



PREVENTION OF HOMELESSNESS DUTIES - A JOINT SCOTTISH GOVERNMENT AND COSLA CONSULTATION. SHELTER SCOTLAND SUBMISSION

Summary

Shelter Scotland exists to defend the right to a safe home and fight the devastating impact the housing emergency has on people and society. We work in communities to understand the problem and change the system. We run national campaigns to fight for home.

We were pleased to participate in the Prevention Review Group (PRG) and we share the sector wide aspiration to ensure and enable public bodies, beyond the housing and homelessness sector, to provide the required support to prevent homelessness wherever possible.

Many of the proposals within the government consultation would introduce important and positive changes for people at risk of homelessness. We wholeheartedly support:

- Extending the definition of threatened with homelessness from two to six months
- Introducing duties on public bodies to ask and act if they believe someone is at risk of homelessness
- Defining in legislation reasonable steps that local authorities should take to support someone who is threatened with homelessness
- Strengthening the concept of suitability for accommodation

If enacted, and, importantly, if adequately resourced, we believe these policies would help reduce the number of people who have to experience the crisis of homelessness.

However, for us the litmus test for any changes to Scotland's homelessness rights must be that they will reduce housing inequality and enhance existing homelessness rights and protections. The proposals contained in the prevention duty consultation go far beyond preventing homelessness, with a large proportion focusing on the local authority's duty to individuals who have been assessed as statutorily homeless. It is some of these proposals which present a substantial risk to the rights-based framework in Scotland.

We have significant concerns about the proposal to remove people's right to permanent accommodation and replace it with 'stable' accommodation. We strongly oppose this proposal and see it as an unnecessary dilution of Scotland statutory rights. In line with human rights-based obligations, there should be no regression of rights, and to realise the human right to adequate housing there must be security of tenure. We outline an alternative legislative change around discharging duty into supported accommodation which would meet the policy

aspirations of choice and control whilst protecting the intention of the Scottish rights-based system and negating the need to regress rights.

As stated in the 2018 Ending Homelessness Together Action Plan:

“This is a significant change and will require careful planning. In particular, we need to ensure that a new duty does not undermine the strengths of the existing homelessness rights. We will learn from evaluation of prevention duties elsewhere.”

To solve the housing and homelessness emergency in Scotland and realise the human right to adequate housing, we must strengthen the housing rights framework, not weaken it. We must then ensure that individuals are aware of their rights, and able to enforce them – plus provide adequate resources for public bodies to deliver on their statutory obligations and to enable them to continue and roll out the many good practice examples that exist in prevention homelessness.

Further, to enable these efforts to be a success, there needs to be sufficient homes available for people to move into. The proposal to extend the existing forms of accommodation to include non-secure housing outcomes are said to provide more choice and control to applicants, but the main barrier to applicant’s choice and control on their housing outcomes is the long waiting times for social housing. The solution to this bottleneck isn’t to dilute rights, but to increase the supply of socially rented homes. The Scottish Government must therefore make good on its promise to secure delivery of 110,000 new affordable homes, including 70% for social rent, by 2032 in order to ensure anyone faced with homelessness is able to access a social home that meets their needs.

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SECTION 2: PROPOSED RECOMMENDATIONS BY THE PREVENTION REVIEW GROUP (PRG) AND CONSULTATION QUESTIONS ON DUTIES TO PREVENT HOMELESSNESS ON WIDER PUBLIC BODIES AND LANDLORDS

Overarching 'foundation principles' of the Prevention Review Group

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

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree

Please say why

Shelter Scotland was pleased to participate in the Prevention Review Group (PRG) and we share the sector-wide aspiration to engage public bodies beyond the housing and homelessness services in the task of stopping people losing their home. However, it is important to signify that we have significant concerns that some of the proposals will inadvertently but explicitly dilute the existing statutory rights of people experiencing homelessness in Scotland and lead to a regression or downgrading of rights. For this reason, we did not support the final recommendations of the PRG and have to state our opposition to some major aspects of the proposals being consulted on by the government.

The foundational principles put forward by the group and consulted on by the government are important and appropriate: we will explain our position on each of these in turn. However, the fact that the principle of non-regression is absent means we cannot conclude that we agree with the foundational principles.

1. Responsibility to prevent homelessness should be a shared public responsibility and not rely solely or primarily on the homelessness service.

Shelter Scotland strongly agrees with this principle. Home is central to wellbeing, as the Commission on Housing and Wellbeing highlighted, and conversely the absence of a safe, secure home can have a devastating impact on many areas of wellbeing. This also means that the benefits and costs of having or not having such a home can be felt across many areas of public service – health, education, employment. Furthermore, well established evidence of pathways into homelessness show us there are many opportunities for such public services to identify a risk of homelessness. Through these pathways we know that if public bodies take or prompt specific actions, we can prevent people from becoming homeless either by supporting them to sustain their existing tenancy or enabling them to move in a planned way. In this way, we can prevent people from having to experience the trauma of homelessness.

However, it is also important to point out that as the law currently stands responsibility for preventing and alleviating homeless lies with the entire local authority and not just its homeless services. If someone presents as homeless to their social worker, the local authority duty to take an application kicks in. In practice, people are directed to homeless services, but in law, it's the local authority who are responsible.

2. 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.

We strongly agree that prevention activity should start as early as possible. Research such as that promoted by the Christie Commission has shown early prevention is likely to have the highest success rate and be the most effective, rather than intervening at or close to crisis stage.

3. 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.

Whilst we agree with the principle of choice and control, the consultation implies changes are required to ensure that homeless households are able to access the same set of housing options available to the non-homeless population, including supported accommodation and returning to previous accommodation, and other options such as living with a resident landlord or shared accommodation.

We believe that choice and control is already provided for in the current system and that these proposals will have the opposite effect, reducing choice and control for people experiencing homelessness and in particular their access to social housing.

People are already able to choose whether or not to exercise their statutory rights to make a homeless application. Some people we work with, despite being eligible for assistance, choose to resolve their situation without support from the local authority. However those that do, do so because they are in need of the assistance provided by the statutory framework, and want the security offered by the permanent housing duty. The main barrier to accessing choice and control on housing outcomes we come across is the long waiting times for social housing. On average, households leaving temporary accommodation in 2020-21 had spent 199 days in temporary accommodation – but this increased to 341 days for couples with children and was as high as 865 days in one local authority. The solution to this bottleneck isn't to dilute rights, but to increase the supply of socially rented homes.

To achieve this principle of choice, there needs to be sufficient homes available for people to move into. The Scottish Government must therefore make good on its promise to secure delivery of 110,000 new affordable homes, including 70% for social rent, by 2032 in order to ensure anyone faced with homelessness is able to access a social home that meets their needs.

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

As in question 2, the principle of non-regression should be included, in line with the commitment to a human rights-based approach by the government and this principle is outlined within the Housing to 2040 programme, and existing international obligations including the duty of progressive realisation.

As stated in the 2018 Ending Homelessness Together Action Plan:

*"This is a significant change and will require careful planning. In particular, we need to ensure that a new duty does not undermine the strengths of the existing homelessness rights. We will learn from evaluation of prevention duties elsewhere."*¹

¹ Scottish Government (2018), [Ending Homelessness Together Action Plan](#)

The Taskforce on Human Rights Leadership² made a number of recommendations and outlined policy objectives for a new statutory human rights framework in Scotland, which were accepted in full by the Scottish Government in 2021³. One of these, policy objective 15, was to ensure duty-bearers understand and implement the international obligations including the duty of progressive realisation. This refers to ICESCR Article 2 (1) which reads to “take steps... to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means.” Similarly, recommendation 13 was “that there be an explicit duty of progressive realisation to support the effective implementation of the framework, which takes into account the content of each right.”

A recent report commissioned by ALACHO outlined that:

“the principle of progressive realisation acknowledges that as economic, social and cultural rights cannot be fully achieved all at once or over a short period of time, every State must pursue a process of continuous improvement. This is understood to entail regularly reviewing and updating laws, policies, programmes, codes of practice and non-statutory guidance, as well as budget decisions and resource allocations, to enhance the ability of people to realise their rights and improve their lives.”⁴

Specifically, UN guidance is that the obligation progressive realisation places on State bodies is to:

“Avoid deliberately taking retrogressive measures to cut goods and services that would deprive people of rights that they currently enjoy...”⁵

Shelter Scotland’s view is the proposal to change the statutory framework to enable local authorities to discharge duty into non-secure housing outcomes would be a retrogressive measure and would therefore contradict the duty of progressive realisation.

The principle of ‘ask and act’ duties

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

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

Yes, Shelter Scotland agrees that there should be new duties on public bodies to prevent homelessness.

Over the last decade, we have seen the lack of social homes, the impact of austerity on local services and the reduction of protection for people through the social security system leave people trapped, sometimes for years, in the homelessness system. The pandemic has since exposed and exacerbated the housing emergency. Whilst we have had a commitment to

² Scottish Government (2021), [National Taskforce for Human Rights: leadership report](#)

³ Scottish Government (2021), [New Human Rights Bill](#)

⁴ Young, G. (2021) [The right to adequate housing: are we focusing on what matters?](#)

⁵ Young, G. (2021) [The right to adequate housing: are we focusing on what matters?](#)

build 110,000 affordable homes in a decade, and there has been much work driven through the Ending Homeless Together Action Plan, fighting homelessness remains a significant challenge in Scotland.

Homelessness prevention activity undoubtedly increased in Scotland as a result of the Housing Options approach. There has also been significant work on pathways to homelessness and in specific sectors such as development – and then review – of the SHORE standards for prison leavers. However, we believe new ‘ask and act’ duties will help to ensure a consistent, rights-based approach, building on good practice and existing initiatives, as well as necessitating additional work at both a strategic and frontline level to fill in some of the gaps that thousands of individuals are still falling through.

It is important to note however that the success of a prevention duty is dependent on more than the introduction of a duty itself. Research commissioned by Shelter Scotland highlighted for example the importance of motivation and language in any implementation process to get partners on board – with one interviewee commenting ‘*Legislation can open the door, but unless you change culture and practice, nothing’s actually going to change. You’ve got to empower staff.*’ Similarly, there was a strong acknowledgment of the need to raise awareness of issues around homelessness and prevention – for example, ensuring people understand the difference between homelessness or risk of homelessness and rooflessness.⁶

Finally – and perhaps most importantly – any new duties must be adequately resourced.

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

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

Shelter Scotland agrees with the principle that public bodies should be required to ‘ask and act’ to prevent homelessness, enabling them to ascertain whether someone they work with is at risk of homelessness and to do something with this information. Many people before they become homeless will interact with different public bodies and if there is an opportunity to act to prevent homelessness for that individual this would be welcome.

Our externally commissioned report on prevention in 2020 outlines this well:

“The influential report of the 2011 Christie Commission called for prevention being at the heart of what all public services in Scotland should seek to achieve, as well as calling for greater integration of those same public services. These principles are nowhere more relevant than in the realm of homelessness, and the Scottish Government commitment to engage wider public bodies in the prevention of homelessness draws them together. This commitment is not only based on sound principles. It builds on the long known and well evidenced fact that before reaching the doors of a homelessness service at the point of crisis, many people will have been involved with other services

⁶ Dore, E. (2020) [Public bodies and homelessness prevention: working towards a prevention duty](#)

and, had the opportunity been recognised and taken, they may have been prevented from losing their home."

However, the report goes on to describe that despite there being various examples of good practice to link wider public bodies and homelessness teams, and a wide understanding and acceptance of the links, *"for those experiencing homelessness across Scotland there are often very real gaps between services."* These gaps mean that homelessness is not prevented, and that people's housing and other needs are often not met. Therefore, introducing a requirement to ask and act is welcome.

There is insufficient information available in the consultation about what the duty to 'act' might mean, for example whether the duty to act would amount to a homeless application being made – for the purposes of triggering the local authority's duties to make enquiries and issue a decision, or whether the duty to act would fall short of an application being made. Similarly, what the consequences would be where that body failed to comply with this duty need to be clear. As such, it is difficult to provide further input to this question from a rights-based perspective.

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

The Consultation paper makes reference to reading 'public bodies' as those 'outside of local authority housing departments that can play a role in preventing homelessness.' It also makes reference to the national directory of public bodies. The latter is a rather limited list of public bodies and we would recommend broadening the definition further.

Decisions on which public bodies a new duty to prevent homelessness should apply to should be based on evidence, much of which is included within the final report of the PRG. Research shows us that there are certain groups that have a greater risk of homelessness, for example people leaving institutions, and research also shows us that certain public authorities are more likely to have contact with people when they are at risk of homelessness, such as the health sector.

People with lived experience told us that the benefit was that often people had built up relationships of trust with other services. *"I talked to my GP and nurse, if they had been able to help I would have talked to them."* [Person with lived experience, 2022]

In addition, we support the Scottish Refugee Council's call that the definition of public bodies should be expanded to include those housing providers contracted by Home Office to provide asylum support accommodation under s98,95 and s4 Immigration & Asylum Act 1999.

The principle that no-one should be discharged from institutions without anywhere to sleep that night

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

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

Shelter Scotland strongly agree with the proposal to introduce a statutory duty on public bodies or bodies performing a public function (to cover privatised services) to prevent homelessness for anybody leaving an institution within six months.

In addition, we support the Scottish Refugee Council's call that the definition of public bodies should be expanded to include those housing providers contracted by the Home Office to provide asylum support accommodation under s98,95 and s4 Immigration & Asylum Act 1999.

In addition, providers of asylum support accommodation under contract with the Home Office should also be included within this as outlined in question 5. Learnings should be taken from the informal arrangement between Glasgow City Council and the accommodation provider that no one has to leave their asylum accommodation until they have an offer of temporary or permanent accommodation from the local authority. Previously, there was regularly no emergency accommodation provision for households granted leave to remain who had their asylum support terminated and in turn were evicted from asylum accommodation. In the past, this involved instances accommodation providers removing keys and physically transporting someone to the local authority office to get homelessness assistance. Now, the accommodation provider has a list of everyone whose asylum support is ending which they share with the asylum and refugee team in Glasgow City Council. The asylum and refugee team contact everyone with a Notice to Quit and establish whether someone would like to make a homeless application, and begin the homeless assessment process. In addition, the accommodation provider has shown some flexibility with the eviction process, allowing people to remain in their asylum accommodation for a further period. This has removed at least some of the need for emergency accommodation, enabling some individuals and families to move straight to a more suitable temporary accommodation placement such as a temporary furnished flat, or in some cases straight to permanent accommodation.

Further information on other institutions is provided in the relevant sections of our consultation response.

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

[no answer provided]

Prevention Review Group proposed recommendations for health and social care

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

See answer to question 9

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

Shelter Scotland support a new legislative duty on Integration Authorities. In some circumstances, the duty may be best fulfilled in some circumstances by the commissioning of joint housing/ health services, including delivered by voluntary sector agencies.

However, it's important to note that whilst a duty to identify housing circumstances is a welcome addition, a legislative duty on its own is not sufficient. Any new duty must be accompanied by communication and training for everyone involved about the benefits to partners and individuals, as well as clear referral pathways.

Shelter Scotland has run several 'test and learn' services with the health sector, including one in NHS Fife at Victoria hospital in Kirkcaldy⁷, and others with the Family Nurse Partnership in the Lothians and, currently, Glasgow. These projects have highlighted the benefits of integrated homelessness prevention work to patients/individuals, as well as staff, and the economic benefits of such services too.

For example, a health economics analysis on our NHS Fife hospital intervention where two full time Shelter Scotland staff members provided support to patients highlights *"that the intervention has the potential to significantly reduce both the proportion of people experiencing future hospital stays, and inpatient length of stay. Having hospital-based staff who can support homeless people at the point of discharge from hospital is potentially cost-effective, on average saves between £610 to £3,853 per patient supported. The total observed saving in terms of NHS (acute health services) resource use is £376,964."* Some of the key benefits that partners identified in this project were the physical presence of a mix of health

⁷ Healthcare Improvement Scotland's ihub (2021) [NHS Fife & Shelter Scotland approach to supporting homeless patients attending hospital: executive summary](#)

and housing expertise within a hospital setting to enable close collaboration and support of patients to have their medical and wider housing and support needs met.

The research commissioned by Shelter Scotland which spoke to people working within health and social care which again highlighted the importance of joint working to fully understand overlaps between different areas of work, with a quote from a strategic health professional interviewed: *"Integration hasn't cracked the link between health and housing. If it wasn't for the specific project, I wouldn't have met [deputy head of homelessness]. Having to deliver a joint piece of work together is the only real way to drive partnership working."* This research also highlighted a strong acknowledgement of the need to raise awareness of issues around homelessness prevention for a duty to make a difference.

This learning echoes some of the feedback from the Family Nurse Partnership project in Glasgow, whereby feedback from family nurses has highlighted the importance of increasing their knowledge to identify when and how to take action to support their patients with their housing situations: for example *"As a practitioner the support and advice I have received from Shelter Housing Project has very much increased my knowledge of housing processes and responsibilities of local authorities. I have also felt more confident to ask directly for advice from local authorities and to be able to rely on my increased understanding of local authorities' responsibilities in order to further support my clients."* And *"The project has given family nurses the language and confidence to use when dealing with housing services and to be better able to support our clients."* However, a duty to identify housing issues alone is also clearly not enough – currently family nurses might try to advocate for their client's housing issues but struggle to gain traction because of unclear lines of communication between social work, family nurses and the housing department. This highlights the need for a duty for the local authority to accept the referral as mentioned elsewhere in the consultation.

As mentioned elsewhere, the need for training to support non-housing people to identify risk of homelessness is crucial. In our experience with family nurses for example, it might be clear when someone is homeless if they're roofless – but if housing is unsuitable in some way it requires more knowledge to understand whether someone would be considered threatened with homelessness, and/or what remedies might be available.

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

[No answer provided]

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

[No answer provided]

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?

Positively Impact

No Impact

Negatively Impact

Please say why

[No answer provided]

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

[no answer provided]

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why, and if you disagree please say how this might be addressed

[no answer provided]

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?

[no answer provided]

Q16. Do you agree with the proposal that the local authority must provide assistance to anyone who is going to be discharged from hospital?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why, and what is the main difference this statutory change would make to people in hospital and at risk of homelessness

We agree that the local authority must provide assistance to anyone who is going to be discharged from hospital who is homeless or at risk of homelessness. However, as outlined in question 73, we believe that if the prevention duty were extended to six months and reasonable steps duty were prescribed with a right of review, that these specific groups will meet the definition of threatened with homelessness. The Code of Guidance is the best place to outline how this legislation ought to be interpreted and applied to assist these groups. We do not believe that the Housing (Scotland) Act 1987 Act should be amended to make reference to specific groups including those being discharged from hospital, beyond what is proposed in the definition of 'homeless' in section 24.

We expect such assistance would reduce hospital stays by addressing delayed discharge issues, and would likely improve health outcomes and recovery times by reducing stress and worry of housing uncertainty for patients. A health economics analysis on our NHS Fife hospital intervention⁸ where two full time Shelter Scotland staff members provided housing support to patients highlights *"that the intervention has the potential to significantly reduce both the proportion of people experiencing future hospital stays, and inpatient length of stay. Having hospital-based staff who can support homeless people at the point of discharge from hospital is potentially cost-effective, on average saves between £610 to £3,853 per patient supported. The total observed saving in terms of NHS (acute health services) resource use is £376,964."* Some of the key benefits that partners identified in this project were the physical presence of a mix of health and housing expertise within a hospital setting to enable close collaboration and support of patients to have their medical and wider housing and support needs met.

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?

We anticipate benefits would outweigh the challenges.

Challenges would likely include elements of uncertainty over the discharge date and potentially housing requirements changing throughout the hospital stay – though good communication with health professionals supporting the individual and regular check ins of a personal housing plan should help overcome this.

Uncertain discharge dates may also present a challenge in negotiating reduced rental payments for an uncertain period, or issues around storing possessions if accommodation loss cannot be avoided during the hospital period. However we don't anticipate there to be any additional 'property' resource required as the intervention could be about preventing loss of accommodation or securing new accommodation for people who would need it later – hopefully avoiding the requirement for temporary accommodation if a household were to present at crisis point.

⁸ Healthcare Improvement Scotland's ihub (2021) [NHS Fife & Shelter Scotland approach to supporting homeless patients attending hospital: executive summary](#)

General Practitioners (GP)

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

We believe that there are benefits to GPs referring people to local authorities where there is a risk of homelessness identified, but we are aware of the potential barriers around the relative independence of GP surgeries to the rest of the NHS.

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

A further roll out of the successful link worker programme might be more fruitful and might also serve to identify links between housing and other issues.

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

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.

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why, and how public services can best work together to prevent homelessness for people with more complex needs.

Shelter Scotland strongly agree with this proposal. Our 2020 research⁹ highlighted: *“While homelessness services and Housing Options teams may seek to make referrals to addiction and mental health services for people facing severe and multiple disadvantage, research has found that they have no command over these resources, nor the necessary authority to coordinate timely multi-sectoral interventions for people with complex needs.”* Evaluation of the Welsh prevention duty found that solely having a ‘duty to cooperate’ wasn’t consistently effective: *“the picture for partnership working remained mixed. The majority of local housing authorities reported no change in partnership work with external partners and success often relying on individual relationships...despite an overall increase in prevention, those with more complex needs continued to fall through the gaps, with high levels of cases becoming ‘lost contacts’.”* A duty to put a case co-ordination approach in place should help address this.

⁹ Dore, E. (2020) [Public bodies and homelessness prevention: working towards a prevention duty](#)

Regular, scheduled and minuted case conferences would identify blockages in cases progressing, assign responsibility to specific professionals, create accountability for progress and – importantly – build relationships and understanding between services that would promote closer and more effective joint working.

Q21. If this statutory duty is established:

How would it work in practice?

[no answer provided]

What challenges would it present, and how could these be best addressed?

[no answer provided]

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

See answer to question 20.

Prevention Review Group proposed recommendations for children's services

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

Yes, given the impact of housing and homelessness on children and young people, both these roles have a clear duty of care under GIRFEC and this should include reporting concerns about a housing issue or risk of homelessness.

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?

[no answer provided]

Prevention Review Group proposed recommendations for young people

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

The Youth Homelessness Prevention pathway compiled by A Way Home Scotland follows a five-tier model of prevention and provides a number of recommendations to government and others on meeting the needs of young people at risk of homelessness.¹⁰

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

We strongly agree that mediation should be available but urge care to be taken in the application of this service. The consultation document notes *“Mediation will only be applicable where appropriate and safe. Mediation is not appropriate in some circumstances e.g. domestic abuse.”* Shelter Scotland agree with this caveat. Further, people exploring these options for applicants need to be trained to identify signs of abuse/neglect or risk of.

Case study from Shelter Scotland services: A young person approached their local authority to make a homeless application after their relationship had broken down with their parents with whom they stayed. The young person did not want the housing officer to contact their parents and would not provide their contact details. The housing officer phoned their school instead, then called the parents who said their child could return home. Two days later, the parents asked the young person to leave again.

An external evaluation¹¹ of Shelter Scotland and Relationship Scotland’s joint Safe and Sound service highlighted however how family mediation can reduce the risk of homelessness for young people and the safe return home for those who have run away:

“it has clearly contributed towards better outcomes for those who engage, as well as contributing to longer periods of stability for both children, young people and their families”

Learning from other organisations with expertise in this area including the Rock Trust and the Scottish Centre for Conflict Resolution should be sought in developing these services and the key factors to success, which we understand to be that mediation is independent and immediately available. It is important to note that support for the young person should be offered alongside mediation, and ideally for the family as well.

Prevention Review Group proposed recommendations for 16 and 17 year olds

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

Positively Impact

¹⁰ A Way Home Scotland, [Youth Homelessness Prevention Pathway](#)

¹¹ Figure 8 Consultancy Services Ltd (2018) [External Evaluation of the Safe and Sound Project](#)

No Impact

Negatively Impact

Please say why

We are aware of the concerns raised by Clan Childlaw's response that the proposals risk removing or delaying statutory rights from young people in this age group by denying them access to housing rights through a s.28 Housing (Scotland) Act 1987 [1987 Act] application. This would of course represent a regression in rights and is not something that Shelter Scotland could support.

It is critical that any change does not undermine 16 and 17 year olds rights to a tenancy or restrict their housing options in any way.

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?

Yes, there could be 'unintended consequences'

No, there could not be any

Please say what the 'unintended consequences' could be, and how can this be addressed so that any new legislation improves outcomes for 16 and 17 year olds at risk of homelessness?

Shelter Scotland are aware of Clan Childlaw's concerns that the proposals would result in significant unintended consequences in terms of 16 and 17 year olds at risk of homelessness. We urge the government to engage with these concerns and rethink the proposals for this age group and find alternative ways to meet the policy principles and the need to overcome some of the barriers with the current system.

Prevention Review Group proposed recommendations for criminal justice – prisons, court services and Police Scotland

Prisons

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

The link between prison and homelessness or risk of homelessness is well-evidenced. For example, in a survey of Scottish prisoners, 49% of respondents said that they had become homeless while they were in prison, and 1,574 homeless assessments were recorded as having been from people leaving prison in 2020-21, accounting for 6% of all homeless assessments. Therefore homelessness prevention for this group is key.

Currently, according to the Code of Guidance, local authorities should have a Discharge Protocol in place. If there is no such protocol, the local authority should be prepared to explain its departure from the Code of Guidance and failure to have regard to the Code may give grounds for judicial review. A Discharge Protocol alongside existence of the statutory duties to take applications from those who are threatened with homelessness within two months and to secure temporary homeless accommodation, immediately, for those who require it should prevent street homelessness or other forms of precarious housing from occurring. However, those who have been released from prison are consistently overrepresented amongst those who sleep rough. More assessment is required to find out why current discharge protocols and statutory duties to take homeless applications from prisoners in advance of their release are not working.

Shelter Scotland have provided advice services in a number of Scottish prisons for several years both preceding and following the publication of the SHORE standards, which we were on the task and finish group for.

Our experience mirrors that represented by the PRG – that changes and improvements have been made to service provision, but that there is inconsistent adherence to the standards. This is very much driven by a lack of resource for both the prison service and local authority housing and homelessness department. This means that we still see the issue of a ‘revolving door’ between prison and homelessness. Individuals often receive little housing advice when they enter prison, which might have enabled them to keep their home while in prison, and are still released from prison with nowhere to go.

“They could have just given me a house as they had plenty of time to know I needed one. Instead of that I got two [temporary accommodation] places that were filthy.” [quote from individual with lived experience of homelessness, 2022]

Shelter Scotland has experience of persons discharged from prisons being advised by homeless services that there is no temporary accommodation available for them that day. Shelter Scotland has on numerous occasions been required to advocate on behalf of such individuals. It cannot be said conclusively in these cases whether or not advance notice was given to the local authority of the release date or not, though many clients advise that support workers in the prison had made the local authority aware in advance.

Case study: A client was released from prison in August 2020. Under the SHORE standards, eight weeks prior to his release he should have been supported to make a homeless application, and accommodation should have been put in place 24 – 48 hours prior to liberation. In this case, this did not happen. The day he was released, the client borrowed a friend’s phone and called a number he had been given but the council told him they didn’t have his name in the system. At 7pm that night they called him back and told him the address of a hostel to go to. He was not provided information to make a homeless application. He stayed in the hostel for around five months before he met someone who referred him to Shelter Scotland.

Case study: Client was given a prison sentence of 20 months. No support was given to try to prevent the loss of his tenancy. The client was in fact released after ten months and he had to make a homeless application on release.

Case study: Female client was in prison for four months. No contact was made with her to identify any housing needs, and no one was aware that she was homeless on her release from prison.

New legal duties should help to make the response across prisons consistent, but to have an impact would need to be accompanied with increased training and resources dedicated to fulfilling the duty (see below).

There are examples of good practice. For example, many prisons ask housing questions as part of the admission interviews and send lists to local authorities of people in need of housing or homelessness assistance. From our experience of working with several prisons and local authorities, a key issue is capacity and a lack of training for prison workers to enable them to identify where there is a housing issue and where action can and should be taken.

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?

Shelter Scotland would hope that a statutory duty would be adequately resourced. As above, our experience mirrors that represented by the PRG – that changes and improvements have been made to service provision particularly since the introduction of the SHORE standards, but that there is inconsistent adherence to the standards very much driven by a lack of resource on both the prison service and local authority housing and homelessness department sides.

There is a lack of staffing resource but also knowledge and staff with specific skillsets to undertake this type of work. At present there is a reliance on external agencies to provide housing advice and advocacy, but these are nearly always short-term funded projects delivered by third sector agencies, and there would be a requirement for something more permanent to be put in place within each prison.

The delivery of support at present can be quite ad hoc and piecemeal: in reality a large proportion of prisoners would be likely to fall into the definition of requiring housing assistance and new systems would need to be put in place to ensure that no one is missed and that everyone receives appropriate support or referrals in a timely manner.

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

One significant challenge to the successful incorporation of any new statutory duty on prisons is capacity of staff.

In addition, the practicalities of people being moved between prisons at short notice can create difficulties with permissions for partner organisations to access different files and notes from previous prisons, partner organisations arranging appointments to speak to prisoners and continuity of support. This is also reflected in the fluidity of prisoner's situations with regard to their release dates which can be changed if there are ongoing court cases. This might mean that people dip in and out of the proposed new six months 'at risk of homelessness' time frame, and that intervention may be best delivered at certain points throughout a sentence, rather than as a 'block' of 56 days.

Our view is that a permanent housing advice service or presence within each prison would be beneficial to overcome some of these issues. Currently much of the advice is provided by the third sector which can be challenging with contracts ending. If a housing advice/homelessness prevention service was permanent it could support an ongoing training provision and the cascading of relevant information to prison officers on how best to

deliver their new duty. The link worker service in prisons is beneficial but as above, the capacity of this service is limited.

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

There would have to be increased capacity and training within local authority teams to support people who are at risk of homelessness, or who were homeless before their incarceration. Our experience is that the vast majority of prisoners are in need of some housing advice.

There is also consideration required on the geographical issue particularly when local connection is removed regarding which local authority takes on responsibility for individual cases. Related to this, the practicalities of people moving between prisons at short notice can create difficulties. More could be done to utilise technology to enable these challenges to be overcome.

In addition, there are wider changes required to social security to address some of the housing issues relating to prison. In particular, Universal Credit is now only paid for six months even for prisoners on remand, whereas housing benefit previously was paid for up to 52 weeks for those on remand. There is a moral and human rights issue here around the fairness of individuals on remand, who have not yet been proven guilty, who face eviction and homelessness because of their temporary incarceration.

Prevention Review Group proposed recommendation for court services

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

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

The proposal for housing options advice to be made available in court settings outlines an ideal situation for those who may be facing eviction and merits further investigation. However, in Shelter Scotland's opinion the bigger benefit would come from addressing the lack of representation for people in court settings by ensuring legal advice and legal aid is available to people to defend their evictions, which is currently not the case. The best means of preventing homelessness would be ensuring that tenants have access to independent specialist legal advice. Shelter Scotland's Housing Law Service is very successful in preventing homelessness through its court representation. It should also be noted that landlords and mortgage lenders are required by law to give notice under section 11 Homelessness (Scotland) etc Act 2003 of the raising of proceedings for eviction. It is suggested that it is at that stage that prevention activity through housing options advice would be most beneficial.

Lastly, it will be acknowledged that if this proposal were to be implemented it would require housing options advice available throughout all of Scotland's sheriff courts as well as in the First-tier Tribunal (Housing & Property Chamber). At time of writing most court and tribunal hearings are digital and this would need to be considered.

Prevention Review Group proposed recommendations for Police Scotland

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

Shelter Scotland strongly agree with the proposal to place a statutory duty on the police to ask about housing circumstances if there is reasonable belief they may be homeless or at risk of homelessness. We know that people experiencing homelessness are more likely to be victims of crime than perpetrators with high rates of homelessness resulting from violent and abusive disputes within the household, as well as non-domestic violence. The opportunity for the police to intervene therefore seems quite high, and might help prevent homelessness as well as further disputes. We also know that there are well-evidenced links between offending and homelessness and *"For most offenders, being arrested by the police is the moment in time that triggers a sequence of events that then eventually lead to imprisonment and homelessness"*.¹² We also believe that given the ongoing duty of care that the police hold, that this would not require a seismic shift in attitudes or culture: *"We have a duty of care – we wouldn't be doing our job if we didn't pass it on. Five minutes [to pass on a referral] is nothing in the grand scheme of things – even if you have to stay a few minutes past the end of your shift to fit it in. It wouldn't really change much for us."*¹³

However, it is also important to highlight the challenges that might come from police intervention and interest in housing – our research showed that some people did not view the police as being able to assist in preventing homelessness, with one interviewee stating *"The police are against you... They would've been glad I was losing my house"*.

Finally, the importance of training and education to provide knowledge of factors and triggers that can increase the risk of homelessness is crucial, as well as when an intervention might be helpful. An example of this is in relation to illegal evictions: Shelter Scotland provides advice to people who have been evicted illegally from their home by their private landlord. On many of these occasions, people have contacted the police and been advised, incorrectly, that it is a civil matter rather than a criminal offence. If the police had understood the criminality of the landlord's behaviour and intervened at this stage, they could have prevented tenants from being evicted and becoming homeless, or at the very least supported the individual to access information on their rights and prevented

¹² Dore, E. (2020) [Public bodies and homelessness prevention: working towards a prevention duty](#)

¹³ Dore, E. (2020) [Public bodies and homelessness prevention: working towards a prevention duty](#)

rooflessness. There is an ongoing appetite from Police Scotland to work on this issue but it does illustrate the importance of a basic understanding of housing rights to ensure such a duty is effective in practice.

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?

The timing and manner of asking this question is crucial. Moments of high stress and vulnerability (both for perpetrator and victim) need to be handled with sensitivity.

Prevention Review Group proposed recommendations for Domestic Abuse

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

[no answer provided]

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?

This question makes reference to preventing homelessness for people experiencing domestic abuse. Where someone is experiencing abuse they are statutory homeless, and not threatened with homelessness. As outlined in question 72, it is important to make clear that prevention of homelessness is no longer possible – efforts at this stage are about preventing rooflessness, or alleviating homelessness by enabling someone to move back/stay in their own home. In the majority of these situations, an individual is likely to still require temporary accommodation and therefore it is important that we ensure that there are no barriers to them receiving the full housing duty and no confusion over their rights as someone who is statutorily homeless. Good practice, and arguably lawful decision making, would require a local authority to take the homeless application, advise the applicant of their right to interim accommodation pending their inquiries and decision, and offer interim accommodation.

Regarding the specific proposals:

- 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

A person-centred approach is extremely important here – even if the threat of further abuse is removed or reduced, there may be a risk of further trauma to an individual to return to their previous accommodation where abuse occurred. As section 2.22 of the Code of Guidance states: 'local authorities must not put pressure on people to remain in or return to their

previous houses if that would cause distress. In particular, when a person is seeking refuge because of a fear of abuse, there will be an immediate need for rehousing.’

- 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.

Experiences from our advice services and specialist domestic abuse support projects has highlighted the importance for mainstream services in agreeing and understanding appropriate protocols for supporting people experiencing domestic abuse, for example understanding how to liaise with and contact the person in a safe manner if the perpetrator is still in the property. This highlights the value of the proposal that 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.

Similarly, we would highlight the importance of specialist gender sensitive domestic abuse support for women and children as a crucial part of this point – again showing the value in homeless prevention services working in partnership with other services to ensure people are supported to access the range of services they might require.

- Social landlords should put in place protocols to address housing issues relating to domestic abuse.

As referred to in our answer to q46, the improving housing outcomes for women and children experiencing domestic abuse report recommends that “*social landlords should develop and implement domestic abuse housing policies based on CIH/SWA 2019 guidance*”. We are aware that Scottish Women’s Aid have highlighted that this has not yet been undertaken consistently by landlords, and that one of the barriers to this was a lack of requirement on social landlords to undertake this work. Legislating for this may assist in overcoming this barrier.

- 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

We suggest a change to this proposal to accommodate the more broad and relevant recommendation from the improving housing outcomes for women and children experiencing domestic abuse report, that women and children who experience domestic abuse are able to easily access free domestic abuse-competent legal advice and representation. Scottish Women’s Aid outline further insight on this in their response.

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

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’?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

Shelter Scotland strongly agree there should be a statutory duty on a local authority to accept a referral from a public body to prevent homelessness.

Without such a duty, there is no guarantee of action on the referral. This is both frustrating from the individual point of view whereby an issue has been highlighted and they have been referred and might not then receive the support they now know could be available, but also from the referrer's point of view it could be demoralising and prevent future referrals from being made if there is no action. The referrer should also receive acknowledgement of the referral as a minimum.

It's important to clarify (and for the referrer to be aware) that acceptance of a referral doesn't mean the local authority are accepting the household as homeless or at risk of homelessness – this is a separate assessment laid out in law. Acceptance of a referral might be, for example, giving clear information to the individual on their housing rights and how to make a homeless application. This process should be as smooth and efficient as possible for the person or household in housing crisis, to avoid feelings of being passed from pillar to post. It would be sensible for the local authority to review these referrals to identify sources of any consistently inappropriate referrals.

This duty to accept referrals would need to be accompanied by additional resources to meet demand. Our 2020 prevention research highlighted that *“Both professionals and people with experience repeatedly stressed that public bodies being more involved in the prevention of homelessness will only be effective if sufficient housing resources are in place. The frontline police interviewee summarised, ‘The worst case would be if the support and resources still aren't available and we let people down.’”*¹⁴

These resources, however, should not just be financial. Evaluation of the implementation of the equivalent Housing (Wales) Act 2014 found that additional training for housing advice staff was needed to increase the skills such as motivational interviewing.

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?

What would be the primary advantages:

- Increased joint working with other public sector bodies
- Motivation on the part of the referrer to refer
- To increase 'upstream' prevention and therefore reducing the number of crisis cases a local authority homeless service sees
- A statutory duty to accept a referral should make clearer the recourse requirements for local authorities to appropriately respond to and action these referrals.

What would be the primary challenges:

Resources will be a major challenge to this, we know that local authority homeless teams are already struggling under a strain of a housing emergency with increasing numbers of homelessness applications and open cases, and that some statutory duties are being breached. Shifting resource from 'crisis' intervention to prevention activity is important and will reap benefits for individuals whereby their homelessness is prevented, but in the short to medium term homelessness teams will have a higher caseload as they try to support people at an earlier stage. The English Homelessness Monitor Report in 2019 highlighted the additional bureaucratic burden that local authorities were experiencing.

¹⁴ Dore, E. (2020) [Public bodies and homelessness prevention: working towards a prevention duty](#)

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

An individual should always give consent/mandate but that this should be done in a way which doesn't put up unnecessary barriers. These systems should already be in place and familiar to public authorities, including local authorities.

The provision of consent is important not just because of data sharing rights, but also because if someone isn't ready or willing to engage then homelessness prevention is unlikely to be successful. However, even if consent is not given a public sector professional making inquiries with the individual may be important in prompting someone to think further about their situation and increase awareness of the support available.

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

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

- The requirements should be included in legislation
- The requirements should be included in guidance

Please say why

Shelter Scotland's view is that legislation is an important tool to drive action and resource, particularly in a time of highly pressured public services.

Furthermore, including strategic planning for homelessness prevention within legislation improves accountability, giving way to further recourse to the courts as a remedy if insufficient strategic planning has been undertaken.

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

No answer provided

Data sharing and data protection

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

No answer provided

Prevention Review Group proposed recommendations for social landlords

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

Shelter Scotland agrees with the proposals set out in this document. There should be no evictions into homelessness from social landlords, and social landlords should be taking all possible steps to prevent an eviction being carried out.

Recent research commissioned by Shelter Scotland¹⁵ found that at a minimum, social sector evictions cost a total of £27.8 million a year in 2019/20, when both direct and indirect costs are considered. At an individual level, the research found that the average total cost of evicting a single person with low support needs into homelessness, with a not unusual 9 month stay in temporary is nearly £24,000. This research showed that not only is eviction a highly disruptive and damaging experience for those being evicted, but also results in high financial costs when the wider costs associated with providing a homelessness duty are considered.

Whilst there is lots of good practice throughout the country, it is notable that Shelter Scotland's Housing Law Service is very successful in preventing eviction and homelessness through its court representation of tenants at risk of social sector evictions, indicating that there is often more that could be done by social landlords to prevent court action, eviction and homelessness.

Ensuring accountability for these duties, for example via reporting and analysis and through the court system is crucial to achieve the policy objectives.

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

Learning can be taken from the current experience of the PARs to build into the reasonable steps. For example, tenants for whom English is not their first language, have mental health issues or learning disabilities. It is therefore highly important that support must be delivered not just through letters, but also through face to face engagement with tenants who are at

¹⁵ Lord, A. and Gu, Y. (2021) [Understanding the true cost of evictions in Scotland](#)

risk of eviction and homelessness. This will ensure that the most vulnerable tenants are also given the support that they need.

We also consider that it should be specified in the legislation that these steps are taken as early as possible, as soon as rent arrears begin to build up. Early engagement and support is key to successfully addressing rent arrears. Every effort must be made by social landlords to proactively work with tenants in addressing arrears at the earliest possible date.

As it is not explicitly stated in the proposal, we would stress the importance of information and support to access independent advice and advocacy, and would welcome another measure which makes specific reference to provision of information on how to access legal representation including legal aid in specific situations.

As an illustration of why independent advice is crucial, Shelter Scotland has for the past year been running a service commissioned by Dundee City Council to respond to section 11 referrals in the city. This has been really successful and where the council had low levels of engagement from tenants who have been served notice previously, around 11%, Shelter Scotland has secured 56% engagement. In general, our experience with this service and others, including the service which supported the client quoted below, have shown that some people who don't feel able to accept help from their landlord or statutory services are more likely to engage with independent support.

Case study: Fiona lost her job because of poor mental and physical health, and got into arrears on her rent as a result. She was burying her head in the sand and unable to accept support from the council. Housing officers at the council had been round to Fiona's house but she wouldn't open the door to them because of her anxiety. *"The council tried to come out but I wouldn't open the door. It was daunting the housing officers coming round to my door. They put the dreaded white slip through but don't say what it's about."* [Fiona, a client of Shelter Scotland's Foundations First service in Renfrewshire]

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

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

Yes. The 'improving housing outcomes for women and children experiencing domestic abuse' report recommends that *"social landlords should develop and implement domestic abuse housing policies based on CIH/SWA 2019 guidance"*. We are aware that Scottish Women's Aid have highlighted that this has not yet been undertaken consistently by landlords, and that one of the barriers to this was a lack of requirement on social landlords to undertake this work. Legislating for this may assist in overcoming this barrier.

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

Our understanding is that the PRG proposed a form of pre-action requirements for tenants facing court proceedings not related to rent arrears (and therefore not covered by the existing PARs duty). We welcome this approach, taking on board learnings from PARs in relation to court proceedings under the rent arrears ground. All efforts should be made to prevent an eviction where court proceedings are being considered by a landlord against a tenant.

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

As part of pre-action requirements landlords are meant to encourage the tenant to contact their local authority for support. It would seem sensible to build on this approach to ensure, where the tenant consents, that local authorities are made aware of the risk of homelessness before section 11 notifications are made. This would work well if PARs were extended beyond rent arrears grounds for eviction, too.

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?

We would welcome any new measures that would support the tenant to keep their home if that is in their best interests.

Statistics on section 11 notices should be collected and published once more to allow further analysis of how effective this duty is.

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

As early as possible if the tenant is thought to meet the (proposed new) statutory definition of threatened with homelessness.

Prevention Review Group proposed recommendations for private landlords

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

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

Shelter Scotland believes that the pre-action requirements (PARs) for eviction proceedings on ground of rent arrears should be made permanent, as contained within the draft Coronavirus (Recovery and Reform)(Scotland) Bill. We consider that this policy has been a welcome step forward in improving the rights-based framework for tenants in Scotland. To remove it would be a significant step backwards, reducing rather than strengthening tenants' rights and therefore putting at risk the progress made to ensure the prevention of evictions and homelessness wherever possible. It would also go against the fundamental human rights-based principle of progressive realisation of rights.

The pre-action requirements for eviction proceedings on the grounds of rent arrears introduce an important preventative measure for eviction and homelessness. The PARs encourage landlords to help their tenants access support and advice on rent arrears management before any eviction action is taken, thus helping them to manage their debt and remain in their home.

The PARs are also a step towards greater parity of protection for private and social tenants in line with the Scottish Government's commitments under the Housing to 2040 strategy.

Additional data to enable ongoing analysis and evaluation of the PARs would also be welcome. The First-tier Tribunal has a key role to play in ensuring that landlords are adhering to this legislation and are making all reasonable efforts to support tenants to remain in their homes. Currently no data is available from the Tribunal. Private landlords are also required by law to send a section 11 notice to the local authority when they start eviction proceedings. However, our understanding is that this is not consistently followed. The lack of published data makes it difficult to understand the extent of the issue and any patterns of non-compliance, and therefore what changes or awareness raising might be required. We recommend that publication of section 11 data is restarted as well as standardised data collection and publication from the Tribunal.

A 2019 report published on advice and support for private renters recommended that the *"Scottish Government works with relevant partners to consider the potential use of Section 11 data to inform local evidence bases and to revise Local Housing Strategy guidance to strengthen links between housing options and wider advice/support approaches at local level."*¹⁶ Shelter Scotland would support this approach.

¹⁶ Donohoe, T, and Young, G. (2019) [Where to Turn: A review of housing support and advice for private tenants in Scotland](#)

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

As part of the PARs, the landlord should encourage the tenant to contact their local authority. A Notice to Leave should also include information on advice for the tenant to contact Shelter Scotland, their local authority, a solicitor or the local citizens advice bureau. The Section 11 notification is also intended to prompt the local authority to take action. In practice, there is very little data available to understand how well these processes are working.

We recommend a clarification is made to the definition of threatened with homelessness. The proposal to extend the definition to six months aligns better with private residential tenancies, where a Notice to Leave is valid for a period of six months (from the date of expiry of the notice), and if an application to evict is not made to the First-tier Tribunal within this six-month period then a new Notice to Leave has to be issued.

The existing definition of threatened with homelessness under section 24(4) 1987 Act could be further strengthened to provide clarity for PRS tenants, as proposed in Appendix 1 of the PRG Recommendations in section 24(8):

"This subsection applies if, in respect of the only accommodation the person has that is available for the person's occupation: (a) a valid notice has been given by the landlord under:

- (i) section 19 or section 33(1)(d) of the Housing (Scotland) Act 1988*
- (ii) section 14(2) or 36(2) of the Housing (Scotland) Act 2001;*
- (iii) section 62 of the Private Housing (Tenancies) (Scotland) Act 2016 and that notice will expire within six months."*

This would avoid the need for a tenant to wait until a court or tribunal order were granted, which may come with expenses and increase a tenant's debt.

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

Work is required to increase awareness of rights and responsibilities amongst both tenants and landlords as well as sources of advice and assistance.

Learnings from Shelter Scotland's private rented project which worked with landlords, letting agents and tenants identified a lack of knowledge of support available for tenants. Our understanding is that there are inconsistencies in practice across Scotland and generally it can be difficult for tenants and landlords to identify who to contact within the local authority. For example, Crisis' review of RRTPs in Scotland highlighted the differing set ups across local authorities in terms of PRS access schemes¹⁷ and a 2019 report reviewing advice and support available for private tenants found

"Local Housing Strategies, Community Plans and the more recent Anti-Poverty Strategies tend to be the main processes through which local authorities and their partners attempt to address advice and support needs in their areas. Often these are pitched more broadly at the wider population or specific groups (i.e. homeless) rather than focusing on specific tenure-based needs, such as those of private renters...landlords and letting agents said it is not clear where to signpost tenants or who they should contact directly if a tenant is experiencing difficulties. In addition, given the demand and operating context for housing support services, private

¹⁷ Crisis (2020) [Rapid rehousing transition plans: a Scottish overview](#)

renters may simply be deemed as not having the level of need to meet the threshold to access a service.¹⁸

The 2019 report found that “without more effective pathways to access services, a greater political willingness to prioritise prevention and provide more resources to enhance community services, private renters were likely to continue to struggle to access housing support prior to the point at which they applied as homeless. This is also undermined by the lack of direct knowledge and evidence of the needs of private renters.”

A new legislative duty on local authorities to respond to referrals should also address this issue – for example a clear named role or PRS liaison service for individuals to contact for specific PRS advice. Again, resources will be required to implement this effectively across all local authorities.

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

Shelter Scotland agrees with the principle of this proposal; we do not believe that anyone should be evicted into homelessness. A local authority should be able to make a representation to the First-tier Tribunal (Housing and Property Chamber) and that the Tribunal should be able to utilise their discretion with full knowledge of the facts of the case.

The current consultation on the Rented Sector is seeking to review whether the pre-action requirements currently in place in the private rented sector, as well as the change to the nature of the ground meaning that they are considered discretionary rather than mandatory, should enable the Tribunal to exercise their discretion on the wider issue of whether an eviction order should be granted at all.

Local authorities should be encouraged to make representation to the Tribunal if they have relevant facts to share to support the Tribunal to make their decision. This is particularly relevant given the Tribunal lacks investigative powers and cannot necessarily seek to confirm information from a tenant on the housing or homelessness advice they may have received from the local authority.

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?

Strongly Agree

¹⁸ Donohoe, T, and Young, G. (2019) [Where to Turn: A review of housing support and advice for private tenants in Scotland](#)

Agree

Disagree

Strongly Disagree

Please say why

Shelter Scotland agrees that homelessness advice and assistance should include information on all available housing options including the PRS. Any information provided should be relevant and up to date – we have seen instances where clients have been given lists of properties available in the private rented sector or landlords to contact which are out of date, which wastes people’s time and can be very demotivating for someone searching for a home.

It is important to note that the PRG report does state that 16% of homelessness applications last year were made by people in the PRS, and therefore it is imperative that tenant rights in the PRS are strengthened and protected, as well as better support offered to landlords and tenants to ensure it is an appropriate tenure. A floating support service providing regular support visits from a trusted worker should also be considered, which could be crucial in helping someone sustain their tenancy or in helping someone who has been in temporary or supported accommodation settle into a new home. In many local authorities the support services are tied to tenure type, which disadvantages people who live or want to live in the PRS.

Further – we must ensure that people are not forced into the private rented sector where this is not a suitable or affordable option for them, simply because of a lack of social homes. We should ensure that tenants can access decent, affordable social homes in the areas they wish to live. Shelter Scotland is therefore calling on the Scottish Government and local authorities to deliver the 110,000 affordable homes of which 70% must be social homes at pace and in the right places.

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?

A specific legislative duty to provide homelessness advice and assistance relating to living in and/or accessing the private rented sector should already be incorporated under the existing and proposed duties on local authorities when someone is assessed as threatened with homelessness. We therefore do not believe there should be an additional or separate specific legislative duty on local authorities to provide homelessness advice and assistance relating to living in and/or accessing the private rented sector.

SECTION 3: PROPOSED RECOMMENDATIONS BY THE PREVENTION REVIEW GROUP AND CONSULTATION QUESTIONS ON REFORMING THE HOMELESSNESS LEGISLATION TO PREVENT HOMELESSNESS

Principles of the Prevention Review Group

Q57. Do you agree with these principles?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

In addition to the foundational principles which we address in question 1, the consultation document outlines that the PRG also recommends that the current statutory framework for homelessness should be amended to achieve the following:

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

Shelter Scotland were pleased to participate in the Prevention Review Group (PRG) and we share the sector wide aspiration to ensure and enable public bodies, beyond the housing and homelessness sector, to provide the required support to prevent homelessness wherever possible. Whilst we agree with many of these principles, we have significant concerns about the proposals put forward under the guise of the fourth principle, which downgrades people's rights from permanent to 'stable' accommodation. Firstly, stable housing with little or no real security of tenure should not be the principle we're aspiring to in our homelessness system. Second, we believe the proposals which are meant to increase choice and control for people experiencing homelessness will in fact have the opposite effect, reducing their choice and control and in particular their access to social housing.

Further, we strongly agree with the fifth principle. In line with a human rights-based approach, there should be accountability and rights should have a legal basis enabling effective access to justice. We believe that the policy proposals to amend the rights of unintentionally homeless people to 'stable' accommodation, despite the safeguards outlined, do not meet this test.

- The principle of 'stable' housing

In line with the Cabinet Secretary's comments to the Scottish Parliament regarding the prevention duty proposals¹⁹, Shelter Scotland strongly believes that someone who is assessed to be unintentionally statutorily homeless should continue to be entitled to a permanent tenancy as they are at present. Anything less than this represents a regression of rights and is not acceptable under Scotland's commitment to progressive realisation of the human right to adequate housing.

Stable housing with little or no real security of tenure should not be the principle we're aspiring to in our homelessness system. We believe the current existing permanent housing duty (and associated temporary accommodation duties) should remain, with the small legislative change outlined in question 79 for those who might require supported accommodation.

Security of tenure is crucial in preventing future homelessness. Enabling local authorities to discharge duty to those who have already experienced the trauma of homelessness into accommodation without security of tenure is non-sensical, particularly when the underlying principle is to prevent homelessness. Further, taking a human-rights based approach, we should be progressively realising the human right to adequate housing within Scotland. This right includes a strong emphasis on security of tenure: housing is not adequate if its occupants do not have a degree of tenure security which guarantees legal protection against forced evictions, harassment and other threats.²⁰ The proposed changes are in direct conflict with realising the UN right to adequate housing.

- The principle of choice and control

Whilst we agree with the principle of choice and control, the consultation implies changes are required to ensure that homeless households are able to access the same set of housing options available to the non-homeless population, including supported accommodation and returning to previous accommodation, and other options such as living with a resident landlord or shared accommodation. We believe that choice and control is already provided for in the system and that the proposals will have the opposite effect, reducing choice and control for people experiencing homelessness and in particular their access to social housing.

People are already able to choose whether or not to exercise their statutory rights to make a homeless application. Some people we work with, despite being eligible for assistance, choose to resolve their situation without support from the local authority. However those that do choose to exercise their statutory rights, do so because they are in need of the assistance provided by the statutory framework, and want the security offered by the permanent housing duty. The main barrier to accessing choice and control on housing outcomes we come across is the long waiting times for social housing. On average, households leaving temporary accommodation in 2020-21 had spent 199 days in temporary accommodation – but this increased to 341 days for couples with children and was as high as 865 days in one local authority. The solution to this bottleneck isn't to dilute rights, but to increase the supply of socially rented homes.

One of the drivers for the suggested amendment by the PRG is to enable the homeless duty to be discharged into supported accommodation. We believe there is an alternative way to enable supported accommodation to be provided in such a way that provides security of tenure, which we outline in our response to question 79. With regard to the other options, Shelter Scotland believe that no further legislative change is required. Currently, if a household is assessed as homeless and wishes to return to their previous/present accommodation, or move in with friends or relatives, they can do so and a local authority fills

¹⁹ Scottish Parliament (2022) [Scottish Government debate: Prevention of homelessness duties, 2 Feb 2022](#)

²⁰ Office of the United Nations High Commissioner for Human Rights [Fact Sheet No 21: The Right to Adequate Housing](#)

out the HL1 proforma saying as much under question 23 (e.g. option 10 – returned to previous/present accommodation, or option 11 – moved in with friends/relatives). Shelter Scotland is not aware of any concerns raised by clients over barriers to accessing their previous or alternative accommodation under the present statutory framework, and therefore see no need to amend legislation in this regard.

However, there may be a case to amend guidance to make clear that this is an option that individuals may take up if they wish – and if that is the case that local authority advice and assistance should be available to support the individual to do so. Essentially, just because someone has received an assessment of ‘statutorily homeless’ and is waiting for accommodation, this doesn’t mean that the same set of prevention services available to them at an earlier stage isn’t or shouldn’t be available to them to exercise if they so wish.

Illustrative case: A young person’s relationship with their parents has broken down over a period of months, and they leave the family home. They have nowhere to stay and approach their local authority to make a homeless application. The local authority provides the individual with temporary accommodation. The individual is assessed as homeless. Three months later, the parents and young person have made contact and at this point are keen to attempt mediation. The young person asks the local authority if they could assist in arranging independent mediation, and following this the parents invite the young person back to stay. The young person chooses to do so, and explains to the local authority they no longer wish to exercise their rights under the homeless legislation. The local authority records the client as having moved back home and closes the case.

In the above case example, guidance for local authorities should ensure that the individual is aware of their rights and that they have been supported to make the right decision for them, to ensure they have choice and control. The law as it stands still enables flexibility, and there should be no bar to households’ access to ‘housing options’ services. Guidance can and should ensure this is clear to local authority housing practitioners, for example not limiting mediation services to those who are only at risk of homelessness and in turn ensuring additional resources are available to extend these services if they are currently limited or restricted. In short, there is no need to change the statutory framework for people experiencing homelessness to access ‘mainstream’ accommodation. However, equally there should be an acknowledgement that making a homeless application is also a choice and a method by which households can access additional, specific support and rights appropriate for their housing situation.

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

As in question 2, the principle of non-regression should be included, in line with the commitment to a human rights-based approach by the government. This principle is outlined within the Housing to 2040 programme, and existing international obligations including the duty of progressive realisation.

As stated in the 2018 Ending Homelessness Together Action Plan:

*"This is a significant change and will require careful planning. In particular, we need to ensure that a new duty does not undermine the strengths of the existing homelessness rights. We will learn from evaluation of prevention duties elsewhere."*²¹

The Taskforce on Human Rights Leadership²² made a number of recommendations and outlined policy objectives for a new statutory human rights framework in Scotland, which were accepted in full by the Scottish Government in 2021²³. One of these, policy objective 15, was to ensure duty-bearers understand and implement the international obligations including the duty of progressive realisation. This refers to Article 2 of the International Covenant on Economic, Social and Cultural Rights which reads to "take steps... to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means." Similarly, recommendation 13 was "that there be an explicit duty of progressive realisation to support the effective implementation of the framework, which takes into account the content of each right."

A recent report on the right to adequate housing commissioned by ALACHO outlined that:

*"the principle of progressive realisation acknowledges that as economic, social and cultural rights cannot be fully achieved all at once or over a short period of time, every State must pursue a process of continuous improvement. This is understood to entail regularly reviewing and updating laws, policies, programmes, codes of practice and non-statutory guidance, as well as budget decisions and resource allocations, to enhance the ability of people to realise their rights and improve their lives."*²⁴

In that same regard, the obligation progressive realisation places on State bodies is to "avoid deliberately taking retrogressive measures to cut goods and services that would deprive people of rights that they currently enjoy".²⁵

Shelter Scotland's view is the proposal to amend the duty of local authorities by introducing non-secure housing options would be a retrogressive measure and would therefore contradict the duty of progressive realisation.

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

Whilst some of the principles are welcome and should result in positive outcomes, our answer here focuses on the outcomes we anticipate if the principle and associated policy proposals around 'stable' housing are adopted.

We believe that there would be a reduction of homelessness rights for all homeless applicants – and a violation of the principle of non-regression or progressive realisation of the human right to adequate housing.

We anticipate that an individual's housing insecurity would in some situations be delayed rather than resolved – a sticking plaster approach whereby people are supported into accommodation which does not offer strong security of tenure and which is likely to result in repeat approaches to local authorities for assistance in future.

²¹ Scottish Government (2018), [Ending Homelessness Together Action Plan](#)

²² Scottish Government (2021), [National Taskforce for Human Rights: leadership report](#)

²³ Scottish Government (2021), [New Human Rights Bill](#)

²⁴ Young, G. (2021) [The right to adequate housing: are we focusing on what matters?](#)

²⁵ Young, G. (2021) [The right to adequate housing: are we focusing on what matters?](#)

Security of tenure may not be the primary concern of a homeless person, who more than anything needs a secure and safe place to stay that night, however lack of security of tenure features heavily in causes of homelessness. Although Scotland's private residential tenancy provides more security of tenure in the private rented sector than available in England, the importance of this is highlighted in evidence showing that the lack of security of tenure and unaffordability of the private rented sector in England is given as the main cause of homeless for those seeking assistance at the prevention stage.²⁶

Prevention Review Group proposed recommendations for changing the current homelessness legislation

An extended prevention duty

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

Shelter Scotland strongly agree with the proposal to extend the definition of threatened with homelessness to someone threatened within the next six months for all the reasons proposed by the PRG: essentially that 'prevention' work is more likely to be effective if started earlier, before an individual's housing situation is critical or eviction imminent, both in terms of sustaining that accommodation or assisting someone to make a planned move. In addition, it complements the proposed duty on wider bodies from part 1 of the consultation which also intends to identify and support someone who is at risk of homelessness at an earlier stage.

We think it will be particularly effective for cases of discharge from institutional settings. In some cases, the most effective preventative action will be before the six-month period, including for many prisoners whereby action should be taken at the start of the sentence.

Such a proposal also aligns better with private residential tenancies, where a Notice to Leave is valid for a period of six months (from the date of expiry of the notice), and if an application to evict is not made to the First-tier Tribunal within this six-month period then a new Notice to Leave has to be issued.

The prevention activity should run throughout the threatened with homelessness period where it is appropriate, rather than limited to 56 days as proposed. It might be that the period of 56 days was an oversight, as this aligns with the English provision where the definition of threatened with homelessness is limited to 56 days.

²⁶ Department for Levelling Up, Housing and Communities (January 2022) [Statutory Homelessness statistics](#)

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

In reality, there are many occasions where households will be unaware that in six months' time they may be homeless. Being asked to leave and household disputes are the most commonly cited reasons for homelessness in Scotland, and this is reflected in the types of accommodation people were leaving or had left when they made their application: 28% from the parental or family home, and 19% from living with friends or partners. Often people might have little or no notice that they will have to leave.

However, what we hope is that for those circumstances where there are indicators of risk at an earlier stage, that housing options assistance can be consistently and effectively provided. Too often we hear from people who have received notification from their landlord that they intend to evict but they are told by the local authority to come back when they have actually been evicted – clarification on when someone should be assessed as threatened with homelessness would be beneficial here, and we pick up on this in question 62.

By extending the duty, risk factors, for example receiving notice from a social or private landlord, should act as a trigger for reasonable steps to be taken in a timely manner. This could include accessing a discretionary housing payment and helping someone put in place an affordable repayment plan for their arrears.

We envisage that extending the definition of threatened with homelessness will be most advantageous to those at risk of homelessness following discharge from an institution (prison/ hospital) or upon termination of other duties (e.g. termination of asylum support upon grant of refugee status, or in the context of care experienced young people). In these circumstances reasonable steps might be to support someone to remain in their current accommodation by making it accessible to wheelchair use, or to support a planned move into alternative suitable housing, for example by supporting them to put their name on a social housing waiting list with the correct priority at the earliest opportunity. Persons who are threatened with homelessness are to be given reasonable preference on mainstream housing lists (section 20(1ZA)(a)(i) Housing (S) Act 1987), and so the earlier an application is made, the closer they will be to an offer when the time comes for them to be discharged or released.

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

The local authority's duty is to assess whether it is 'likely that he will become homeless within six months' – this will always be based on the specific facts in each case.

It is suggested that Statutory Guidance could provide examples of when someone meets the definition of threatened with homelessness e.g.

- Has a discharge from hospital date
- Has a liberation from prison date
- Has received a grant of status from Home Office (which would result in the termination of asylum support and the service of a notice to quit by the housing provider)

The existing definition of threatened with homelessness under section 24(4) 1987 Act could be strengthened to provide clarity for PRS tenants, as proposed in Appendix 1 of the PRG Recommendations in section 24(8):

"This subsection applies if, in respect of the only accommodation the person has that is available for the person's occupation: (a) a valid notice has been given by the landlord under:

- (iv) section 19 or section 33(1)(d) of the Housing (Scotland) Act 1988*
- (v) section 14(2) or 36(2) of the Housing (Scotland) Act 2001;*
- (vi) section 62 of the Private Housing (Tenancies) (Scotland) Act 2016 and that notice will expire within six months."*

This would avoid the need for a tenant to wait until a court or tribunal order were granted, which may come with expenses and increase a tenant's debt.

Tenants who have been served with a notice of proceedings for recovery of possession of a social rented sector tenancy, for example where there are rent arrears, will be unlikely to meet the definition of 'threatened with homelessness within six months'. Once a court summons has been served giving notice of a hearing date that would meet the definition. Social landlords are under a legal obligation to comply with pre-action requirements in advance of serving a notice of proceedings which have the intention of preventing homelessness, by ensuring the tenant has access to the necessary advice and information to address their arrears.

Further, we believe someone who has been given leave to remain and if they are in receipt of asylum support they should be considered threatened with homelessness. Currently, after grant of status is made, the Home Office gives 28 days notice of termination of asylum support and the accommodation provider also issues a Notice to Quit. These three processes are not always aligned resulting in people being issued with a decision on their asylum claim but stuck in asylum accommodation because they have not yet been issued with a Notice to Quit, which local authorities rely on as a trigger to provide homelessness assistance. They should also not have to wait for notice of termination of asylum support for a local authority to consider them threatened with homelessness – once they have been granted leave to remain the termination of asylum support (including being asked to leave their asylum accommodation) is inevitable, and if someone is on asylum support they have already had to prove they are destitute and have no other support available. Providing support once grant of status is made (and if the individual is in receipt of asylum support) would give the local authority and applicant more time to secure alternative accommodation through the statutory homelessness system in line with the preventative principles, rather than waiting for a Notice to Quit as an arbitrary trigger for assistance which severely limits the time available before an individual will be made homeless and in need of crisis support.

Duty to take reasonable steps to prevent homelessness

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

For clarity, Shelter Scotland support a reasonable steps duty in the context of the prevention of homelessness, not for the alleviation of homelessness. The consultation paper indicates that a reasonable steps duty may be introduced not only to prevent homelessness but to alleviate homelessness when this occurs. We note the following at the bottom of page 27 and top of 28 'The current duty under section 31 of the Housing (Scotland) Act 1987 is to take reasonable steps to secure that accommodation is available...' This is incorrect. The duty under section 31 is to 'secure that [permanent] accommodation becomes available for his occupation'. We believe that the amendment of the section 31 duty to make it a reasonable steps duty would be regressive and so do not support this.

Shelter Scotland do however support the recommendation for a reasonable steps duty to prevent homelessness with a non-exhaustive list of reasonable steps specified in the primary legislation.

It is important to state that there is much good prevention activity going on throughout Scotland, but much of this is outwith the statutory homeless framework under informal housing options approaches. An indication of this is the low number of 'threatened with homelessness' cases. At present, Shelter Scotland see few cases where an individual has been assessed as 'threatened with homelessness' by their local authority. Similarly, the last annual homelessness statistics showed in 2020-21 there were 1,103 'threatened with homelessness' decision made, just 3% of all decisions. This included a huge variance between local authorities - from 22% of decisions in Argyll and Bute (95 decisions), to eight local authorities reporting having made five or under 'threatened with homelessness' decisions.

At Shelter Scotland, we find people facing homelessness may have approached their local authority for support, but a homeless application is not always taken and support not provided under Section 32 duties. The following case studies come from recent experience of our advice and support teams across Scotland.

Case study 1: A client and their family were private tenants in a property in a poor state of disrepair. Repairs were requested numerous times and were not been undertaken. The landlord suggested that the tenants just leave if they are not happy, and indicated he might be terminating their tenancy. This resulted in the client approaching their local authority for homeless assistance. Although the local authority said they will provide support to the client from their private rented team, there is a backlog and they cannot provide further support at this time. Despite this partial offer of support, the local authority did not accept a homeless application. Had the local authority taken a homeless application and treated this household as threatened with homelessness, they could have given advice on remedies in the First-tier Tribunal and signposted the household for legal advice in relation to access these remedies.

Case study 2: A client was released from prison in August 2020. Under the SHORE standards, eight weeks prior to his release he should have been supported to make a homeless application, and accommodation should have been put in place 24 - 48 hours prior to liberation. In this case, this did not happen. The day he was released, the client borrowed a friend's phone and called a number he had been given but the council told him they didn't have his name in the system. At 7pm that night they called him back and told him the address of a hostel to go to. He was not provided information to make a homeless application. He stayed in the hostel for around five months before he met someone who referred him to Shelter Scotland.

In many cases we believe individuals would have met the definition of threatened with homelessness. In others it can be less clear, for example private tenants: more clarity would be welcomed on when a private tenant meets the legal definition of threatened with homelessness, particularly given the recent and proposed changes to the private residential tenancy regime including making eviction grounds discretionary.

Case study 3: A client and their family live in a short assured tenancy. The landlord has issued the client with two sets of section 33 notices trying to end the tenancy, under the 'no fault' ground for eviction. Both notices have had some technical errors and the local authority are not willing to provide temporary accommodation until the correct notices are served and an order for eviction is granted through the First-tier Tribunal. The client has been under a great deal of stress awaiting notices to be served correctly by their landlord and the insecurity of not knowing when her family will be evicted and provided support by the council. As this is a short assured tenancy, it is certain that the landlord will repossess the property, and the delay is prolonging the insecurity for the family.

In the cases above, supporting local authorities to shift from crisis intervention to prevention activity may have been helpful to prevent homelessness.

Whilst the Code of Guidance outlines some regulatory requirements on how local authorities should provide advice and assistance in their various duties, this is limited²⁷ and the specific actions making up the duty to ensure accommodation does not cease to be available is not prescribed in detail. In addition, local authorities run 'housing options' services, which again are subject to few legislative requirements although there is Housing Options guidance as well as entries within the Code of Guidance relating to this provision. Offers of support and assistance can vary between local authorities.

The proposals to introduce a reasonable steps duty for people who are threatened with homelessness are therefore welcome.²⁸ It should enable local authorities to build on their current service offering – and entitle applicants by law to receive such assistance. As outlined above, this support could be to either assist people to stay in their own accommodation e.g. through use of mediation service, financial or other help with managing rent arrears, or making physical adaptations to the property; or to find alternative accommodation in a planned move by providing access to a rent deposit guarantee scheme, identifying supported accommodation (under a SSST or PRT) or helping someone apply to a housing association or a common housing register. In line with HARSAG's intent, it should mean outcome-orientated preventative practice can be better regulated, and by mandating specific options that each local authority needs to offer (such as mediation services) it should make the prevention offer between local authorities more comparable. It should (and indeed must) also come alongside new resources for local authorities to undertake this preventative work – a factor which is crucial given the pressures on local authority services and without which will likely result in ineffectual legislation.

Further consideration is required to build on lessons from Housing Options and indeed the current threatened with homelessness duties, to ensure that these proposals meet the policy intention. For example, monitoring of Housing Options has always been described as inconsistent and it can be difficult to make comparisons to understand how it is working in each local authority. The Scottish Housing Regulator has a key role here, too.

²⁷ E.g. Section 9.24 in Scottish Government (2019) [Homelessness: Code of Guidance](#)

²⁸ NB: as discussed elsewhere, we do not think it is helpful for reasonable steps to be included within the statutory response to people who are assessed as homeless, when the existing duties should apply.

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

Yes

No

Please say why, and what are these other specific measures

The measures set out in the consultation document are wide-ranging and welcome. We would stress the importance of information and support to access independent advice and advocacy, and would welcome another measure which makes specific reference to provision of information on how to access legal representation including legal aid in specific situations.

As an illustration of why independent advice is crucial, Shelter Scotland has for the past year been running a service commissioned by Dundee City Council to respond to section 11 referrals in the city. This has been really successful and where the council had experienced low levels of engagement from tenants who have been served notice previously, around 11%, Shelter Scotland has secured 56% engagement. In general, our experience with this service and others, including the service which supported the client quoted below, have shown that some people who don't feel able to accept help from their landlord or statutory services are more likely to engage with independent support.

Case study: Fiona lost her job because of poor mental and physical health, and got into arrears on her rent as a result. She was burying her head in the sand and unable to accept support from the council. Housing officers at the council had been round to Fiona's house but she wouldn't open the door to them because of her anxiety. *"The council tried to come out but I wouldn't open the door. It was daunting the housing officers coming round to my door. They put the dreaded white slip through but don't say what it's about."* [Fiona, a client of Shelter Scotland's Foundations First service in Renfrewshire]

Insight from a 2021 consultation with people with experience of homelessness through our Time for Change project showed, when asked how people thought their homelessness might have been prevented, that people wanted more information on their rights as well as support tailored to their individual needs and not the "generic" housing support offered in these situations. Specifically, the need for support to be put in place around someone's addiction was also highlighted.

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?

Yes

No

Please say why, and how they could be more specific

Whilst the reasonable steps and measures laid out are quite broad, we do not have proposals to make them more specific and it might be more helpful for guidance to go into more detail on these including sharing good practice.

Processes for monitoring and review should be put in place including gathering information on service users' experiences. This should learn from the lessons of Housing Options monitoring which can be inconsistent and it can be difficult to make comparisons to understand how it is working in each local authority. The Scottish Housing Regulator has a key role here, too to ensure the policy intent is met.

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?

Avenues to be utilised and explored include ongoing monitoring through official statistics, use of the Scottish Housing Regulator, and a requirement for accessible information on what services offered would also increase accountability. The continued utilisation of Housing Options hubs for sharing good practice and providing peer accountability will also be important. An updated Code of Guidance will of course be required, which we suggest local authorities should be heavily involved in drafting to encourage ownership and to ensure that wording is practically applicable. Further, a process in which local authorities have to describe what they will need to do to shift to this new model and forecast how much funding they will need to achieve it, similar and possibly linked to the rapid rehousing transition plan processes. This should assist in the budgeting process and provide a guide for national government on the funding requirements of the new duties proposed.

Personal Housing Plans

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

PHPs offer an opportunity to reframe the engagement and the relationship with the homeless household or those at risk of homelessness, embedding their choices and putting them at the heart of decision making.

In 2021 Shelter Scotland in collaboration with Healthcare Improvement Scotland completed a piece of work commissioned by Scottish Government on PHPs, including developing joint guidance and a template PHP and making a series of recommendations for next steps.

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?

Yes, they should form part of a statutory assessment

No, they should be an option

Please say why

In Shelter Scotland's view, households with more complex needs may benefit most from a PHP and in particular those experiencing or who are threatened with homelessness.

PHPs can help to identify the needs and aspirations of people within groups who are at risk of homelessness and can be used to help plan how the local authority and the applicant and their household can work together to prevent homelessness and secure suitable accommodation with access to a wide range of supports.

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

Shelter Scotland agree with the principle of assessing housing support needs as early as possible.

Current legislation which established the housing support duty (Section 32B of the of the Housing (Scotland) Act 1987 inserted by Housing (Scotland) Act 2010) places a duty on local authorities to conduct a housing support assessment for applicants who are unintentionally homeless or threatened with homelessness where they have 'reason to believe' there is a need for the housing support services prescribed in regulations. The prescribed services within the Housing Support Regulations include aspects such as advising or assisting a person with personal budgeting or in dealing with welfare benefit claims; assisting a person to engage with individuals, professionals or other bodies with an interest in that person's welfare; and advising or assisting a person in understanding and managing their tenancy rights and responsibilities. The existing housing support duty kicks in far too late as it requires a decision to have been made on the application, which can some time take in excess of a month. The duty can only assist those who are found to be unintentionally homeless or threatened with homelessness.

The amended Homeless Persons (Unsuitable Temporary Homeless Accommodation) (Scotland) Order requires an assessment of needs to be carried out upon someone presenting as homeless, as the local authority must ensure that any temporary accommodation offered meets the needs of the household (Article 4(b)). The Homeless Persons Unsuitable Accommodation Guidance (Jan 2021) explains this further in paragraph 3.4. *"In assessing whether accommodation is unsuitable for a homeless household, a local authority must take account of the needs of each member of the household, including any protected characteristics, equality considerations or vulnerabilities around psychological informed service delivery and childhood trauma."*

Where no temporary accommodation is required, the UAO does not help someone have a housing support needs assessment. Therefore, as proposed, a housing support assessment which is undertaken at an earlier stage and incorporates those who are threatened with homelessness is welcome. This should be carried out when a homeless application is made and prevention duties (both proposed and current) are triggered.

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

Housing support needs should already be assessed upon presentation where temporary accommodation is required - at least to identify what type of accommodation may be unsuitable, taking into account the needs of the household. Further assessment may need to be carried out alongside the inquiries.

We propose a housing support assessment should be carried out when a homeless application is made and prevention duties (both proposed and current) are triggered.

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?

If someone's circumstance changes from being threatened with homelessness to homeless, the full housing duty should take effect immediately. (Note for this to happen intentionality requires to be abolished. Until such time, those who are found to be intentionally homeless will not be entitled to permanent accommodation.)

There should be regular contact between the local authority and applicant and a clear point of contact for the applicant to update the local authority of a change in circumstance to ensure this process works smoothly and without delay.

The applicant should not be required to undertake any additional onerous application process. The local authority should make any relevant inquiries to determine the change in status, and relevant section 29 duties to provide temporary and permanent accommodation should commence.

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.

It is important to make clear that prevention of homelessness is no longer possible when someone has been defined as statutorily homeless – efforts at this stage are about preventing rooflessness, or alleviating homelessness by enabling someone to move back/stay in their own home. In the majority of these situations, an individual is likely to still require temporary accommodation and therefore it is important that we ensure that there are no barriers to them receiving the full housing duty and no confusion over their rights as someone who is statutorily homeless. Good practice, and arguably lawful decision making, would require a local authority to take the homeless application, advise the applicant of their right to interim/temporary accommodation pending their inquiries and decision, and offer interim accommodation.

In answer to the above question, people experiencing domestic abuse and those people being asked to leave the family home should be treated as statutorily homeless and the full housing duty should kick in. In both circumstances temporary accommodation is likely to be required: whilst the perpetrator of abuse is removed, should the applicant want to return to the home; and whilst mediation, support and advocacy is put in place, to enable the applicant to return to the family home.

People facing eviction from a PRS tenancy may be threatened with homelessness. Where a PRS tenant is living in housing conditions which fall short of the tolerable standard, they may

be statutory homeless and again will likely require temporary homeless accommodation pending repairs to the tenancy.

In some cases, mediation or other prevention activity **may** be effective and someone may be able to move back or remain permanently in their accommodation, and access to the 'reasonable steps' should be available to everyone within these categories should they want them. However, equally there are many situations whereby this would not be the best route for the individual or may simply delay their homelessness, with them reapplying shortly in the future. Or, it may simply be a temporary fix and remove their need for temporary accommodation, enabling them to remain in that accommodation for a short period to provide time to find alternative accommodation – again the statutory homelessness status may be important here for people's priority level in gaining access to social housing. Extreme care must be taken to ensure that any support is person-centred: most people make a homeless presentation as a last resort having already tried to make things work before making an application for assistance.

For those experiencing domestic abuse, again a person-centred approach is extremely important – the victim may not feel safe in their home, pending criminal proceedings. There is also the question of what rights to the tenancy or property the victim has, and how easy it is for the rights to be transferred over. Even if the threat of further abuse is removed or reduced, there may be a risk of further trauma to an individual to return to their previous accommodation where abuse occurred. As section 2.22 of the Code of Guidance states: 'local authorities must not put pressure on people to remain in or return to their previous houses if that would cause distress. In particular, when a person is seeking refuge because of a fear of abuse, there will be an immediate need for rehousing.'

Shelter Scotland believe that no legislative change should be made or is required for these groups. Currently, if a household is assessed as homeless and wishes to return to their previous/present accommodation, they can do so and a local authority fills out the HL1 proforma saying as much under question 23 (e.g. option 10 – returned to previous/present accommodation, or option 11 – moved in with friends/relatives). Shelter Scotland is not aware of any concerns raised by clients over barriers to accessing their previous or alternative accommodation under the present statutory framework, and therefore see no need to amend legislation in this regard.

However, there may be a case to amend guidance to make clear that local authority advice and assistance to return home is an option that individuals may take up if they wish – and indeed the resources should be available to ensure that such services are not limited or restricted to prevent this from happening. Essentially, just because someone has received an assessment of statutorily homeless and is waiting for accommodation, this doesn't mean that the same set of services or prevention support available to them at an earlier stage isn't or shouldn't be available to them to access if they so wish.

Illustrative case: A young person has had an argument with their parents, and leaves the family home. They have nowhere to stay and approach their local authority to make a homeless application. The local authority provides the individual with temporary accommodation. The individual is assessed as homeless.

Three months later, the parents and young person have made contact and at this point are keen to attempt mediation. The young person asks the local authority if they could assist in arranging independent mediation, and following this the parents invite the young person back to stay. The young person chooses to do so, and explains to the local authority they no longer wish to exercise their rights under the homeless legislation. The local authority records the client as having moved back home and closes the case.

In the above case example, guidance for local authorities should ensure that the individual is aware of their rights and that they have been supported to make the right decision for them, to ensure they have choice and control.

Meeting the needs of specific groups

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

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

The consultation proposes that persons leaving prison, youth detention, armed forces or hospital should be treated as threatened with homeless. We believe that if the prevention duty were extended to six months and reasonable steps duty were prescribed with a right of review, that these specific groups will meet the definition of threatened with homelessness. The Code of Guidance is the best place to outline how this legislation ought to be interpreted and applied to assist these groups. We do not believe that the Housing (Scotland) Act 1987 Act should be amended to make reference to specific groups, beyond what is proposed in the definition of 'homeless' in section 24.

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

The Code of Guidance is best placed to address how the legislation might be used to protect certain groups. When legislating to ensure better joined up working, we should ensure that the law remains clear as to who ultimately has responsibility to a) take applications; b) carry out assessments/ inquires; and c) secure accommodation. That should be the local authority.

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

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

See answer to question 37.

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

What else should be included

See answer to question 37.

Prevention Review Group proposed recommendations for stability and suitability of accommodation

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

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

In line with the Cabinet Secretary's comments to the Scottish Parliament regarding the prevention duty proposals²⁹, Shelter Scotland strongly believes that someone who is assessed to be unintentionally statutorily homeless should continue to be entitled to a permanent tenancy as they are at present. Anything less than this represents a regression of rights and is not acceptable under Scotland's commitment to progressive realisation of the human right to adequate housing.

Currently, those who are defined as unintentionally statutorily homeless are entitled to one offer of permanent accommodation. Permanent accommodation is defined as: a Scottish Secure Tenancy, a Short Scottish Secure Tenancy under para 1,2 or 2A of Housing (Scotland) Act 2001; or a Private Residential Tenancy. It does not include accommodation which (a) is overcrowded within the meaning of section 135 Housing (Scotland) Act 1987; (b) does not meet any special needs of the applicant or any other person referred to in their household or (c) that is not reasonable for the applicant to occupy.

Shelter Scotland disagrees strongly with the proposals around the stability of housing outcomes, and in particular the expansion of housing outcomes to include insecure forms of accommodation. We believe the current existing permanent housing duty (and associated temporary accommodation duties) should remain, with the alternative legislative change outlined below for those who might require supported accommodation.

Security of tenure is crucial in preventing future homelessness. Enabling local authorities to discharge duty to those who have already experienced the trauma of homelessness into accommodation without security of tenure is non-sensical, particularly when the underlying principle is to prevent homelessness. Further, taking a human-rights based approach, the Scottish Government has a duty to progressively realise the human right to adequate housing within Scotland. This right includes a strong emphasis on security of tenure: housing is not adequate if its occupants do not have a degree of tenure security which guarantees legal protection against forced evictions, harassment and other threats.³⁰ The proposed changes are in direct conflict with realising the UN right to adequate housing.

²⁹ [Scottish Parliament, Scottish Government debate: Prevention of homelessness duties, 2 Feb 2022](#)

³⁰ [FS21_rev_1_Housing_en.pdf \(ohchr.org\)](#)

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

As above, Shelter Scotland strongly disagree that 12 months is an appropriate minimum expected period for accommodation to be available. Accommodation should be secured in the form of a SST, a PRT or in limited instances a SSST as outlined in question 79. Both these tenancy types have strong rights and protections for their tenants. Offering an applicant an occupancy agreement with almost no legal protection marks a regression in rights and the proposal that a local authority should be assured that accommodation is available for even 12 months provides no legal security of tenure. Furthermore, 12 months seems an arbitrary period, for example for those with complex needs going into supported accommodation, 12 months is not necessarily long enough to build trusting and stabilising relationships with support staff and for support needs to be 'met'.

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?

a) Private tenancy:

We do not see this working in a private tenancy. In any new private tenancy, a tenant would be given a private residential tenancy which comes with its own protections and relatively strong security of tenure with a landlord having to match a specific ground to evict. Furthermore, proposals to make permanent the recent legislative provisions which make all grounds discretionary and introduce pre-action requirements on landlords further strengthen the rights of tenants.

b) Accommodation with occupancy agreement:

We do not see this working in accommodation with an occupancy agreement. We understand the desire to enable occupancy agreements is driven by the need to provide supported accommodation, and we have developed a counter-proposal which we outline below.

The current statutory framework does not presently envisage a Short Scottish Secure Tenancy being granted where there has been no previous Anti-Social Behaviour.

Shelter Scotland suggest a change is made to legislation to enable local authorities to discharge their duty into a SSST for support reasons³¹ – currently the law only allows a local authority to offer a SSST if there is antisocial behaviour. This would mean that local authorities would be able to discharge their duty into supported accommodation which is provided via a SSST or PRT.

³¹ Alongside incorporation of The Homeless Persons (Provision of Non-Permanent Accommodation) (Scotland) Regulations 2010 to strengthen rights further – as detailed further in the paper.

Where the landlord is a social landlord, a SSST can be created under para 6 of Schedule 6 of the Housing (Scotland) Act 2001. Where the landlord is a private landlord a PRT can be granted. So long as the tenancy has been granted following an assessment under section 12A of the Social Work (Scotland) Act 1968 (where the need for community care services have been identified) the landlord can terminate the PRT if supported accommodation is no longer needed (See Ground 9, Schedule 3 of Private Housing (Tenancies)(Scotland) Act 2016). The 2016 Act could be further amended to make reference to a Housing Support Needs Assessment in Ground 9, enabling a private landlord to terminate the PRT where a review of the Housing Support Needs has concluded that supported accommodation is no longer available. In other words the insertion of 'or 6' in section 31(5) Housing (Scotland) Act 2001 would enable local authorities to discharge their duty by offering supported accommodation through a SSST, as well as by a PRT. In both cases a homeless applicant will have greater security of tenure than someone under an occupancy agreement. A Sheriff Court or Tribunal would have oversight of the proposed eviction of the applicant. There are a number of safeguards in place in respect of both which could give rise to a defence by the homeless applicant. This would require effective working relationships with the Social Work department to ensure that everyone who requires an assessment under section 12A would get one including a review of eligibility criteria for assessments.

Shelter Scotland would further suggest incorporating the principles of The Homeless Persons (Provision of Non-Permanent Accommodation)(Scotland) Regulations 2010³² into primary legislation to provide clarity on expectations of the local authority when supported accommodation is provided and to ensure that duty is discharged only when the applicant's needs are met.

The regulations outline that non-permanent accommodation can be offered when:

- (a) a housing support services assessment has concluded that the applicant or any other person residing with that applicant currently requires a level of housing support services which makes permanent accommodation inappropriate; and*
- (b) as a result of that housing support services assessment, the local authority is providing the applicant and any person residing with that applicant with transitional accommodation together with–*
 - (i) all services required in terms of the housing support services assessment and a record of the services to be provided;*
 - (ii) access to independent advice and information services in connection with the services mentioned in sub-paragraph (i);*
 - (iii) a timetable, agreed with the applicant, for the provision of the transitional accommodation and housing support services and a record of the timetable;*
 - (iv) a review date for the provision of services and transitional accommodation, not later than six months from the date on which the transitional accommodation was first provided;*
 - (v) an undertaking to provide permanent accommodation when a housing support services assessment identifies that this would be appropriate; and*
 - (vi) a mechanism to monitor the use of transitional accommodation and the long term outcomes for the applicant.*

³² [The Homeless Persons \(Provision of Non-permanent Accommodation\) \(Scotland\) Regulations 2010](#)

We believe these regulations offer important protections for those experiencing homelessness who require supported accommodation including an ongoing duty to provide permanent accommodation when this is identified as appropriate.

In contrast, the consultation proposes enabling local authorities to discharge their duty to people experiencing homelessness to an occupancy agreement. Supported accommodation through the vehicle of an occupancy agreement, whilst possible³³, is not desirable in particular given the vulnerability of this client group and the policy intention to prevent (recurring) homelessness. There is far less scope for preventing eviction from accommodation occupied under an occupancy agreement than there is for someone who has a SST, SSST or PRT.

The following case studies are provided as examples of homeless persons with support needs who are already in the homeless system and being asked to leave their (temporary) accommodation. In these instances, these individuals had no security of tenure, and on being asked to leave had to contact Shelter Scotland to access their right to further temporary accommodation to which they were entitled:

Case study 4: A teenage boy with autism, ADHD and epilepsy was provided with temporary accommodation at a hostel. He was asked to leave because of his behaviour.

Case study 5: A young teenage girl with ADHD and depression was asked to leave a supported accommodation unit due to behavioural issues, having previously been removed from other temporary accommodation units for similar reasons. The council noted that the staff in the supported accommodation felt ill equipped to support her given her support needs.

We do not believe the safeguards proposed would prevent scenarios like the above from happening. It is the lack of security of tenure and due process rights which fail to protect these individuals. Similarly, it highlights the need to ensure that accommodation is suitable in that they are able to provide support at the level required. See the end of this answer for further detail on the safeguards proposed for all non-standard options.

Further, current legislation envisages the provision of supported accommodation by way of a short assured tenancy for a minimum of 12 months. This is now redundant given the Private Housing (Tenancies)(Scotland) Act 2016. It seems appropriate to highlight that this Act replaced short assured tenancies with private residential tenancies and the greater security of tenure they afford. The proposals of the PRG to introduce a mechanism to discharge duty to people experiencing homelessness to accommodation with an occupancy agreement or a non-legally binding 'assurance' of its term, i.e. accommodation even more insecure than a short assured tenancy, is a backwards step and marks a regression in rights.

c) Return to family home/living with relative:

We have serious reservations about introducing this as a potential outcome for discharge of a local authority's duties to homeless people. Relationship breakdown is one of the primary reasons for homelessness. 28% of homeless applications were made from people living in the parental or family home or with relatives. We already see in practice homeless people returning to homes where they are not welcome and do not feel safe because the local authority have advised them that there is no accommodation available for them upon presentation. As stated below, there is nothing in the current statutory framework preventing a homeless applicant from choosing to return to the family home or moving in with a relative, where they have been given advice in relation to their homelessness rights and advice on the housing options available to them.

³³ See *Watts v Stewarts and others (Trustees of the Ashted United Charity)* [2018] Ch 423.

Our experience is that often if a local authority calls and asks if a young person who has been asked to leave their home and approached the local authority for support, family members will say yes and the young person returns home, only for the relationship to break down again shortly after.

Shelter Scotland case study: A young person approached their local authority to make a homeless application after their relationship had broken down with their parents with whom they stayed. The young person did not want the housing officer to contact their parents and would not provide their contact details. The housing officer phoned their school instead, then called the parents who said their child could return home. Two days later, the parents asked the young person to leave again.

Pressure from another party to allow someone to move back home is unlikely to be successful without mediation and support being in place to address underlying issues for both the person who has been asked to leave and the family they are being asked to return to. Even when this is in place a long-term return is not guaranteed given that (dependent on the circumstance) the individual might have no or limited rights to stay in the home. The proposal that an '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' will do little in reality to change this, and certainly provides no legal security of tenure for the person seeking accommodation.

Currently, if a household is assessed as homeless and wishes to return to their previous/present accommodation, or move in with friends or relatives, they can do so and a local authority fills out the HL1 proforma saying as much under question 23 (e.g. option 10 – returned to previous/present accommodation, or option 11 – moved in with friends/relatives). Shelter Scotland is not aware of any concerns raised by clients over barriers to accessing their previous or alternative accommodation under the present statutory framework, and therefore see no need to amend legislation in this regard as proposed by the PRG.

However, there may be a case to amend guidance to make clear that returning home is an option that individuals may take up if they wish – and if that is the case that local authority advice and assistance should be available to support the individual to do so. Essentially, just because someone has received an assessment of statutorily homeless and is waiting for accommodation, this doesn't mean that the same set of services or prevention support available to them at an earlier stage isn't or shouldn't be available to them to access if they so wish.

Illustrative case: A young person's relationship with their parents has broken down over a period of months, and they leave the family home. They have nowhere to stay and approach their local authority to make a homeless application. The local authority provides the individual with temporary accommodation. The individual is assessed as homeless. Three months later, the parents and young person have made contact and at this point are keen to attempt mediation. The young person asks the local authority if they could assist in arranging independent mediation, and following this the parents invite the young person back to stay. The young person chooses to do so, and explains to the local authority they no longer wish to exercise their rights under the homeless legislation. The local authority records the client as having moved back home and closes the case.

In the above case example, guidance for local authorities should ensure that the individual is aware of their rights and that they have been supported to make the right decision for them, to ensure they have choice and control. The law as it stands still enables flexibility and there should be no bar to households' access to 'housing options' services. Guidance can and should ensure this is clear to local authority housing practitioners, for example not limiting mediation and support services to only those at

risk of homelessness. In short, there is no need to change the statutory framework for people experiencing homelessness to access 'mainstream' accommodation. However, equally there should be an acknowledgement that making a homeless application is also a choice and a method by which households can access additional, specific support and rights appropriate for their housing situation.

The safeguards proposed within the consultation for all non-standard accommodation options are in three parts:

(1) that the applicant consents to that type of accommodation;

We have significant concerns about how to ensure consent is freely given, and the potential coercion of individuals into accepting these options, particularly those who may have support needs.

Amendments to The Homeless Persons (Unsuitable Accommodation)(Scotland) Order 2014, introduced Rapid Access Accommodation as a possible housing option for those in need of temporary accommodation. The law makes it clear that Rapid Access Accommodation can only be used where the household has agreed to be placed in this type of accommodation, which does not otherwise meet all the suitability standards required in law. The guidance on the Order provides: 'Article 7A of the Order now allows other accommodation model options that should be considered by local authorities as part of their homelessness portfolio and can broaden the options available to some homeless households. As the specific need of one household will vary considerably from another, these options should be carefully considered and applied and only when there is agreement with the homeless household that this is the most suitable option available for them.' (para 4.19) In a recent Shelter Scotland case when asked about the type of accommodation our client was being offered we were told:

'This is RRA and is the only type of accommodation available at this time until the property comes available. All homeless people go into rapid access accommodation until a suitable temporary flat becomes available. At this time there [are] no temp flats'

Rapid Access Accommodation was not suitable for this client. They had to leave after several days and sleep on a friend's couch.

The law now empowers local authorities to use Rapid Access Accommodation when complying with their duty under Section 29 to make temporary homeless accommodation available. The safeguard written in, which requires the agreement of the homeless person and the presentation of Rapid Access Accommodation as one of several options available to the homeless person are insufficient to protect the individual in practice, unless they are able to secure independent specialist advice. We have no reason to believe that the proposed safeguards in relation to the use of 'non-standard' housing outcomes will be more effective, when ultimately local authorities do not have the resources to comply with their statutory duties.

(2) that the owner/ landlord has provided written confirmation of their intention that the accommodation will be available for at least 12 months;

This would not prevent a parent or landlord (for example) from changing their mind – and given the situations would often relate to instances whereby an individual has previously been asked to leave, this would be high risk. Furthermore, it is difficult to envisage what a local authority could or would do where a parent or landlord subsequently does change their mind, other than take steps to take a fresh homeless application and secure temporary accommodation.

(3) that the local authority is satisfied with this reassurance.

This proposed safeguard effectively leaves it to the local authority to decide whether or not the non-secure accommodation is adequate for the purposes of discharging their duty. It provides very little reassurance to the applicant who would need to be able to challenge the local authority's exercise of its discretion.

Finally, the proposals have been drafted under the understanding that intentionality would be abolished. This is not yet the case and we have concerns about how this would affect people's rights in practice.

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?

Yes

No

Please say why, and any other grounds that should be considered

Shelter Scotland welcomes the introduction of the suitability standards – these provide clarity in relation to what type of accommodation may be 'reasonable for the applicant to occupy' and mirror the standards developed through the Homeless Persons (unsuitable accommodation)(Scotland) Order 2014, as amended, which applies to temporary homeless accommodation. In practice it is difficult to challenge an offer of permanent accommodation – so this extended and non-exhaustive list is welcome.

In particular, the proposed definition of suitable accommodation includes reference to its affordability, which is a welcome introduction, given the importance of affordability in ensuring a tenancy will be sustainable.

On the location point, the guidance should include consideration of the right not to be near unhelpful social networks as requested, for example for people leaving prison.

One addition to be considered is that a key factor in the suitability of accommodation is the availability of the appropriate level of support. In practice, even if the bricks and mortar are 'suitable', a tenancy can quickly fail without support and therefore it is not suitable without the support being in place.

Further definition of the suitability elements should be reviewed in light of the Scottish Government's commitments to progressive realisation of the human right to adequate housing.

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?

Yes

No

Please say why

No, Shelter Scotland's view is that the introduction of proposals around 'stability' will not always lead to better outcomes for the applicant. Should the housing outcomes for homeless persons, who are presently entitled to maximum security of tenure in the social or private rented sector, be extended to include options with less security of tenure, it would be reasonable to expect recurring homelessness. Notwithstanding the stress on the household, it is difficult to see how this will alleviate the burden on local authority homeless services in the medium to longer term.

The consultation implies changes are required to ensure that homeless households are able to access the same set of housing options available to the non-homeless population, including the above examples of supported accommodation and returning to previous accommodation, and other options such as living with a resident landlord or shared accommodation.

We have outlined the necessarily changes to legislation to enable supported accommodation to be provided in such a way that provides security of tenure. With regard to the other options, Shelter Scotland believe that no further legislative change is required. Currently, if a household is assessed as homeless and wishes to return to their previous/present accommodation, or move in with friends or relatives, they can do so and a local authority fills out the HL1 proforma saying as much under question 23 (e.g. option 10 - returned to previous/present accommodation, or option 11 - moved in with friends/relatives). Shelter Scotland is not aware of any concerns raised by clients over barriers to accessing their previous or alternative accommodation under the present statutory framework, and therefore see no need to amend legislation in this regard.

Shelter Scotland do however support the introduction of the suitability standards.

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

The Prevention Review Group suggested that accommodation not protected by other legal safeguards (referred to "non-standard" options in the PRG report) must have additional safeguards in place:

- The accommodation must have appropriate facilities for settled living (such as 24-hour access, adequate toilet and washing facilities, access to kitchen facilities, a private bedroom)
- 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).

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?

Yes

No

Please say why, and if there are additional safeguards that could be put in place

Shelter Scotland do not agree with the proposal to enable local authorities to discharge into non-standard accommodation as outlined in questions 77-79. If the proposal were to go forward, the safeguards are not sufficient.

In relation to the additional safeguards specifically:

- As per question 79 we have significant concerns about how to ensure consent is freely given, and the potential coercion of individuals into accepting these options, particularly those who may have support needs.
- Although a statement of rights and responsibilities is proposed, this does not address the core issue of the lack of security of tenure and due process rights.
- There should be an element included regarding the level of support offered at the accommodation meeting the individuals' support needs.

PRG proposed recommendations for enforcing people's rights

Right to review

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?

Yes

No

Please say why

The existing legislative provision on reviews (section 35A) does not provide for a right to review the full range of decisions which are ordinarily made in homelessness cases. Reform in this area is welcome.

To the list of proposed recommendations outlined in Appendix 1 PRG Recommendations at section 35A, we would suggest including the following right to review:

- Any decision as to whether the applicant is eligible for homeless assistance.

This could be a different decision to that proposed in section 35A(2)(a) - 'any decision to refuse an application made under section 28' as a local authority may have reason to believe that someone may be eligible for homeless assistance in which case they are duty bound to take the application. Following their enquiries the local authority may conclude that the applicant is in fact ineligible and a decision to that effect should be issued. In other words an ineligibility decision will often be issued after an application has been taken and inquiries are made.

We welcome the inclusion of a right to review an offer of accommodation under section 29.

We welcome the extension of the statutory review period from 21 to 28 days. Homelessness is a complex area of law and applicants will often require specialist advice at review stage. There are concerns about the availability of free specialist advice to homeless people which gives rise to access to justice issue. Reference is made to these concerns at question 33.

We also welcome the proposed clarity introduction by provision section 35A(4) that where an applicant accepts an offer of temporary or permanent accommodation this does not preclude them from exercising their right to review. This is important, as often in practice, a homeless person will have no option but to take an offer so as to avoid rough sleeping or returning to another precarious housing situation, notwithstanding the fact that the offer of

accommodation being made is not acceptable to that person. English statutory framework provides this clarity in law.

It would make sense to extend the decisions specified under section 30 -notification of decisions and reasons- to cover the series of decisions which may be reviewed. We would again recommend including the requirement to issue a decision on eligibility to the list of new proposed decisions.

Right to appeal

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

Section 35C introduces a new legal remedy in homeless cases by creating a right to appeal a negative section 35A decision to the First Tier Tribunal.

This is a welcome proposal, as there is currently no further right of review beyond Section 35A unless there are grounds for judicial review, which is not the same as a right of appeal.

Judicial review is a costly and often inaccessible remedy as someone ordinarily requires both a solicitor and an advocate to take such proceedings.

Introducing appeals on points of law and the merits of a decision to the First Tier Tribunal would increase access to justice for homeless people. It is important we learn lessons from extension of Housing & Property Chamber to all aspects of private sector housing. Sufficient resource will need to be made available to recruit and train staff to administer justice; legal aid will need to be made available for homeless applicants, wishing to seek legal advice.

We would submit that any fears that an appeal right would result in the judicialisation of the administration of homelessness are ill founded in Scotland. There are very few court cases brought in Scotland in the context of homelessness. On the contrary, increased access to justice for homeless persons will no doubt also result in greater clarity in homelessness law as more cases are brought before a tribunal.

As well as the appropriate legal remedy following an unsuccessful right of review, judicial review proceedings are required in homeless cases where a local authority is alleged to be in breach of its statutory duty- most commonly, in relation to its duty to take a homeless application under section 28 or to secure interim accommodation under section 29. Interim orders can be sought in the context of judicial review proceedings, normally where an applicant requires interim accommodation pending determination of the substantive judicial review claim.

Consideration should be given as to what powers if any the Tribunal would have to grant interim orders, should the need arise.

Regulation

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?

In addition to annual reporting on the experiences of individuals experiencing homelessness, we suggest a thematic review as local authorities adopt the new duties would provide key insight and learning about what is working well and what the barriers might be.

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

[no answer provided]

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?

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

The PRG proposal was that 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. We strongly agree with this proposal. The Social Bite-commissioned guidance for rapid rehousing plans suggested that "*Rapid rehousing strategies therefore require local authorities and HSCPs to assess and quantify the level of support needs, and to plan and resource these support requirements to ensure households are rehoused as quickly as possible.*"³⁴ We are not aware of how effectively this is working at present but expanding this to a general assessment of housing support needs of persons in an area should assist in strategic planning for prevention services as well as being beneficial for temporary accommodation provision and identify any training needs for staff to support them in carrying out their roles. This should also assist local authorities in meeting their statutory duties under the Equality Act 2010.

³⁴ Indigo House (2018) [Rapid Rehousing Transition Plans: Guidance for Local Authorities and Partners](#)

SECTION 4: QUESTIONS ON THE PACKAGE OF PROPOSALS, RESOURCES AND MONITORING

The package of proposals

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

Strongly Agree

Agree

Disagree

Strongly Disagree

Please say why

Shelter Scotland was pleased to participate in the Prevention Review Group (PRG) and we share the sector-wide aspiration to ensure public bodies, beyond the housing and homelessness sector, provide the required support to prevent homelessness wherever possible.

Many of the proposals within the government consultation would introduce important and positive changes for people at risk of homelessness and we wholeheartedly support them. In particular, we support the proposed duties on public bodies to ask and act, and we support an amended definition of threatened with homelessness to incorporate those at risk of homelessness within six months and to provide clarification on notices. The proposal to ensure accommodation meets suitability requirements is also very welcome and is a positive step towards the incorporation of elements of the human right to adequate housing in Scots law. For us however, the litmus test for delivering the aspiration shared by all members of the group must be that any changes will safeguard and enhance existing homelessness rights and protections.

We have significant concerns about the proposal to remove people's right to permanent accommodation in the form of a PRT or SST, by adding in non-secure housing options. We strongly oppose this proposal and see it as an unnecessary dilution of Scotland statutory rights. We believe the proposals which are meant to increase choice and control for people experiencing homelessness will in fact have the opposite effect, reducing their choice and control and in particular their access to social housing. Further, given the link between insecure housing and homelessness, we believe introducing options for local authorities to discharge their duty to homeless households into inherently insecure housing options goes directly against the policy principles of early intervention and preventing homelessness.

To solve the housing and homelessness emergency in Scotland and realise the human right to adequate housing, we must strengthen the housing rights framework, not weaken it.

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?

We believe the focus should be on strengthening rights and the proposals addressing prevention of homelessness, including duties on other public bodies and legislating to

encourage roll out of much of the good practice already underway on prevention throughout the country. Namely: the duty on public bodies to ask and act, amending the definition of threatened with homelessness to include those at risk of homelessness within 6 months and clarification on notices, and amending the duty on local authorities to enable supported accommodation to be provided through the vehicle of a SSST, alongside incorporation of the principles of the non-permanent accommodation regulations. We believe these will meet the policy principles whilst avoiding regression of housing rights.

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?

See answer to question 88:

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Many of the proposals within the government consultation would introduce important and positive changes for people at risk of homelessness and we wholeheartedly support them. In particular, we support the proposed duties on public bodies to ask and act, and we support an amended definition of threatened with homelessness to incorporate those at risk of homelessness within six months and to provide clarification on notices. The proposal to ensure accommodation meets suitability requirements is also very welcome and is a positive step towards the incorporation of elements of the human right to adequate housing in Scots law. For us however, the litmus test for delivering the aspiration shared by all members of the group must be that any changes will safeguard and enhance existing homelessness rights and protections.

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To solve the housing and homelessness emergency in Scotland and realise the human right to adequate housing, we must strengthen the housing rights framework, not weaken it.

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

Many groups of people with protected characteristics are more likely to experience housing insecurity and have a greater risk of homelessness. We have concerns about the negative impact of introducing 'stable' housing options to the statutory homeless system, i.e. accommodation options without any security of tenure, and this would have an adverse impact.

(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

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?

[no answer provided]

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?

[no answer provided]

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?

Shelter Scotland believe the proposals relating to prevention of homelessness offer an opportunity for savings or benefits to services – whilst acknowledging that the primary driver for taking forward the proposals should be helping people to avoid the personal crisis of 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?

[no answer provided]

Monitoring

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?

Standard information on numbers threatened with homelessness and the response of the local authority – i.e. what reasonable steps were undertaken, and what the outcome is – i.e. whether prevention activity was successful. Statistics on referrals into the local authority from different public bodies would also be welcome.