have experienced the care system – see section 1: introduction). The intention behind this proposal is to prevent homelessness before it occurs for 16 and 17 year olds, which will mean a better outcome for a young person than experiencing the trauma of homelessness. However, the proposal needs to be assessed in the wider context of the law surrounding the age of legal capacity.

The questions below attempt to address concerns about the intervention of children's services for 16 and 17 year olds and the unintended consequence of children feeling they have less choice about which services they are able to access. The policy intention is not to divert 16 and 17 year olds who present as homeless to an assessment by social work, or to establish a barrier to any rights to accommodation under the Housing (Scotland) Act 1987.

Questions

Q27. Do you think the proposal for 16 and 17 year olds would positively impact on the prevention of homelessness for young people?

Q28. Could there be any 'unintended consequences' for 16 and 17 year olds in taking this approach to legislation? If so, how can this best be addressed so that any new legislation improves outcomes for 16 and 17 year olds at risk of homelessness?

Prevention Review Group proposed recommendations for Criminal Justice – Prisons, Court Services and Police Scotland

Prisons

- **PRG proposal:** The Prisons and Young Offenders Institutions (Scotland) Rules 2011 are amended to ensure that:
 - People entering prison are asked about their housing situation as soon as reasonably possible following admission.
 - If people in prison are 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 individual for homelessness assistance.
- Where housing issues are identified, prisons work with partners including housing options and housing associations to address the issues.

It is proposed that 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, the Scottish Courts and Tribunal Service and Community Justice Partnerships.

The PRG noted that in 2018/19, 1,822 (5%) homeless applications were recorded as having been from people leaving prison in 2018/19. However, it also points out that this may be an underestimate with more people leaving prison with arrangements in place which break down after a short period, resulting in homelessness. In recent years, the SHORE standards (Sustainable Housing on Release for Everyone) have been co-developed by the Scottish Prison Service (SPS) and other key partners. Data sharing agreements have also been agreed between SPS and all Scottish local authorities which enable local authorities to maintain existing tenancies when someone enters prison and to make plans for suitable accommodation in advance of release.

The development of SHORE is the responsibility of both SPS and local authorities/housing bodies to deliver collectively (supported by Scottish Government and other stakeholders) and progress still needs to be made towards full and consistent application of the processes it describes.

The PRG sees this as supporting its recommendations for legislative change. These proposed recommendations on prisons should also be considered in parallel with the recommendation highlighted on pages 10-11 in relation to those leaving institutions. The intention behind the proposals is 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 prison. Consideration also needs to be given to the implications for the protection and rights of the victims of crime in this process.

Questions

Q29. Do you agree with the proposal to introduce new legal duties on prisons to ask about and work with partners to address housing issues to prevent homelessness?

Q30. How would a statutory duty on prisons to identify and work with partners on housing issues change existing practice already in place to prevent homelessness amongst those leaving prison?

Q31. What are the main challenges of introducing any new statutory duty on prisons to identify and work with partners on housing issues?

Q32. What changes to existing practice would local authorities have to make to ensure they meet the needs of those leaving prison??

Prevention Review Group proposed recommendation for Court Services

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

Stakeholder consultation by the PRG suggested that there is a lack of housing options advice available within court settings. There is a future aspiration to develop the SHORE standards to include sections on preventing homelessness on arrest and in court. The importance of this provision for those who have been trafficked has been highlighted, as without accommodation they may be more at risk of being placed in custody.

Question

Q33. Do you agree with the proposal that housing options advice should be available in court settings?

Prevention Review Group proposed recommendations for Police Scotland

- **PRG proposal:** 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).

The police may encounter people at risk of homelessness in range of situations, including during domestic abuse or neighbourhood disputes, as well as where people are likely to sleep rough that night. Support for a duty on police was expressed by police representatives at the criminal justice stakeholder group of the PRG (especially in conjunction with a duty on the local authority to respond).

The police may be involved upon arrest and/or through support within the community, where they are supporting victims or helping people in distress on the street. The approach to finding out a person's housing circumstances will be different in those different situations.

Question

Q34. Do you agree with the proposal to place a statutory duty on the police to ask about somebody's housing circumstances if there is 'reasonable belief' they may be homeless or at risk of homelessness?

Q35. How would a statutory duty on police to ask about somebody's housing circumstances, if there is 'reasonable belief' they may be homeless or at risk of homeless, work in practice?

Prevention Review Group proposed recommendations for domestic abuse

- **PRG proposals:** People at risk of homelessness as a result of domestic abuse should be able to access free legal aid in order to obtain an exclusion order.
- 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.
- 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.
- 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.
- Local authorities support victims of domestic abuse to access exclusion orders.
- 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.

The PRG highlighted that a violent or abusive dispute is the biggest cause of homelessness for women in Scotland, and that figures may significantly underestimate the scale of homelessness caused by domestic abuse.

These recommendations are intended to be complementary to recent changes in law and policy including the Domestic Abuse (Protection) (Scotland) Act 2021, which when enacted, will give the courts a new power to impose Domestic Abuse Protection Orders. These can remove a suspected perpetrator of domestic abuse from a home of any tenure of a person at risk, and prohibit them from contacting them while the order is in effect. These also allow a social landlord to apply to the court to end a perpetrator's interest in a social housing tenancy or joint tenancy, thereby enabling the victim to remain in the family home where they wish to do so.

They are also intended to complement the implementation of the recommendations in the [Improving Housing Outcomes for Women and Children Experiencing Domestic Abuse report](#), which have been accepted by the Scottish Government.

Questions

Q36. Do you agree that the set of proposed measures on domestic abuse are complementary to each other and consideration should be given to implementing them in full?

Q37. Do you have any comments about the implementation of any specific proposal made in relation to preventing homelessness as a result of domestic abuse, and is there anything missing from these proposals?

Prevention Review Group proposed recommendations for a local authority duty to respond to referrals

- **PRG proposal:** 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.

The intention of this proposal is to reflect the “no wrong door” approach set out by HARSAG and in the subsequent Scottish Government/COSLA Ending Homelessness Together Action Plan (updated in October 2020), and in the consultation for a National Care Service. The issue of consent in relation to referrals by public bodies was considered by the PRG and by the Prevention Commission, with the Group suggesting, in accordance with the principles of choice and control, that consent should be sought where possible, but concluded that the issue of consent is one that is likely to vary depending on the circumstances and vulnerability of the individual concerned.

Questions

Q38. Do you agree with the proposal that there should be a statutory duty on a local authority to accept a referral from a public body to prevent homelessness, as part of legislative change that places a duty on public bodies to ‘ask and act’?

Q39. If a statutory duty on local authorities to accept a referral from a public body to prevent homelessness was introduced, what would be the primary advantages and challenges compared to existing arrangements?

Q40. Do you have a view on the issue of an individual’s consent in this process?

Prevention Review Group proposed recommendations for joining-up services through strategic planning

- **PRG proposals:** 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 (their home) successfully.

The PRG highlighted that effective homelessness prevention requires services, as early as possible, 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. The PRG noted that a key driver of local outcomes is the National Performance Framework (NPF). However, whilst the PRG acknowledged the increased focus on homelessness as a result of HARSAG, they stated, homelessness has not had the strategic, cross-cutting focus provided by the NPF.

Question

Q41. Should the requirements for joining-up services through strategic planning to prevent homelessness be included in legislation or guidance?

Q42. Are there any other requirements for joining-up services through strategic planning that should be considered?

Data Sharing and Data Protection

Question

Q43. What do you think the implications are of increased joint working to prevent homelessness between public bodies on data sharing and data protection?

Prevention Review Group proposed recommendations for social landlords

- **PRG proposal: 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 or abandonment).
 - 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.
 - Where tenants face court proceedings.

The PRG recognised that social landlords are well placed to carry out work which prevents homelessness and that much of existing good tenancy management practice may already serve to achieve this, especially work to address rent arrears and antisocial behaviour. Legislative pre-action requirements aimed at providing further protection for tenants facing eviction for rent arrears have been in place since 2012 (Section 14 and 14A of the Housing (Scotland) Act 2001).

The intention behind this proposal is to formalise responsibilities to prevent homelessness as duties so that social landlords take action within their powers to identify and mitigate the risk of homelessness as early as possible, including the separate risks resulting from rent arrears, neighbour and relationship concerns, domestic abuse and risk to tenancy due to impending court action.

Questions

Q44. Do you agree with the new legislative duties to ensure social landlords take specified reasonable steps to prevent homelessness where a risk is identified?

Q45. Are there any other reasonable steps apart from those listed that a social landlord should be legally obliged to take to prevent homelessness?

Q46. Do you agree with the proposal to legislate for the establishment of protocols by social landlords in relation to domestic abuse?

Q47. Do you agree with the proposal to legislate for the establishment of protocols by social landlords in relation to where tenants face court proceedings?

- **PRG proposal:** 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.

This is similar to existing provisions (the Section 11 duty of the Homelessness etc. (Scotland) Act 2003, which states that landlords must notify a local authority where the landlord raises proceedings for possession. However, the intention of the proposal is to ensure that the referral is as far upstream, targeted and as preventative as possible, and to have a clear process in place between the social landlord and the local authority, so that a crisis point is avoided and no one is evicted from social housing without somewhere to stay that night.

Questions

Q48. Given that landlords are already expected to notify local authorities of raising proceedings for possession, do you agree with a new legislative provision to ensure it happens earlier than under current arrangements?

Q49. What further statutory measures beyond the existing Section 11 provision are needed so landlords notify and work with local authorities as soon as possible to prevent homelessness?

Q50. At how early a stage should a landlord be expected to notify a local authority about the risk of homelessness?

Prevention Review Group proposed recommendations for private landlords

- **PRG proposal:** 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 about a possible case of homelessness.

The intention behind these proposals is to prevent homelessness as much as possible from the Private Rented Sector (PRS) and that the PRS will be more widely used, where appropriate, to house people at risk of homelessness.

Please note that a consultation on a draft Rented Sector Strategy – A New Deal for Tenants is being launched in December 2021 and will run until April 2022.

This will include questions related to improving accessibility, affordability and standards across the whole rented sector. The current Coronavirus Recovery Bill also contains proposals on pre-action requirements.

Questions

Q51. Do you agree with the proposal to make pre-action requirements on private landlords in cases of rent arrears permanent in legislation?

Q52. How might a new legislative duty on local authorities to respond to referrals to prevent homelessness from private landlords work in practice?

Q53. What sort of support do you think private landlords may need to ensure they meet this requirement?

- **PRG proposal:** 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.

Question

Q54. Do you agree with the proposal that a local authority should have a power to request a delay to eviction to allow time to secure a positive outcome for the tenant?

- **PRG proposal:** The homelessness advice and assistance is designed to meet the needs of people living in and seeking to access the PRS.

The PRG indicates that, in practice, homelessness advice and assistance provided by local authorities in relation to the PRS would include PRS access schemes, landlord liaison, rent deposit guarantee schemes and a focus on tenancy sustainment and prevention.

Question

Q55. The Prevention Review Group propose that the homelessness advice and assistance is designed to meet the needs of people living in and seeking to access the private rented sector. Do you agree with this proposal?

Q56. How would a specific legislative duty on local authorities to provide homelessness advice and assistance relating to living in and/or accessing the private rented sector work in practice?

Section 3: Proposed recommendations by the Prevention Review Group and consultation questions on reforming homelessness legislation to prevent homelessness

Introduction

This section firstly focuses on the principles that guided the PRG approach and secondly, on the proposed recommendations for changing the current homelessness legislative framework.

Principles of the PRG

The overarching **foundational principles** covered in section 2 will also be relevant to this section:

- 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.

Under their principles, the PRG also recommends that the current statutory framework for homelessness should be amended to achieve the following:

- Clarify, strengthen and extend a duty to prevent homelessness, and integrate it within the main statutory framework.
- 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.
- Ensure the service meets the needs of specific groups at risk of homelessness, and those leaving prison, care and other institutions, and those facing a threat of homelessness living in the private rented sector.
- 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.
- The system must be clear and accountable, providing people with appropriate and effective rights of reviews and challenge throughout the process.

The PRG was clear that its principles should underpin the outcome to 'clarify and integrate the law on homelessness prevention within the current statutory framework set out in the Housing (Scotland) Act 1987. The Group's engagement with stakeholders, including local authorities, underlined the wish for reforming 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.

Questions

Q57. Do you agree with these principles?

Q58. Are there any other principles that should be included and, if so, why?

Q59. What outcomes do you foresee if the above principles were to be adopted to amend the statutory homelessness framework?

Prevention Review Group proposed recommendations for changing the current homelessness legislation

An extended prevention duty

Please note that this section makes reference to ‘stability and suitability’ of accommodation as terms used by the Prevention Review Group. These terms are explained more fully on pages 32-34 and, as intended by the Prevention Review Group, should be considered together and in conjunction with the package of measures on legislative change set out in this section.

The policy intention behind these proposals is to provide more choice and control to those either assessed as at risk of homelessness or homeless, not to replace the duties local authorities already have to those assessed as being homeless in Scotland.

- **PRG proposal:** A local authority must assist anyone threatened with homelessness within the next six months.

The legislation in relation to those threatened with homelessness is set out in sections 24 and 32 of the Housing (Scotland) Act 1987. Section 24(4) provides that, “A person is threatened with homelessness if it is likely that he will become homeless within 2 months.” Section 32 goes on to set out the duties on a local authority where a person is found to be threatened with homelessness. More detail on the legislative context for homelessness in Scotland is provided at Annex A.

Section 32(2) reads, “Where they are not satisfied that he became threatened with homelessness intentionally they shall take reasonable steps to secure that accommodation does not cease to be available for his occupation.” A person is threatened with homelessness if it is likely that he will become homeless within 2 months.

The PRG indicated that a longer timeframe is needed than is currently in place to take action to prevent homelessness, especially in light of the change to tenancy notice periods under the Private Housing (Tenancies) (Scotland) Act 2016. The Prevention Commission also thought addressing the prevention of homelessness earlier would mean that those facing homelessness could make informed decisions before having to respond in ‘crisis mode’.

The intention behind this proposal is that legislating for action in the timescale of six months before to prevent homelessness will encourage activity at an early stage, for example, before financial difficulties or rent arrears have escalated 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. It is recognised that this will require a cultural shift away from thinking in terms of homelessness, to thinking in terms of early resolution of housing problems across the local authority and other public agencies, assisting people to remain in their homes or to be rehoused rapidly without resorting to temporary accommodation, and with a strong emphasis on integrated or co-ordinated working with other services.

Questions

Q60. Do you agree with the recommendation that there should be changes to existing homelessness legislation to ensure that a local authority must assist somebody threatened with homelessness within the next six months to prevent homelessness?

Q61. How do you think a duty to prevent homelessness within six months would work in practice?

Q62. How would an assessment be made to identify whether someone was at risk of homelessness within six months?

Duty to take reasonable steps to prevent homelessness

- **PRG proposal: Duty to take reasonable steps to secure that suitable accommodation is available, or does not cease to be available. The minimum statutory framework 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.

The policy intention behind this proposal is to build on the best practice of housing options developed in Scotland over recent years, and ensure a minimum consistency or offer 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 the PRG to put the preventative housing options approach on a more formal basis.

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, and making housing options advice available for people in court settings etc. The current duty under section 31 of the Housing (Scotland) Act

1987 is to take reasonable steps to secure that accommodation is available, and only applies where the individual is found to be homeless in accordance with the definition in Section 24 of the 1987 Act. In relation to preventing homelessness, the duty is set out at section 32 of the 1987 Act, and is a duty to take reasonable steps to secure that accommodation does not cease to be available for occupation where the person has not been found to be threatened with homelessness intentionally.

Questions

Q63. Building on the experience of housing options approaches in Scotland, do you agree with the proposal to regulate for making specific measures available or reasonable steps to prevent homelessness in legislation?

Q64. Are there any other specific measures that should be made available or reasonable steps to prevent homelessness that should be included in legislation?

Q65. Do you think the specific measures made available, or reasonable steps duties outlined, are clearly and unambiguously set out so that it is possible to measure their achievement? Do they need to be more specific?

Q66. If you agree with these new duties, what processes or procedures do you think should be put in place to encourage local authority compliance?

Personal Housing Plans

- **PRG proposal:** A local authority must take into account the applicant's views as part of the statutory 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 should form the basis of a Personal Housing Plan agreed between the local authority and the applicant.

The PRG intended that this and the following recommendations about the statutory assessment should apply to new homelessness prevention duties, and also apply to statutory assessment in cases where the applicant is homeless.

These proposals are intended to produce a minimum statutory framework to underpin an approach where the local authority and the applicant work together to identify the barriers, desired outcomes and a way forward to addressing the applicant's housing situation.

Scottish Government officials have explored the potential for a Scottish personal housing plan model, and note that there are existing and valid processes of recording people's needs and options. It is not yet clear what additional benefits would be gained from implementing a standard personal housing plan approach, given the housing support assessments and outcome tools already in use. The Scottish Government will consider how different assessment processes are valued by people using the service, and will work with local authorities to understand the range of assessment processes in place, with a view to ensuring a consistent service to homeless households wherever they are in Scotland.

Questions

Q67. How can we best ensure that an applicant's views are addressed in a statutory assessment to prevent homelessness?

Q68. Should personal housing plans form part of a statutory assessment for preventing homelessness by local authorities, or just be an option for local authorities to use with an applicant?

- **PRG proposal:** Where an applicant has housing support needs, the local authority must assess these and make provision to meet them.

The intention of these proposals is that where an applicant has housing support needs, the local authority must assess these and make provision to meet them, and that this should be irrespective of tenure. This may include housing support associated with Housing First as well as lower level support in order to prevent homelessness.

Please note that a duty on local authorities to provide housing support for those assessed as being unintentionally homeless by local authorities and in need of that support has been in place since 2013. The intention behind this proposal is to ensure that housing support needs are met at an earlier stage, before the homelessness application stage, through preventative activity before homelessness occurs. As indicated in the introduction to this consultation, the recommendations of the PRG were made on the basis that the intentionality provision in the current homelessness assessment are abolished. At the time of this consultation, intentionality is a power local authorities may use when assessing homelessness, having being changed from a legal duty in 2019.

Questions

Q69. Do you agree with the proposal that a local authority should assess housing support needs and make provision to meet them, as part of a new prevention of homelessness duty?

Q70. How and at what point do you think an individual's housing support needs should be assessed?

- **PRG proposal:** The duty to take reasonable steps would end in a range of circumstances, including by securing suitable and stable 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.

The policy intention here is that the duty to take reasonable steps would ideally end by supporting the applicant to prevent or resolve their homelessness, by securing "suitable" and "stable" accommodation (explained more fully at pages 32-34). However, where it becomes apparent that the situation cannot be resolved by taking such steps, the applicant is to be owed the duty to be rehoused, which would also result in the applicant securing "suitable" and "stable" accommodation. There are other circumstances in which the reasonable steps duty would no longer apply, such

as where the applicant withdraws their application, or where the local authority loses contact with the applicant.

In suggesting specific actions are set out in law about what are 'reasonable steps' to prevent homelessness, the intention of this proposal is that the steps are not taken indefinitely. The PRG had discussed the possibility of a maximum period to take reasonable steps to prevent homelessness through the application of a new duty over 56 days, after which the local authority must secure suitable and stable housing for the applicant. The new prevention duty on the local authority could end where suitable and stable accommodation has been secured for/by the applicant.

There is a possibility that an applicant who is defined as threatened with homelessness, who is undergoing the reasonable steps process as part of a new prevention duty up to six months before homelessness, could experience a material change of circumstances or a loss of accommodation which makes them statutorily homeless, and/or the reasonable steps being carried out are no longer appropriate. This may also apply to an applicant defined as homeless who experiences a change of circumstances which means the reasonable steps being applied are no longer relevant.

This suggests the system needs to be designed in such a way that people have access to the right support for the circumstances they are in, that it is flexible to account for a change in circumstances, and that there is no delay to them being owed a duty to be housed in stable and suitable accommodation.

The PRG developed this proposal to address situations where people with statutory homelessness status may have 'salvageable' accommodation if appropriate steps are taken, and able to avoid the trauma and disruption of having to move out of their home into temporary accommodation. There are three obvious (and fairly large) groups who might fall into this category:

- people experiencing domestic abuse, who have statutory homelessness status, as they are at risk of abuse from someone with whom they would otherwise reasonably be expected to reside, or with whom they formerly resided
- people facing eviction from a PRS tenancy
- people being asked to leave the family home.

The PRG is proposing one single application process for assistance whether requiring homelessness or prevention assistance, which in either case would result in an outcome of stable and suitable accommodation.

Questions

Q71. An applicant during the time they are receiving prevention assistance under a new prevention duty from the homelessness system experiences loss of accommodation, or other change of circumstances which make the reasonable steps agreed to be carried out no longer valid. What should the process look like to ensure someone always has access to the right assistance for the circumstances they are in?

Q72. What assistance should be provided to those who are defined as statutorily homeless, but where it may be possible to prevent them from becoming homeless from their current accommodation (while ensuring it meets the definitions of suitable and stable)? This might include:

- People experiencing domestic abuse and who therefore have statutory homelessness status
- People facing eviction from a PRS tenancy
- People being asked to leave the family home.

Meeting the needs of specific groups

- **PRG proposals:**
- Anyone leaving these institutions within the next six months with no accommodation arrangements in place should be considered as threatened with homelessness:
 - Prison or youth detention accommodation
 - The armed forces
 - Hospital – without suitable accommodation to go to.
- **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:
 - 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.
- 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 the Homelessness Code of Guidance should be updated to include specific instructions on this.

Proposals for new duties to prevent homelessness for those leaving institutions is also covered in section 2 of this consultation, emphasising the importance of this key issue. The PRG highlighted that certain parts of the population are at greater risk of homelessness than others. Those leaving (or entering) particular institutions can often find themselves without accommodation when they move on, including those who may be under the age of 18. Local authorities will, in many cases, already be taking the needs of specific groups into account as part of their local Rapid Rehousing Transition Plans (RRTPs).

Question

Q73. Do you agree with the proposal for meeting the needs of specific groups?

Q74. Is there anything you would add to these proposals that may strengthen legislative changes to prevent homelessness amongst specific groups?

Specific groups: people experiencing domestic abuse

- **PRG proposals:**
- Assistance from homelessness services to prevent homelessness must include support and security measures to enable people experiencing domestic abuse 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.
- Local authorities support victims of domestic abuse to access exclusion orders.

Please note: these recommendations are included here as part of the PRG report relating to proposed changes to homelessness legislation, but specific questions on homelessness for those experiencing domestic abuse can be also be found in section 2.

Question

Q75. Do you agree with these proposals on preventing homelessness for people experiencing domestic abuse?

Q76. Is there anything else that should be included in considering new legislative proposals on the prevention of homelessness resulting from domestic abuse?

Prevention Review Group proposed recommendations for stability and suitability of accommodation

- **PRG proposals:**
- The criteria for identifying appropriate housing options shifts to focus on the stability and suitability of the accommodation, with suitable safeguards.
- **Stability:** all accommodation must be expected to be available for a minimum period of 12 months.
- Stable accommodation should be defined to include to:
 - A Scottish secure tenancy (SST) or short Scottish secure tenancy (SSST)
 - Owner occupation (e.g. LIFT scheme – Low Cost Initiative for First Time Buyers)
 - Private Residential Tenancy (PRT) 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.

Stability of accommodation

For those households who are assessed by local authorities as homeless and unintentionally so, the law currently requires a local authority to secure permanent accommodation. This is defined as a Scottish Secure Tenancy, Short Scottish Secure Tenancy or Private Residential Tenancy. These tenancies come with a considerable degree of security of tenure: a landlord must meet the statutory criteria for eviction, and a court or tribunal must oversee the lawfulness of the proposed eviction.

The PRG wanted 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 prevent homelessness, while ensuring appropriate and adequate protections for people, whether they are subject to a tenancy or an occupancy agreement.

The PRG highlighted that 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. They felt that people should have the same options as other members of the public, while balancing this with safeguards to give people stability. They identified tenure as just one of the factors which may influence people's decisions regarding housing choice.

The term 'stable' accommodation was intended by the PRG to be accommodation which is reasonably expected to be available for a minimum of 12 months, either through a tenancy or other agreement. It was intended by the PRG that any accommodation used to discharge either the prevention duty or the full rehousing duty meets the criteria of suitability and stability, to be defined in regulations. The policy intention is that stability and suitability is intended for both the prevention and alleviation of homelessness, i.e. prevention and rehousing duties.

It is also to bring greater alignment with health and social care related accommodation, specifically supported accommodation. This type of accommodation generally uses occupancy agreements rather than SSTs or PRTs. It also intends to create a legal mechanism with some protections for people to return to the family home (for example, following successful mediation), if that is appropriate for them.

This is the policy intention, with the PRG looking to ensure strong protections, both through the requirements for stability and suitability, further requirements for accommodation not protected through a tenancy, and through ensuring a discussion between the local authority and the applicant about what options are desirable and suitable for the applicant.

Questions

Q77. Do you agree with the criteria proposed for the stability of housing outcomes?

Q78. Do you agree that 12 months is an appropriate minimum expected period for accommodation to be available (regardless of the type of tenure) for people who are threatened with homelessness or have become homeless?

Q79. How do you see this working in a) a private tenancy; b) accommodation with an occupancy agreement; and c) those returning to the family home or to live with another relative?

Suitability of accommodation

- **PRG proposal: 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
 - 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.

Please note that for some people, suitability may also relate to their culture, for example suitable accommodation for a Gypsy/Traveller may be a caravan or residential mobile home rather than housing.

Questions

Q80. Are these the right grounds to consider in deciding on the suitability of housing outcomes? Are there any other grounds that should be considered?

Q81. Do you think the criteria proposed for both stability and suitability of housing outcomes would allow people a wider range of housing options to either prevent homelessness or rehouse someone who has become homeless, and that could lead to better outcomes for the applicant?

Safeguards for non-standard accommodation options as part of a new prevention of homelessness duty

- **PRG proposal:** Social or private tenancy or owner occupation should be considered as 'standard' discharge. Any other form of accommodation ('non-standard') may be considered for discharge of the duty, where these additional safeguards are met:
- The accommodation must have appropriate facilities for settled living, including:
 - i. 24-hour access
 - ii. adequate toilet and washing facilities
 - iii. access to kitchen facilities
 - iv. a private bedroom
 - v. 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).

Question

Q82. When taken with the general criteria for suitability and stability, do these additional safeguards provide the right safeguards to ensure these accommodation types (non-standard) are always suitable and stable? Are there any additional safeguards that could be put in place?

PRG proposed recommendations for enforcing people's rights

Right to review

- **PRG proposal for right to review:** There should be a comprehensive right to review which covers the following decisions:
 - 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
- Any applicant should still be able to request a review even if they have accepted an offer of accommodation.

Question

Q83. Do you think any additional measures are needed to ensure a right to review by the local authority within the proposed legislative measures to prevent homelessness?

Right to appeal

- **PRG proposal for right to appeal:** 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.

This is a far reaching recommendation that requires careful consideration. The Scottish Government has stated that it is keen to ensure the system is transparent and can be held to account so that it works effectively, and it can be challenged when it fails to work as it should, to provide full accountability in a system which is accessible, proportionate, and seeks to support and protect people in such a vulnerable situation as losing their home.

Question

Q84. What do you think are the key considerations in any appeal process linked to new legislative measures to prevent homelessness as outlined?

Regulation

- **PRG proposal on regulation:** The Scottish Housing Regulator (SHR) should report annually on the experiences of households facing homelessness and the threat of homelessness as it does currently for social tenants.

The SHR currently report on landlords' performance in achieving the Scottish Housing Charter in their annual National Report, and that includes some reporting on homelessness. SHR also publish annually a report for every landlord and provide an online landlord comparison tool. The annual reporting is based on the data received in the Annual Return on the Charter, supplemented where relevant with qualitative information from the National Panel of Tenants and Service Users, which usually includes information about the experiences of people who have experienced or are experiencing homelessness.

Questions

Q85. Do you have anything to add to the proposal on the role of the Scottish Housing Regulator in relation to proposals for new legislative duties to prevent homelessness?

Q86. What implications do you think these proposals have for other regulatory bodies?

Strategic housing needs assessments

- **PRG proposal on strategic housing needs assessment:** As part of the local authority Local Housing Strategy required under section 89 of the Housing (Scotland) Act 2001, an assessment should be carried out of the needs of persons in the area for housing support.

Question

Q87. Do you agree that there should be a general assessment of housing support needs of persons (separate to assessments for individuals) in an area as part of the Local Housing Strategy?

Section 4: Questions on the package of proposals, resources and monitoring

The package of proposals

The PRG proposals were intended as a package - especially the reform of the statutory framework - and they have highlighted that to accept some recommendations without others could undermine the intention of the proposals, or have unintended consequences.

Questions

Q88. Do you agree this is this the right package of reforms to meet the policy principles of early intervention and preventing homelessness?

Q89. If you do not agree this is the right package of reforms to meet the policy principles of early intervention and preventing homelessness, what do you recommend in terms of other ways of reforming the system to meet these policy principles?

Q90. How do you feel about the overall package and the balance it strikes between the different objectives, interests and principles outlined? Does it work as a whole package? If not, how can the package be adjusted overall to better meet the principles of early intervention and prevention?

Q91. Please give us your views on the potential impact of the proposed new homelessness prevention duties on different groups of people.

(Different groups of people with protected characteristics in the Equality Act 2010 include: age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, sexual orientation).

Resources

Questions

Q92. What do you think are the potential implications for your role or for your organisation's role of the implementation of new duties to prevent homelessness in terms of time and resource?

Q93. What do you think you or your organisation would be doing to meet new prevention duties as outlined in this consultation that you were not doing before?

Q94. Do you think these proposals offer an opportunity for potential savings or benefits to services through an increased focus on early intervention and preventing homelessness?

Q95. What additional training needs do you think will be required for your role or your organisation's role in implementing any new prevention of homelessness duties, and what do you think the timescales for this would be?

Monitoring

Prevent1 statistics are currently published by the Scottish Government to record housing options approaches by local authorities, activity undertaken and outcomes of approaches. The latest data available is for 2020/21 with published information available from 2015/16 onwards. All publications for homelessness statistics, including equality breakdowns can be found **here**.

It is worth noting that it may not be helpful to make direct comparisons between local authorities using currently published statistics as Housing Options is not a statutory function. The use and implementation of Housing Options varies greatly between local authorities as each tailors its service provision to meet needs specific to their area.

The policy intention of introducing new forms of monitoring is to ensure the appropriate statistics are collected to help measure the impact, outcomes and consistency of the implementation of new homelessness prevention duties, without creating an unreasonable additional administrative burden to the duties of local authorities.

Q96. What monitoring information do you think should be collected in order to best assess the implementation, progress and outcomes of new legislative duties to prevent homelessness?

Section 5: Questions on the PRG proposals on prevention of homelessness duties for people with lived or living experience of housing crisis, homelessness or risk of homelessness

We are interested to hear of your lived or living experience of housing crisis and homelessness, and how and when you believe your homelessness may have been or could be prevented. We are also interested in what you think about our plans to introduce prevention of homelessness duties through legislation.

The purpose of including this section is to ensure the consultation is informed by the views of people with lived or living experience of homelessness, but people with this experience may also wish to complete other parts of this consultation.

Please answer any of the following questions that are applicable to you:

About your experiences

Q97. When you most recently or previously became homeless were there any earlier actions that you think could have been taken by the council or other public bodies (health, education, justice services, etc.) that would have prevented it?

Q98. What was the main action taken by the council or other public bodies to help prevent your most recent or previous homelessness?

Q99. What other actions taken by the council or other public bodies do you think would have helped prevent your most recent or previous homelessness?

Q100. Please list some of the different services, homeless and otherwise, that you were in contact with in the time before you most recently or previously became homeless?

Q101. How long (if at all) before you most recently or previously became homeless did you start receiving support?

Q102. Did any services you were interacting with pick up on warning signs prior to your most recent or previous homelessness?

Duty on wider public bodies and landlords to prevent homelessness

There is a proposal that public bodies would need to identify or 'ask' 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.

Q103. Do you agree with the proposal for a new duty to 'ask and act' about homelessness for public bodies such as health, justice, education, etc.?

Q104. Do you think such a duty on public bodies would have made a difference to your experiences, and do you think it could have prevented your most recent or previous homelessness?

Prevention of homelessness legislation

Q105. There are proposals for making changes to the law so that action to prevent homelessness needs to be taken up to six months before you may become homeless. Do you agree with this approach? Would it have helped prevent your most recent or previous homelessness?

Q106. How would you know if you are 6 months away from homelessness, and how would you know where to go for help?

Q107. There are proposals for making changes to the law so that local authorities can prevent or resolve your homelessness by providing you with accommodation that is 'stable and suitable'? Do you have a view on this proposal?

Q108. Is there anything else you wish to add to the proposals in this consultation to change the law on preventing homelessness based on your lived or living experience of homelessness?

Section 6: Responding to this consultation and the Respondent Information Form

We are inviting responses to this consultation by Thursday 31 March 2022.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/housing-and-social-justice/prevention-of-homelessness-duties>

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of Thursday 31 March 2022.

If you are unable to respond using Citizen Space, please send your response, including the completed Respondent Information Form to:

Janine Kellett
Homelessness Unit
Scottish Government
4 Atlantic Quay
70 York Street
Glasgow
G2 8AE

Handling your response

If you respond using Citizen Space, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or to Matt Howarth at [Homelessness Mailbox](#)

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

RESPONDENT INFORMATION FORM

Prevention of Homelessness Duties – A Joint
Scottish Government and COSLA Consultation



Scottish Government
Riaghaltas na h-Alba
gov.scot

Please note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
- Individual with lived experience of homelessness
- Organisation

Full name or organisation's full name

Phone number

Address

Postcode

Email Address

For individuals, which local authority do you live in? For organisations, which local authority are you based in?

Organisations – Please indicate where your main responsibilities are:

- Housing and homelessness
- Health and social care
- Children's services
- Prisons
- Court services
- Police
- Social landlord
- Private landlord
- Third sector
- Other, please specify:

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

Section 7: Annexes

Annex A

Background

Homelessness has a strong legislative basis in Scotland. Under the [Housing \(Scotland\) Act 1987](#), ('the 1987 Act') a person should be treated as homeless if they have no accommodation. It is possible for a person who has accommodation to be treated as homeless. For the person to be considered as having accommodation, that accommodation needs to be reasonable for the person to continue to stay in. The [Housing \(Scotland\) Act 2001](#) also introduced changes to homelessness legislation, including the right to review a homelessness decision.

In April 2003, the [Homelessness etc. \(Scotland\) Act 2003](#) ("the 2003 Act") was introduced to radically overhaul Scotland's existing homelessness laws by, in the main, amending the Housing (Scotland) Act 1987 and the Housing (Scotland) Act 2001. The 2003 Act primarily affects how local authorities carry out their homelessness functions, strengthening people's rights to support when they are facing homelessness. The 2003 Act also improved the housing rights of people experiencing domestic abuse and provided a mechanism for the abolition of priority need which then followed in 2012, marking a significant departure from the approach taken in any other parts of the UK.

Proposals were also made to modify the intentionality and local connection parts of a homelessness assessment made by local authorities. The duty to investigate intentionality became a power rather than a duty in 2019 and proposals to modify local connection will be introduced this parliamentary term.

Legislation is underpinned by the statutory [Code of Guidance on Homelessness](#), which was updated in 2019. Statutory [Homelessness Prevention Guidance \(2009\)](#) was also published by the Scottish Government, followed by statutory guidance on the interests of children facing homelessness in 2011, and [Guidance on Housing Support Duty to Homeless Households](#) for those assessed as being unintentionally homeless and in need of housing support, which came into force in 2013.

In 2017, the Scottish Government established the Homelessness and Rough Sleeping Action Group (HARSAG) to provide recommendations on the actions needed to eradicate rough sleeping and transform the use of temporary accommodation in Scotland. The [final HARSAG report](#) set out recommendations for action needed across national and local government in conjunction with other partners.

The recommendations sought to reflect the views of people with experience of homelessness and rough sleeping. The [Aye We Can](#) report ensured that HARSAG's recommendations were based directly on people's experiences and priorities.

The recommendations have now been translated into the [Ending Homelessness Together High Level Action Plan](#) published by Scottish Government and COSLA in

November 2018, and then an updated [Ending Homelessness Together action plan](#), published in October 2020.

A key strand of Ending Homelessness Together was to move to a system of rapid rehousing by default with the aim of preventing homelessness by prioritising settled housing, including the use of the Housing First model for those with more complex needs. The intention is that this will result in fewer people needing to spend less time in temporary accommodation. Local authorities have produced five year rapid rehousing transition plans which include their locally developed plans to prevent homelessness in their area.

The latest annual update to the Scottish Parliament on progress towards ending homelessness in Scotland was published in October 2021:

<https://www.gov.scot/publications/ending-homelessness-together-annual-report-2021/>.

The Prevention Review Group (PRG)

One of HARSAG's key recommendations was to introduce a prevention of homelessness duty in Scotland. The Prevention Review Group was established to produce recommendations on how this may be best achieved. The Group's report, [Preventing Homelessness in Scotland](#), was published in early 2021.

The Group's foundational principles were made clear in their final report:

- 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.

The final report provided recommendations in two broad sections; placing duties on wider public bodies and landlords and changing existing homelessness legislation to improve prevention.

Duties on wider public bodies and landlords

The recommendation of new duties on wider public bodies and landlords to prevent homelessness marks a potentially significant change in current arrangements. While it has become increasingly clear in recent years amongst the housing and homelessness sector, and those with lived experience of homelessness, that a range of public bodies may have a role in preventing homelessness, current legal duties in this area largely sit in the housing departments of local authorities and, in some cases, with social work.

The PRG's final report was clear of the need for change in this area highlighting that

‘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.’

For example, past studies have emphasised the strong correlation between contact with health services and homelessness <https://www.gov.scot/publications/health-homelessness-scotland> and in the contact with a myriad of different services, including criminal justice, faced by some of those experiencing homelessness who also face severe and multiple disadvantage:

<https://lankellychase.org.uk/publication/hard-edges-scotland/>. The PRG recommendations also aim to ensure that nobody leaves an institution without an appropriate place to stay.

The other element of this part of the PRG final report are the new duties proposed for landlords in both the social rented and private rented sector (PRS). The Group recognised that many social landlords already undertake significant activity in this area, with its proposals intending to formalise current responsibilities as duties, so that social landlords take action within their powers to identify and mitigate risk of homelessness as early as possible. The proposals suggest 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.

The issue of domestic abuse and preventing homelessness is a common feature of both PRG proposals for new duties both on wider public bodies and landlords, and in making changes to existing homelessness legislation. The biggest difference between men’s and women’s homelessness is the impact of domestic abuse, which is the most common reason for women making a homelessness application.

While making recommendations around a number of specific groups that may be at risk of homelessness, including children and young people, the PRG made a point of not mentioning those who may have experienced the care system in their recommendations.

They recognised the local authority’s primary responsibility to those leaving care up to the age of 26 is in relation to their role as corporate parent and did not want to create conflicting duties. Stakeholders also argued that current statutory provisions needed time to bed in.

Proposed changes to existing homelessness legislation

There is a strong legislative basis for addressing homelessness in Scotland. Under section 32 of the 1987 Act, a local authority is under a duty to take reasonable steps to secure that accommodation does not cease to be available for occupation. However, under the 1987 Act, there is no duty on a local authority to take reasonable steps to secure accommodation for those at risk of homelessness.

The recommendations from the PRG include the significant change to place a duty on local authorities to take steps to prevent homelessness within six months of potential homelessness. In making a series of recommendations, the PRG are clear in their final report that they 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'.

Another significant element in the recommendations is that the 'reasonable steps' taken to prevent homelessness by local authorities should be prescribed in regulations, which is not currently the case. It is also recommended that the steps to prevent homelessness, starting up to six months before potential homelessness, should be undertaken for up to 56 days, before other homelessness duties are enacted.

Current prevention activity and housing options

The PRG final report made reference to recent and current activity to prevent homelessness in Scotland. The main approach in this regard has been that of 'housing options', adopted by local authorities from in Scotland around 2010, working with partners to prevent homelessness, which also led to the development of five regional local authority led Housing Options Hubs to support activity in this area.

Despite apparent progress in this approach in reducing homelessness applications in Scotland from 2010, the PRG final report highlighted concerns from local authorities about how to do effective homelessness prevention within the current statutory framework, particularly in light of a 2014 Housing Options report from the Scottish Housing Regulator, and noted that 'a tension emerged between the non-statutory Housing Options approach and statutory homelessness framework'.

[Housing Options Guidance](#) issued by the Scottish Government in 2016 suggested that 'when someone approaches the local authority for accommodation, or for assistance in obtaining accommodation, and if the Local Authority has reason to believe an applicant is homeless or threatened with homelessness within 56 days, then the Local Authority has a statutory duty to investigate'. The PRG noted that in 2019/20, local authorities recorded less than 5% of homelessness applications being related to a threat of homelessness rather than current homelessness. The Scottish Government have already made clear that the impact of the housing options approach in its current form is unlikely to have a further significant impact on reducing numbers of homelessness applications.

Changes in Wales and England

While recognising the difference in statutory frameworks on homelessness across the UK, the PRG did identify lessons from the introduction of prevention of homelessness legislation in Wales, and subsequently in England, in recent years. There has been more emphasis on helping people at an early stage, so that they do

not lose their homes at all, or are rehoused rapidly without having to experience homelessness. In both countries, 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 (already abolished in Scotland).

Evaluations of the impact of the new legislation in Wales and England suggest that it has led to a more proactive and person-centred culture, although implementation has not been as consistent or effective as might be hoped. However, there have been decreases in the rate of full homelessness acceptances in both England and Wales, following the introduction of new prevention legislation there.

The Prevention Commission

Another significant part of the work of the PRG was the role of the Prevention Commission, which fed into the work of the group by giving a voice to those with lived experience of homelessness. The PRG final report highlighted that the key themes identified by the Commission during this process were the importance of choice and control, stating that ‘those in the greatest housing need often have fewest housing options’, and of the ‘duty to ask and act’ on public bodies through a ‘requirement to routinely ask about housing, and then act on that information’.

Conclusion

The Scottish Government committed to consult on the introduction of a prevention of homelessness duties through changing homelessness legislation, placing new duties on public bodies to prevent homelessness and what processes are needed to monitor how the new duties are being implemented and maintained. Following the conclusion of this consultation, it is the intention to bring forward proposed legislative changes during 2023.

Annex B

Membership of the Prevention Review Group

Chair: Professor Suzanne Fitzpatrick

Core working group members:

- Cllr Elena Whitham, East Ayrshire Council / COSLA
- John Mills, Fife Council/Association of Local Authority Chief Housing Officers (ALACHO)
- Susanne Millar, Glasgow City HSCP
- Matt Downie, Crisis
- Gordon MacRae, (later replaced by Jess Husbands, Adam Milne), Shelter Scotland
- Sally Thomas, (later replaced by Jeremy Hewer), Scottish Federation of Housing Associations (SFHA)
- Callum Chomczuk, Chartered Institute of Housing (CIH)
- Maggie Brunjes, Homeless Network Scotland
- Tom Mullen, University of Glasgow
- Ruth Whatling, Scottish Government
- Kathy Cameron, (later replaced by Katey Tabner, Laura Caven), COSLA



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