



SHELTER CONSULTATION RESPONSE

Department for Levelling Up, Housing and Communities:

Technical consultation on consequential changes to the homelessness legislation

Introduction

Changes to the rights of people facing homelessness

- This consultation may appear 'technical'. But it concerns changes to the rights of homeless people. We urge the government to proceed with caution and consideration to avoid any unintended consequences, which could lead to a reduction in support for people facing homelessness. For some people, this could mean the difference between life in suitable accommodation or the risk of an untimely death on the streets.
- Consequently, while we understand the need to consult swiftly in order to introduce the Renters' Reform Bill, it's disappointing that the consultation period was limited to seven weeks, including the Christmas and New Year period: the busiest time for voluntary sector homelessness organisations.

Need for transitional protection

- People who already have an Assured Shorthold Tenancy (AST) at first implementation stage of abolition of section 21 (i.e. for new tenancies) will continue to be legally served with section 21 notices until the second implementation stage (likely to be at least 18 months after the legislation receives Royal Assent).
- **So amendments to the homelessness legislation will need to be drafted in such a way as to provide transitional protection to tenants with pre-existing ASTs, where a s.21 notice is served during the transitional year.**

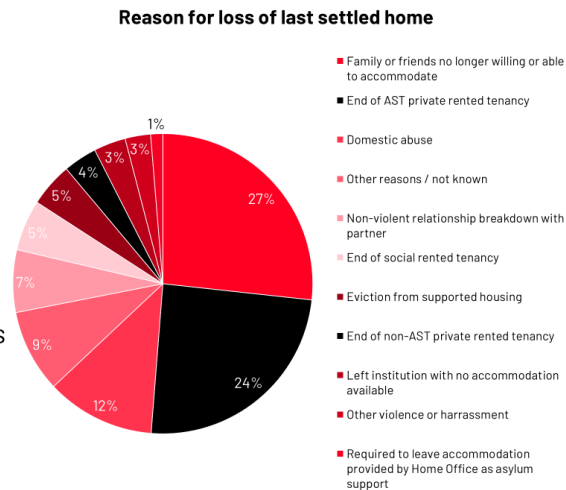
Policy aims

- The most important priority for any changes to the homelessness legislation must be that they **should not lead to a reduction in rights** of people facing homelessness.
- The abolition of section 21 (no-fault) possession notices via a Renters Reform Bill will be a long-overdue and **important homelessness prevention measure**. The ending of a private tenancy is a leading trigger of homelessness, with around a quarter of households applying for homelessness assistance losing their last settled home for this reason. Many of those whose homelessness is triggered by family and friends being no longer willing to accommodate are also likely to have lost their last settled home due to no-fault eviction and initially tried to avoid homelessness by staying with family and friends.

THE TRIGGERS OF HOMELESSNESS

27% of households lost their last settled home due to **no longer being able to stay with friends or family**

The **second most common trigger (24%)** of homelessness is the **ending of an assured shorthold (AST) private tenancy**



Source: MHCLG statutory homelessness tables

Homelessness statistics for the period January to March 2022

- The aim of changes to the homelessness legislation must be to require and encourage local authorities to take **early prevention actions** which support tenants to remain in their existing home (if they wish to remain there). It's particularly important to help families with dependent children and vulnerable adult households in a settled home.
- Therefore, the first objective of changes to the legislation in regard to homelessness prevention should be to place an expectation on local housing authorities to **prevent repossession and eviction** by supporting applicants to avoid or defend possession proceedings, e.g. by providing debt advice and negotiating a plan to clear rent arrears. It should not be simply to prevent the main rehousing duty being owed.
- The legislation and any subsequent guidance should expect local housing authorities to help applicants into a suitable alternative home **only if it's clear there's no likelihood of the current home being saved** (e.g. no realistic prospect of successfully defending possession proceedings) or the applicant doesn't wish to remain living there (e.g. escaping domestic abuse).
- It's important that the legislation **sets out clear legal duties on local housing authorities to prevent homelessness**, rather than leaving assistance to their discretion. We regularly advise on cases where local housing authorities have breached the homelessness legislation by failing to take applications for assistance, make assessments and fulfil duties (often referred to as 'gatekeeping').
- Where the legislation sets clear duties and expectations, such practices can be challenged to ensure that applicants can enforce their rights to help with securing suitable accommodation.
- **If the government is serious about preventing homelessness and making sure families and individuals at risk of repossession aren't turned away without help, then robust, rights-based legislation is essential.**

- **This is why we recommend the government proceed with Option 2 and why we oppose Option 1 and Option 3.**
- **This is also why we oppose the removal of the reapplication duty unless the Renters Reform Bill creates a two-year protection period.**

Impact on homelessness services

- The abolition of s.21 notices (and thereby no-fault evictions) **should lead to a considerable reduction in caseloads for local authority homelessness services.** We accept some private tenants will still face repossession on either the permissible landlord grounds (e.g. landlord selling property) or due to breach of tenancy (e.g. rent arrears, nuisance), but there are likely to be far fewer cases than the number of applicants who are currently homeless due to no-fault eviction. This should allow statutory homelessness services to put more resources into preventing repossession and eviction.

Response to consultation questions

1) Substantial changes to the legislation

A) Threatened with homelessness and ending the prevention duty

This consultation proposes three options for amending the legislation on prevention of homelessness. The consultation doesn't state which is the government's preferred option.

Option 1 proposes:

- Local authorities would assess whether an applicant is threatened with homelessness (within 56 days) and, if so, accept a prevention duty.
- **Applicants who have been served with valid notice to leave a tenancy may or may not be considered threatened with homelessness**, and the local authority would assess whether a prevention duty is owed.
- The prevention duty could be ended when any of the circumstances for ending the duty apply, including having secured that suitable accommodation is available for 6 months or more, or that 56 days has passed.
- If after 56 days the applicant continued to be threatened with homelessness, **the local authority could extend the duty** and continue taking reasonable steps to prevent homelessness or could end the prevention duty.
- This option would completely remove the specific requirements to accept and continue prevention duties that currently apply to cases involving section 21 notices.

Q1a: What will be the impact of option 1 on local authority resourcing? Please provide comments for your answer.

This option would likely result in a switch in resourcing from preventing homelessness to relieving homelessness (i.e. helping homeless households to access a suitable tenancy) and to procuring temporary accommodation.

It would result in a switch from prevention to crisis-point intervention and is likely to push up costs of providing interim and temporary accommodation.

Q1b: What will be the impact of option 1 on local authority caseloads? Please provide comments for your answer.

The abolition of s.21 notices (and thereby no-fault evictions) should lead to a considerable overall reduction in caseloads for local authority homelessness services.

This should allow statutory homelessness services to put more resources into preventing repossession and eviction by providing help with defending possession notices and claims.

This option could result in a huge drop in prevention caseloads, but a rise in relief and interim/temporary accommodation caseloads.

Q1c: What will be the impact of option 1 on the demand on time for local authority staff? Please provide comments for your answer.

This option would put few demands on the time of local authority staff in terms of preventing homelessness.

However (as set out in response to Q1d below) it could put greater demands on staff time in terms of relieving homelessness and procuring/managing temporary accommodation.

Q1d: What will be the impact of option 1 on homelessness prevention activity and success rates within local authorities? Please provide comments for your answer.

We oppose Option 1. It crosses a red line for Shelter.

It gives complete discretion to local authorities to assess when an applicant is threatened with homelessness and when prevention duties would apply. It would entirely be up to local housing authorities to decide whether someone who receives a section 8 notice is 'likely to become homeless within 56 days'.

One local authority could accept a family as homeless on the date the notice expires, thereby accepting a prevention duty immediately and a relief duty on expiry. Whereas another authority could refuse to accept the family as homeless unless/until a court has made an outright possession order. As there is no way of knowing when the court might make such an order, it would allow authorities to defer accepting the prevention duty until the possession proceedings are well advanced, when it may be too late to successfully defend the possession proceedings and save the home.

We could see tragic cases of families losing their home, when earlier statutory prevention advice could have averted this.

It would result in people at risk of homelessness being turned away without help and housing advice organisations, such as Shelter, being unable to challenge such practice to ensure they receive statutory assistance.

Homelessness prevention activity and success rates are bound to decline when local authorities have a wide discretion to delay accepting the prevention duty and (once accepted) to end it after 56 days without having successfully prevented homelessness.

So this approach is likely to:

- undermine the government's approach of early prevention
- risk increasing homelessness (i.e. applicants owed the homelessness 'relief' duty)
- risk increases in numbers in temporary accommodation (i.e. applicants owed the main rehousing duty because they are unintentionally homeless and have a 'priority need')
- risk increases in street homelessness (i.e. applicants not owed the main rehousing duty)
- result in a postcode lottery of assistance, with a wide variation of policies between different local authorities in respect of cases with the same facts.
- make it more difficult to provide information on rights to people at risk of homelessness, as it would depend on local policy.

We suspect an equalities impact assessment would conclude that this option risks putting people with certain protected characteristics (e.g. mental health, learning and/or physical disabilities) at greater risk of repossession, eviction and homelessness.

Q1e: Do you have any additional comments on the impacts of option 1 which have not been covered in your response to Q1a-d? Yes/No. If yes, please provide comments for your answer.

Option 2 proposes:

- Local authorities will be required to accept the prevention duty **at the point of a section 8 notice being served** regardless of whether the person is at risk of becoming homeless within 56 days.
- The local authority would owe a prevention duty **where a valid notice was served on any ground relating to an assured tenancy**, including where the landlord is a Private Registered Provider.
- Where a local authority has accepted a prevention duty in respect of someone served with a section 8 notice they cannot end the duty on the basis that 56 days have passed.
- The local authority would be required to keep the prevention duty open until one of the other circumstances for ending the duty applied.
- If the local authority were unable to prevent the landlord from pursuing possession of the property, **the local authority will be required to assess at what point it is no longer reasonable for the applicant to continue to occupy**, such that a relief duty is owed.

Q2a: What will be the impact of option 2 on local authority resourcing? Please provide comments for your answer.

Placing more emphasis on prevention, it would require local housing authorities to ensure that they have resources (e.g. housing advisers, discretionary housing payments, referral to support services) to prevent repossession, eviction and homelessness.

They may choose to commission local prevention services who are skilled in successfully averting and defending possession proceedings or support services who may be able to avert possession on ASB grounds by working with a tenant with support needs to address nuisance behaviour.

Q2b: What will be the impact of option 2 on local authority caseloads? Please provide comments for your answer.

The abolition of s.21 notices (and thereby no-fault evictions) should lead to a considerable overall reduction in caseloads for local authority homelessness services.

This should allow statutory homelessness services to put more resources into preventing repossession and eviction by providing help with defending possession notices.

Although this option would require local housing authorities to prevent homelessness, there would still be an overall reduction in prevention caseloads. Where homelessness was prevented, there would also be a reduction in homelessness relief activity and interim/temporary accommodation caseloads.

Q2c: What will be the impact of option 2 on the demand on time for local authority staff? Please provide comments for your answer.

It should reduce demands for staff time on procuring relief offers and interim/temporary accommodation, as well as managing temporary accommodation.

This would free up more staff time for genuinely preventing homelessness.

Q2d: What will be the impact of option 2 on homelessness prevention activity and success rates within local authorities? Please provide comments for your answer.

This is our preferred option. We urge the government to proceed with this option.

This will ensure that early prevention assistance is owed to all tenants at risk of homelessness following the service of any possession notice.

It is essential to ensure local authorities carry out intensive prevention work (e.g. helping an applicant to claim housing benefit or discretionary housing payments) during the period of the notice, with a view to persuading the landlord not to bring proceedings.

Once the proceedings have started, it is essential to ensure local authorities carry out prevention work in the period leading up to the court hearing with the aim of enabling the applicant to defend the proceedings and/or persuading the landlord not to go ahead with repossession or accept a suspended possession order (e.g. on the basis that payments are made towards the arrears).

If a case comes to court, it is essential to ensure local authorities carry out (or commission local agencies to carry out) prevention work to defend the possession claim or to persuade the court to make a suspended possession order.

This option will give the highest chance of prevention success rates, thus resulting in fewer cases of homelessness relief and temporary accommodation.

If the government chooses Option 2 and assured tenants qualify for the prevention duty when a section 8 notice of seeking possession is served, as we recommend, there is one anomaly which should be addressed.

Option 2 would ensure that assured private and housing association tenants would be owed a continuing prevention duty when served with a section 8 notice. However, no such provision is made for secure council tenants served with a section 83 (Housing Act 1985) notice or introductory tenants served with a section 128 (Housing Act 1996) notice.

We therefore recommend that Option 2 is extended so that the same provision for a continuing prevention duty applies to secure council tenants receiving a section 83 notice or introductory tenants receiving a section 128 notice.

Q2e: Do you have any additional comments on the impacts of option 2 which have not been covered in your response to Q2a-d? Yes/No. If yes, please provide comments for your answer.

No further comments.

Option 3 proposes:

- Local authorities would accept the prevention duty **where a valid notice had been served under section 8 notice for one or more of the landlord circumstance grounds**, regardless of whether the person is at risk of becoming homeless within 56 days.
- Where a local authority has accepted a prevention duty in respect of someone served with a section 8 notice under the landlord circumstance grounds, they would not close it on the basis that 56 days have passed even if the notice has expired.
- The local authority would continue to owe the prevention duty until one of the other circumstances for ending the duty applied.
- This option would replace the current requirement to accept and continue a prevention duty where a valid section 21 notice is served, but only where certain grounds for possession are to be relied on. The full list of mandatory landlord circumstance ground can be found at Annex B.

Q3a: What will be the impact of option 3 on local authority resourcing? Please provide comments for your answer.

This option would likely result in a switch in resourcing from preventing homelessness to relieving homelessness (i.e. helping homeless households to access a suitable tenancy) and to procuring temporary accommodation.

It would result in a switch from prevention to crisis-point intervention and is likely to push up the costs of providing interim and temporary accommodation.

However, given the circumstances of people who have been evicted for rent arrears or anti-social behaviour, it is likely that homelessness relief will be challenging.

Q3b: What will be the impact of option 3 on local authority caseloads? Please provide comments for your answer.

The abolition of s.21 notices (and thereby no-fault evictions) should lead to a considerable overall reduction in caseloads for local authority homelessness services.

This should allow statutory homelessness services to put more resources into preventing repossession and eviction by providing help with defending possession notices.

This option could result in a huge drop in prevention caseloads, but a rise in relief and interim/temporary accommodation caseloads.

Q3c: What will be the impact of option 3 on the demand on time for local authority staff? Please provide comments for your answer.

We are not in a position to answer this question.

Q3d: What will be the impact of option 3 on homelessness prevention activity and success rates within local authorities? Please provide comments for your answer.

We oppose Option 3. We urge the government not to proceed with this option.

While not quite as bad as Option 1, this option restricts prevention duties to applicants with served a section 8 notice on landlord circumstances grounds only (e.g. landlord selling the property) and means that local housing authorities will only have to continue prevention activity beyond 56 days where one of those ground applies.

It would mean that tenants, including social tenants, facing repossession due to rent arrears or other breaches of tenancy would not be owed a prevention duty.

As the biggest cause of homelessness is affordability, applicants most at risk of homelessness are those without sufficient income (including housing benefit) to afford or access a suitable alternative home. They may well be facing possession and eviction due to rent arrears and will likely struggle to access a suitable alternative tenancy on the basis of previous rent arrears.

Likewise, people with unmet support needs, who may be facing repossession due to non-payment of rent or nuisance behaviour, are also those most at risk of homelessness because landlords will be more risk-averse of letting to someone with unmet support needs who was evicted for anti-social behaviour.

Survivors of domestic abuse could also face repossession, eviction and homelessness due to the anti-social behaviour of the perpetrator. Where they are lone-parent families, they are at higher risk of homelessness because of the impact of the benefit cap and the need to afford a family-sized home while recovering from (and helping children recover from) the trauma of domestic abuse, relationship breakdown and homelessness.

The key for households who struggle to pay rent or with support needs which may lead to anti-social behaviour is to help them to sustain their existing tenancy and avoid repossession, eviction and homelessness because – once homeless – it's likely to be very difficult to assist them into an alternative tenancy.

Because homelessness prevention activity will be far more limited under Option 3, homelessness prevention success rates would be lower.

For all applicants at risk of homelessness under all other possession grounds, notably rent arrears and discretionary anti-social behaviour, local authorities are likely to fail to prevent homelessness because they will engage with the prevention duty too late and they will serve notice to end it after the minimum 56 day period.

Due to the circumstances of such applicants, it's likely success rates under the homelessness relief duty are also likely to be lower, because securing another suitable tenancy is likely to be challenging.

Many of these households are likely to be found 'intentionally homeless', so – if homelessness relief assistance failed – they would not be owed the main rehousing duty, even if they were in 'priority need' because they had dependent children or were vulnerable in some other way (old age, fleeing domestic abuse, disabilities, chronic ill-health).

To avoid street homelessness, families with dependent children would then have to apply to the local social services authority for support and accommodation under the Children Act. There are no time limits or suitability standards for temporary accommodation provided under the Children Act – families with dependent children can spend years living in one room of a hostel or B&B or substandard/poorly managed flats. This would be very damaging for children.

This would be devastating for parents (most of whom are mothers) and children who have been subjected to domestic abuse and then evicted. The spectre of eviction could be used by perpetrators to deter them from leaving.

For those without dependent children, homelessness – followed by a failure of the homelessness relief duty and an intentionality decision – would lead to street homelessness and risk of exploitation in order to access accommodation (such as 'survival sex' or modern slavery).

Therefore, this approach is likely to:

- undermine the government's approach of early prevention
- undermine the government's commitment to support survivors of domestic abuse

- risk increasing homelessness (i.e. applicants owed the homelessness relief duty)
- risk increases in applicants with a 'priority need' being found intentionally homeless and refused temporary accommodation
- put additional pressures on social services authorities to accommodate homeless families
- risk increases to street homelessness and exploitation.

Q3e: Do you have any additional comments on the impacts of option 3 which have not been covered in your response to Q3a-d? Yes/No. If yes, please provide comments for your answer.

No further comments.

B) The reapplication duty

- The reapplication duty was introduced alongside the introduction of Private Rented Sector Offers (PRSOs) in the Localism Act 2011.
- The 2011 Act allowed local housing authorities to end the full rehousing duty with an offer of a suitable Assured Shorthold Tenancy (PRSO) of at least 12 months as an alternative to the offer of a permanent social tenancy.
- Shelter opposed PRSOs on the basis that (i) private rentals are much more expensive than social tenancies; (ii) private rentals (especially at the more affordable bottom end of the market) are in worse condition and can be less well-managed than social tenancies; and (iii) a 12 month private tenancy could lead to repeat homelessness as the ending of a private tenancy was a major trigger of homelessness. We argued that the solution to homelessness is a permanent, social home.
- The reapplication duty was included in the 2011 Act in response to concerns about repeat homelessness due to the short-term and insecure nature of Assured Shorthold Tenancies.
- Under the reapplication duty, applicants who accept a PRSO, but become homeless again within 2 years (e.g. because the landlord refuses to renew the tenancy after 12 months), do not have to reapply for assistance – the main rehousing duty simply kicks back in.
- This effectively means the full rehousing duty is a duty to rehouse for at least 2 years.

It is proposed that:

- All reapplications will be treated according to the current circumstances, with **no distinction between those who accepted private sector or social housing offers** to end the main housing duty.
- They will be owed the prevention, relief duty and main duty in the same way as any other homelessness applicant.

Q4: Do you have any comments on the proposed option to remove the reapplication duty from the homelessness legislation? Yes/No/Don't Know. Please provide comments for your answer.

We oppose the removal of the reapplication duty unless the Renters Reform Bill creates a two-year protection period.

However, if the Government sets an eviction protection period of two years in the Bill, then we would support the removal of the reapplication duty.

In the 2019 'A New Deal for Renting' consultation¹, the Government set out strong proposals for a protection period or period of commitment in respect of new assured tenancies, whereby private renters would be protected from eviction for two years where there had been no breach of the tenancy agreement.

We supported these initial proposals for a two year protection period, as this would give renters, especially families with children, the security and stability needed to settle in their home and neighbourhood.

Unfortunately, this protection was watered down to just six months in the 2022 White Paper.²

Without a two-year eviction protection period, the replication duty would still be needed for tenants being repossessed on landlord circumstance grounds (e.g. landlord selling the property).

The consultation paper argues that (by removing the reapplication duty) *'all reapplications will be treated according to the current circumstances, **with no distinction between those who accepted private sector or social housing offers to end their previous main duty***.

However, a distinction should continue to be made between those who accepted a private rented sector offer (PRSO) and those who receive an offer of social housing. Even under the proposals in the Renters Reform White Paper, a private rented sector tenancy will be inherently less secure than a social tenancy. This is because it would remain subject to mandatory no-fault grounds which would not apply to social tenants (i.e. landlord wishing to sell and landlord/family member wishing to occupy themselves).

If a PRSO was secured to fulfil the main rehousing duty and then the tenancy were to be brought to an end within two years for one of these reasons, it's important that the reapplication duty continues to apply.

2) Minor technical changes to the legislation

It's proposed that:

- All references to section 21 notices, assured shorthold tenancies and fixed term tenancies from the Housing Act 1996 will be removed from the homelessness legislation.
- Where appropriate the reference to assured shorthold tenancies and fixed term tenancies will be replaced with assured tenancies.
- Annex A sets our proposals out in detail.

¹ DLUHC (2019) [A New Deal for Renting Resetting the balance of rights and responsibilities between landlords and tenants](#)

² DLUHC (2022) [A fairer private rented sector](#)

- The government do not expect these minor amendments to have an impact on local authority operation or prevention activity. They will only remove wording that is no longer relevant in the legislation.

Q5a: Do you have any comments on the proposed approach to minor technical changes? Yes/No/Don't know. Please give your comments.

No

Q5b: Do you have any comments on the proposed minor technical changes in Annex A? Yes/No/Don't know. Please give your comments.

No

Q6: Do you think that any of the proposed changes could give rise to any impacts on people who share a protected characteristic? Yes/No/Don't know. Please give your comments.

People with some protected characteristic under the Equality Act 2010 are likely to need the more intensive and continuing prevention activity following a section 8 notice that only Option 2 gives them.

An equalities impact assessment of Option 1 and Option 3 is likely to conclude that they will lead to a rise in homelessness among people with some protected characteristics (e.g. mental, learning or physical disabilities or women fleeing domestic abuse).

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