

CHANGES TO HOMELESSNESS LAW AND PRACTICE IN SCOTLAND, WALES AND ENGLAND

June 2016
shelter.org.uk

Shelter

Contents

Summary	2
England Context.....	3
Scotland	6
Wales.....	11
Gaps – Scotland and Wales	18
Conclusion	20

Summary

Scotland and Wales have recently made changes to their homelessness legislation and practice. Some politicians, charities and commentators have talked of these changes as progressive steps towards resolving homelessness in the United Kingdom. The benefits of adopting them have also been the focus of increased media interest. Most notably, the changes, and the scope for similar approaches being adopted in England, are being considered as part of the DCLG Select Committee inquiry into homelessness¹. This briefing summarises the changes in Scotland and Wales, considers the evidence for success in both countries, and considers the implications of both approaches being implemented in England.

We are clear that there are limitations to what can be achieved through changes to homelessness legislation alone. The main problems in England are not inadequacies with the legislation, but a shortage of affordable housing, cuts to housing benefit, and funding restrictions to local government. There are however key issues regarding legislation and local authority practice that need addressing:

- The level of support and assistance provided to people who are unintentionally homeless, but not in priority need.
- How to prevent homelessness as far ahead of crisis point as possible, ensuring more positive results for applicants than if they were made homeless.
- How to ensure that measures to prevent homelessness are genuine prevention measures, which are accountable inside a legislative framework.

Scotland and Wales have also looked at these questions, and have produced different approaches. In Scotland the key change has been to abolish distinctions of priority need. This is designed to ensure that all applicants who are unintentionally homeless and eligible for support receive the same level of housing assistance from their local authority. In Wales, priority need is retained for the 'final' housing duty; however there is now a new duty for local authorities to prevent homelessness earlier on, regardless of whether an applicant is in priority need.

We believe that there are significant risks in simply replicating either approach in England. This is both because of some flaws in the new approaches in Scotland and Wales, and most importantly because of the far more challenging housing circumstances in England.

Despite these challenges, our analysis of the approach in Wales shows some very positive steps that can be taken in England to better assist homelessness applicants. We conclude by supporting the basis of the approach in Wales, while also highlighting specific concerns with the homelessness legislation there. These concerns are raised with a view to offering an improved approach to homelessness legislation in Wales, Scotland and England.

¹ The inquiry is ongoing at the time of publication - <http://www.parliament.uk/business/committees/committees-a-z/commons-select/communities-and-local-government-committee/inquiries/parliament-2015/inquiry1/>

England Context

Homelessness legislation in England

In England, households who present to a local authority as homeless are entitled to a homelessness assessment if they are within 28 days of being made homeless. If they are unintentionally homeless, in priority need and eligible (see below), at the end of this 28 day period the local authority has a duty to re-house them into settled accommodation, or provide interim (temporary) accommodation until this is possible. Distinctions around priority need are a key component of homelessness assessments. If someone is not considered priority need (i.e. vulnerable, with children or other specified circumstances) then the local authority does not owe a re-housing duty.

5 tests of homelessness

- **Are you homeless**, badly housed, or likely to be made homeless in the next 28 days?
- **Are you eligible:** does your immigration status mean that you have recourse to public funds?
- **Are you in priority need:** some people are automatically priority need – for example, households with children, someone who is pregnant, 16 & 17 year olds, 18 & 20 year olds who have been in care, and people who have been made homeless due to an emergency, such as a flood. Others will need to show that they are vulnerable.
- **Are you intentionally homeless:** was your homelessness a result of actions that were within your control?
- **Local connection:** you must have resided in the local authority area for 6 out of the last 12 months, or at least 3 in the last 5 years. If an applicant does not meet this, they will be referred to the authority where they have a local connection, if they meet all of the other 4 criteria.

Households who are not in priority need and are unintentionally homeless are entitled to advice and information, with the intention being to help prevent homelessness by keeping someone in their current accommodation, or by finding new accommodation. This is often provided under the 'Housing Options' approach (see below). Local authorities are under a legal duty to provide housing advice, however evidence suggests that local authorities are not meeting this duty, especially for households that they identify as not being in priority need. There is also evidence of local authorities not providing a homelessness assessment to households that they consider to be in priority need, and instead diverting them solely through the non-statutory Housing Options approach.

Housing Options has produced mixed results in England. Between 2003 and 2010/11 homelessness fell as prevention appeared successful, with the number of acceptances and households living in temporary accommodation steadily reducing. However, since 2010 we have seen an increase in these numbers. This is due to a combination of increasing housing costs, increasing reliance on the private rented sector, welfare reform, and cuts to local housing authority budgets; the latter undermining efforts to prevent homelessness. Insecurity in the private rented sector is a growing issue, and the loss of a private tenancy is now the single leading cause of homelessness.

Homelessness trends vary across the country. While homelessness isn't just a London issue, households in the capital dominate the statutory statistics. Three quarters of homeless households living in temporary accommodation are from London. Therefore, any discussion around changes to

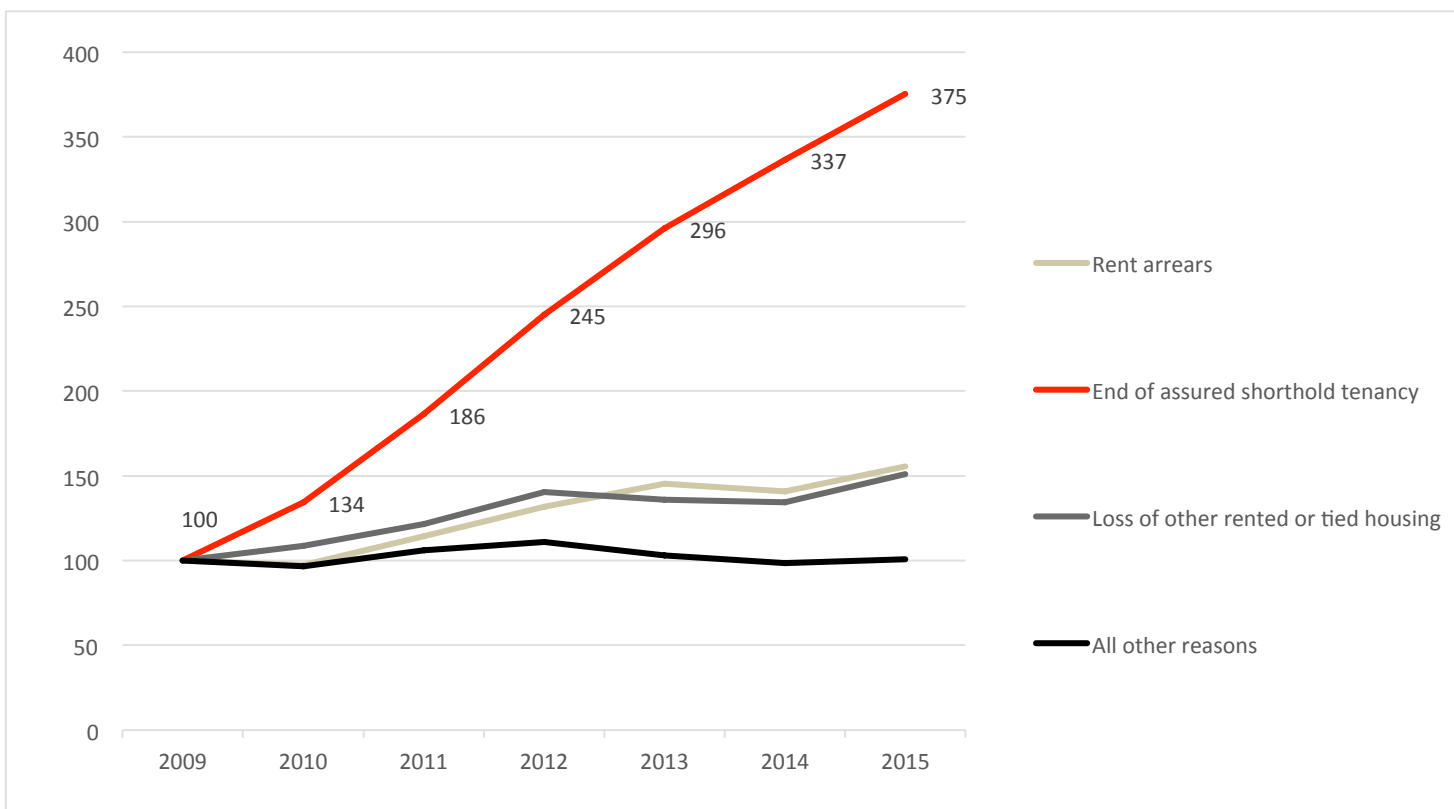
homelessness legislation in England must be had with this context in mind, and how it varies significantly to the pictures in Wales and Scotland.

Preventing homelessness

Since its introduction in 1977, the homelessness legislation has protected hundreds of thousands of people who lack suitable accommodation. Around 50,000 households a year are currently re-housed under the legislation. Most of these are families with children, who would otherwise be facing appalling overcrowding, dangerous or exploitative conditions, or rough sleeping.

Despite the protections that the legislation affords, homelessness is currently being driven by structural problems which cannot be resolved through legislative changes alone. The main causes of homelessness are failings in the housing system. This includes the lack of stable, affordable and decent housing, and problems with access to accommodation. This is apparent in the increase in homelessness brought about because the end of a private tenancy – now the leading cause of homelessness (Figure 1, below).

Figure 1: Reason for loss of last settled home among those accepted as homeless²



² <https://www.gov.uk/government/statistical-data-sets/live-tables-on-homelessness>

In order to tackle homelessness, there must be a national and local focus on these underlying causes. Most of all, this means a more strategic local approach to tackling homelessness, increased security of tenure in the private rented sector, and an increase in the availability of social housing. Our 50 years of experience in advising and supporting people with housing problems has taught us that prevention of homelessness is much more likely with: 1) access to early, good quality, independent advice to tackle housing problems; and 2) provision of housing support, when necessary, to deal with the triggers of homelessness as they arise.

We are very encouraged that the Government is serious about tackling homelessness and has recently retained Homelessness Prevention Grant to assist authorities.

But our services regularly see cases where people have been refused statutory assistance or where unlawful decisions have been made. So we'd also like to see improvements to both entitlements and practice: there must be improved collaboration between social services, housing and health authorities in assessing need and providing assistance to families, and there must be an improved offer for non-priority homeless households

However, we must keep in mind that statutory re-housing assistance can only be effective if there is suitable accommodation accessible to those who need it.

Scotland

Key changes to homelessness legislation and practice

Since devolution in 1999 there has been a significant divergence between English and Scottish homelessness legislation. The changes to homelessness legislation in Scotland have sought to address a lack of provision for single homeless people, and were driven by a commitment to end rough sleeping in major towns and cities. Legislative reform was coupled with the creation of a Housing Options approach, based on England's, with an aim to prevent or relieve homelessness before the loss of accommodation.

- ***Removal of distinctions between homeless households based on 'priority' and 'non-priority' need***

The key change in the Homelessness (Scotland) Act 2003 is the removal of distinctions between homeless households based on 'priority' and 'non-priority' need³. The duty to provide temporary and settled accommodation was extended to all homeless households rather than just those considered vulnerable, with children or other specified circumstances – as is still the case in England and Wales.

Since December 2012 all eligible and unintentionally homeless households have been entitled to settled housing, and temporary accommodation in the interim. This is regardless of their status as priority or non-priority need.

- ***Introduction of Housing Options***

The Housing Options approach in Scotland was introduced in 2010. As in England, it requires Scottish local authorities to conduct an interview with clients to offer advice and support to try to resolve a client's housing problem, with the focus being on prevention and putting the applicant first. Housing Options advice typically involves keeping people in their current accommodation, for example through negotiation with a landlord; or finding alternative accommodation, for example in the private rented sector.

Scotland has adopted a 'twin-track approach' where Housing Options sits alongside the statutory homelessness duty, without diverting applicants down one track or another. This was highlighted by recently published Housing Options Guidance. Everyone who is homeless, or threatened with homelessness, has a right to make a homeless application at any point and therefore to access the statutory duties this invokes. Previously in some local authorities, applications were only taken if prevention had been tried and failed. Some local authorities expect the new guidance to lead to a change in practice that will see the number of homelessness applications increase in the near future.

³ The removal of priority need was enacted through the Homelessness (Scotland) Act 2003, but only came into force through the Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012.

- ***Closer monitoring of intentionality***

The proportion of cases assessed as ‘intentionally homeless’ in Scotland increased from 3% during January-March 2005 to just over 6% in January-March 2014. Some increase in intentionality will be an inevitable consequence of the removal of priority need, as those without priority need would previously not have been assessed for intentionality. Nevertheless, local authorities have been cautioned by the Scottish Government to ensure that all intentionality decisions are robust and legal. Closer monitoring of these decisions is published to provide transparency.

- ***Introduction of housing support***

Since 2013 local authorities in Scotland have been required to conduct a ‘housing support’ assessment, where there is reason to believe that a homeless household could benefit from such service. This must look at the needs of everyone in the household. For example, the assessment may disclose that someone has mental or physical health needs, or lacks the skills to live independently. The local authority has to arrange for these needs to be supported and is required to provide support, where needed. For example help with budgeting, debt, signposting to other relevant services, settling into a new tenancy or managing an ongoing tenancy.

- ***Removal of local connection***

The Homelessness (Scotland) Act 2003 included provision to suspend local connection criteria. This has not come into effect and there is no indication that it will be implemented. The new power would mean that a local authority must assist any homeless applicant that approaches them. It would prohibit local authorities referring cases to other local authorities. Evidence suggests that the local connection criteria have been stricter since the removal of priority need.

What has happened to homelessness since the changes?

Following the removal of priority need 4 years ago there have been some noticeable changes in homelessness trends. Since 2011/12, the number of homelessness applications in Scotland has steadily declined. In 2014/15, applications fell by 4%, while the number of acceptances dropped by 5%⁴. However, statistics also show that the number of people at risk of homelessness has not reduced during this period.

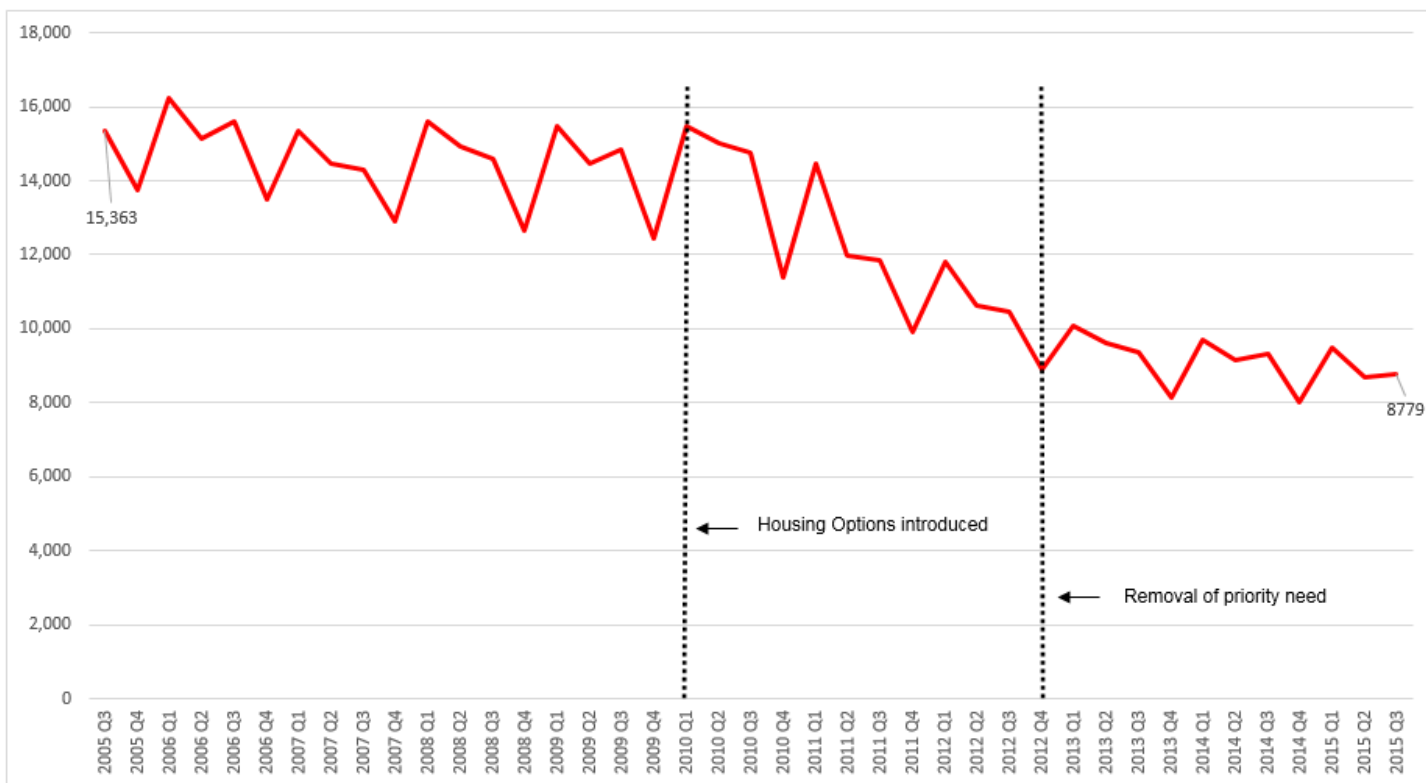
The number of households in temporary accommodation in Scotland has remained fairly static in recent years, despite the fall in acceptances. Local authorities and Shelter Scotland have reported that households are spending longer in temporary accommodation since the removal of priority need. This suggests that the supply of temporary accommodation is silting up and LAs are struggling to find settled accommodation.

Recent trends allay fears that the removal of priority need would lead to a significant increase in homelessness applications and acceptances, and numbers in temporary accommodation. Undoubtedly, the Housing Options model has been influential in preventing statutory homelessness. A similar trend in homelessness acceptances was observed when Housing Options was brought in

⁴ <http://www.crisis.org.uk/pages/homelessnessmonitor.html>

across England in 2003⁵. At the same time, the definition of priority need in England was expanded to cover new groups not previously owed a full housing duty. Whether this trend will continue is debatable. Housing Options only works as well as the local supply of affordable accommodation allows. Since 2010, presentations, acceptances and the numbers in temporary accommodation in England have started to creep back up to pre-2003 levels as the supply of affordable accommodation has become more constrained. Anyone analysing the approach and data trends in Scotland must bear in mind the different context in England.

Figure 2: Scotland – number of applications for homelessness assistance⁶



At present, the drivers of homelessness in Scotland are not comparable to England. The lower rate of evictions in Scotland suggest a less challenging private rented sector, although unaffordability is a growing issue. A dispute within a household is the single main reason for homelessness in Scotland. This is in contrast to England where the ending of a tenancy in the private rented sector is the main driver of homelessness. Only 18% of homeless applicants in Scotland were previously living in the private rented sector, whereas almost half of applicants were previously residing with friends, family or a partner. Similarly, the rate of eviction across all tenures is far lower in Scotland than in England. Local authorities and Shelter Scotland have raised concerns about the lengthening of the time that households are spending in temporary accommodation. This reflects the shortage of affordable accommodation available to local authorities in which to permanently re-house people. In particular, this has been caused by the increasing demand for social housing, and a combination of welfare reform measures and restricted access to the private rented sector.

⁵ <https://www.gov.uk/government/statistical-data-sets/live-tables-on-homelessness>

⁶ <http://www.gov.scot/Topics/Statistics/Browse/Housing-Regeneration/RefTables>

Shelter Scotland has also reported that the removal of priority need has not prevented a small number of local authorities from blocking access to homelessness applications and temporary accommodation for some single people. In such cases, for example, a local authority may tell an applicant that there is no temporary accommodation available as a way to deter their application.

Implications for England

Recent changes to legislation in Scotland are undoubtedly a positive step for homeless households who would previously have been considered non-priority. But importantly, the removal of priority need has been aligned with the introduction of increased prevention work through Housing Options. This has been achieved without the need for changes to legislation, and is responsible for the steady decrease in homelessness acceptances.

There are other factors that must be considered when weighing up the merits of such changes in England:

- ***Lack of evidence to support change***

It is too soon to determine the success of the homelessness changes in Scotland, and there are still significant challenges that cannot be easily resolved. For example, it is concerning that the number of households living in temporary accommodation is not going down, and that on average people are now waiting longer for an offer of settled accommodation.

- ***Structural challenges in England***

Ultimately the structural pressures which are limiting the supply of settled accommodation for local authorities to move homeless households into cannot be overcome by changes to homelessness legislation or practices alone.

These pressures are generally far more acute across England than they are in Scotland. As highlighted above, the initial success of Housing Options to prevent homelessness in England has given way to a gradual increase in homelessness acceptances over the past 5 years, as structural pressures have become insurmountable.

Local authorities in England have made it clear that the removal of priority need would be unmanageable in the context of current housing supply and demand pressures. The shortage of affordable accommodation in high demand areas, plus lack of affordability and the effects of welfare reform, would undoubtedly lead to more people spending longer in temporary accommodation. Our research suggests that these pressures would also lead to higher usage of out of area temporary accommodation placements⁷.

⁷ In the last year, 27% of households accepted households and placed in TA are living there outside their home area (34% in London) – Shelter: Home and away: the rise in homeless families moved away from their local area.

- ***Thresholds for vulnerability***

The threshold for the vulnerability test of priority need was re-defined in England by the 2015 Supreme Court judgment. This is the basis on which local authorities determine priority need for applicants who do not have children or a pregnant household member. The new threshold must be given time to work its way fully into local authority practice, so that its impact – the extent to which it guides local authorities to accept a duty towards vulnerable homeless applicants - can be properly reviewed and acted upon accordingly.

In England and Wales, priority need distinctions are in place to ensure that the most vulnerable groups don't resort to rough sleeping, or other unsatisfactory housing outcomes. Without these distinctions, and in the context of the current housing pressures, there is a risk that outcomes for the most vulnerable homeless households will be watered down.

- ***Current support for non-priority need clients***

In the meantime those who are not in priority need should still be able to access support from their local authority. There is already legislation in place that requires local authorities to provide housing advice and assistance for non-priority need applicants who are unintentionally homeless and eligible for assistance. The statutory guidance is clear that this requires thorough assessment of housing need, which must go beyond the inquiries made in the initial homelessness assessment.

Wales

Welsh homelessness legislation departed from English legislation (Housing Act 1996) in 2014⁸. The main homelessness provisions came into force on 27 April 2015.

The key difference with the Housing Act 1996 is that the Welsh legislation introduces a duty on local authorities to provide housing advice and assistance to everyone within their local area, if they are eligible and threatened with homelessness within 56 days. In England, the threat of homelessness needs to be within just 28 days, and there are no specific duties to prevent or relieve homelessness for all household types.

A key driver behind the change is the view that Housing Options and the statutory system sit uncomfortably alongside one another, in the sense that the former gave rise to unlawful gatekeeping and created a lack of transparency and inconsistent practice among local authorities⁹. Furthermore, the new legislation aims to produce better outcomes for applicants who would be considered homeless, but are not in priority need and are ineligible for the 'full' re-housing duty.

Key changes to homelessness legislation and practice

▪ **Earlier homelessness intervention**

A local housing authority must carry out an assessment of a household's case if that person may be homeless or is threatened with homelessness. A person is threatened with homelessness if it is likely that they will become homeless within 56 days. This is a key juncture with current homelessness legislation in England.

Early intervention in the Act consists of both prevention and relief, the former to keep people in their current accommodation, the latter to find new accommodation. The terms prevention and relief are used in England, but with different meanings. In Wales they mean:

- Duty to prevent homelessness: a local housing authority must provide help and assistance that ensures suitable accommodation does not cease to be available for occupation by an applicant that is threatened with homelessness. There is no consideration of priority need under this duty.

Where work to prevent homelessness fails, or is not appropriate, then assistance falls under the duty to relieve homelessness.

- Duty to relieve homelessness: a local housing authority must provide help and assistance with a view to ensuring that suitable accommodation is made available for an applicant that is threatened with homelessness. The Act allows for homelessness to be relieved by helping to secure a tenancy in the private rented sector that is likely to last 6 months. There is no consideration of priority need under this duty, but local connection is applied if the local authority has reason to believe that the applicant will be in priority need.

⁸ There were some minor differences with England prior to the 2014 Act. For example, the Priority Need (Wales) Order 2001.

⁹ <http://www.crisis.org.uk/pages/expert-panel-review-of-legal-duties-owed-to-single-homeless-people.html>

If the applicant's homelessness has not been resolved after 56 days, and they are eligible, in priority need and unintentionally homeless, then the local authority must accept a full housing duty.

- **Priority need**

Legislation in Wales does not go as far as Scotland in completely removing priority need distinctions. However, both the new prevention and relief duties are blind to priority need during the 56 day prevention period. Priority need only becomes relevant at the point that the local authority owes a re-housing duty to the applicant – for example, an offer of settled housing, or temporary accommodation in the interim.

In other words, local authorities have a duty to apply prevention and relief equally to applicants, regardless of whether or not they are considered to be in priority need¹⁰.

- **Failure to cooperate**

A local authority can bring any of the housing duties to an end if it is satisfied that an applicant is unreasonably failing to co-operate. The local authority must be satisfied that the applicant is not failing to co-operate because they are vulnerable or have unmet support needs. As long as they are satisfied that this is the case it would ordinarily not be unreasonable of the local authority to bring the duty to an end if the household is no longer engaging or cooperating with the local authority.

- **6-month tenancies**

Under the new legislation a local authority can resolve homelessness by helping to secure a 6 month tenancy, typically in the private rented sector. This differs from England, where a 12 month tenancy is the minimum suitability requirement for 'settled accommodation'.

What has happened to homelessness since the changes?

The new legislation in Wales has only been operational for 12 months, and full homelessness statistics only cover 6 months of this period¹¹. It is therefore too early to draw conclusions on whether the new approach is working.

The number of households accepted as homeless and in priority need from July to December 2015 was 67% lower than in the same period a year before. This is despite a 42% increase in people presenting to their local authority as homeless¹². Presentations are likely to be higher due to the fact that local authorities now report cases that previously would have been dealt with under Housing Options, and therefore not officially recorded as presentations. So while it is accurate to conclude

¹⁰ The 2014 Act gives Ministers the power to amend priority need groups or end priority need entirely without further primary legislation

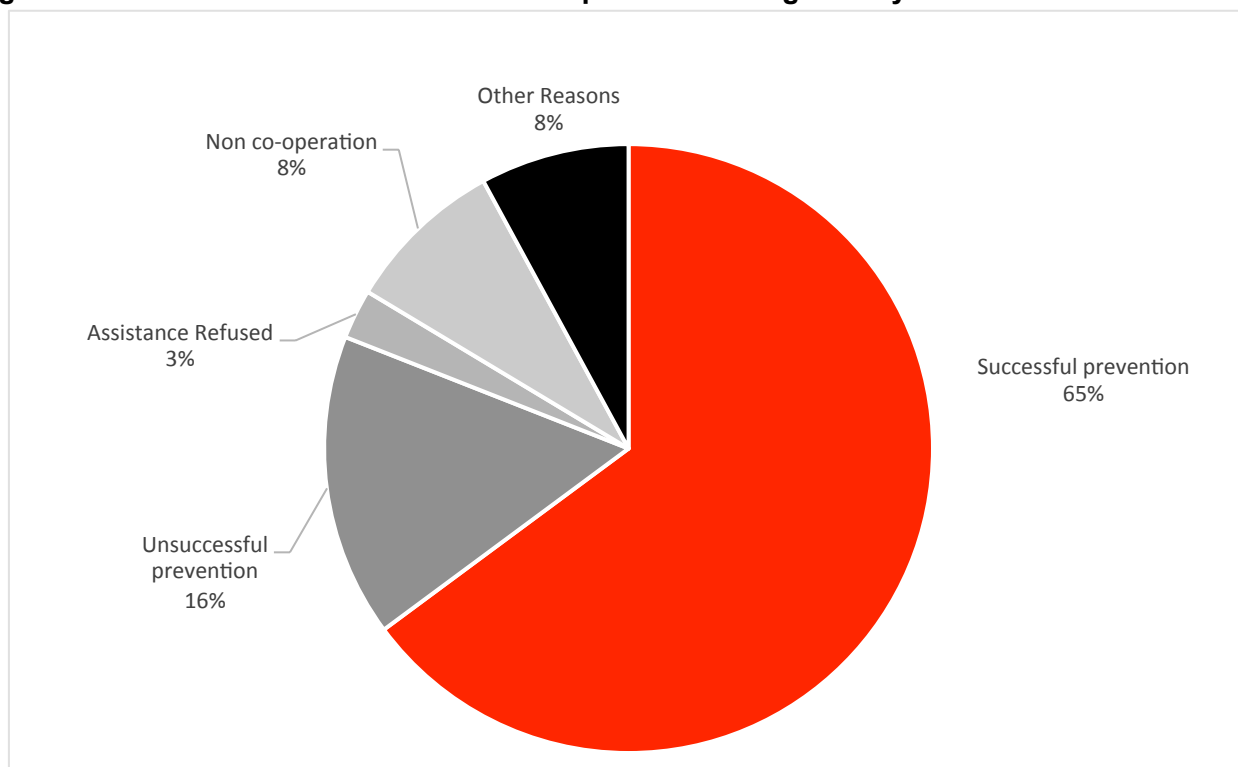
¹¹ July - December 2015. As the new legislation was operational from the end of April, April – June statistics provide only partial data.

¹² <https://statswales.wales.gov.uk/Catalogue/Housing/Homelessness>

that homelessness acceptances have decreased, it would be misleading to place this in a context of increased homelessness presentations.

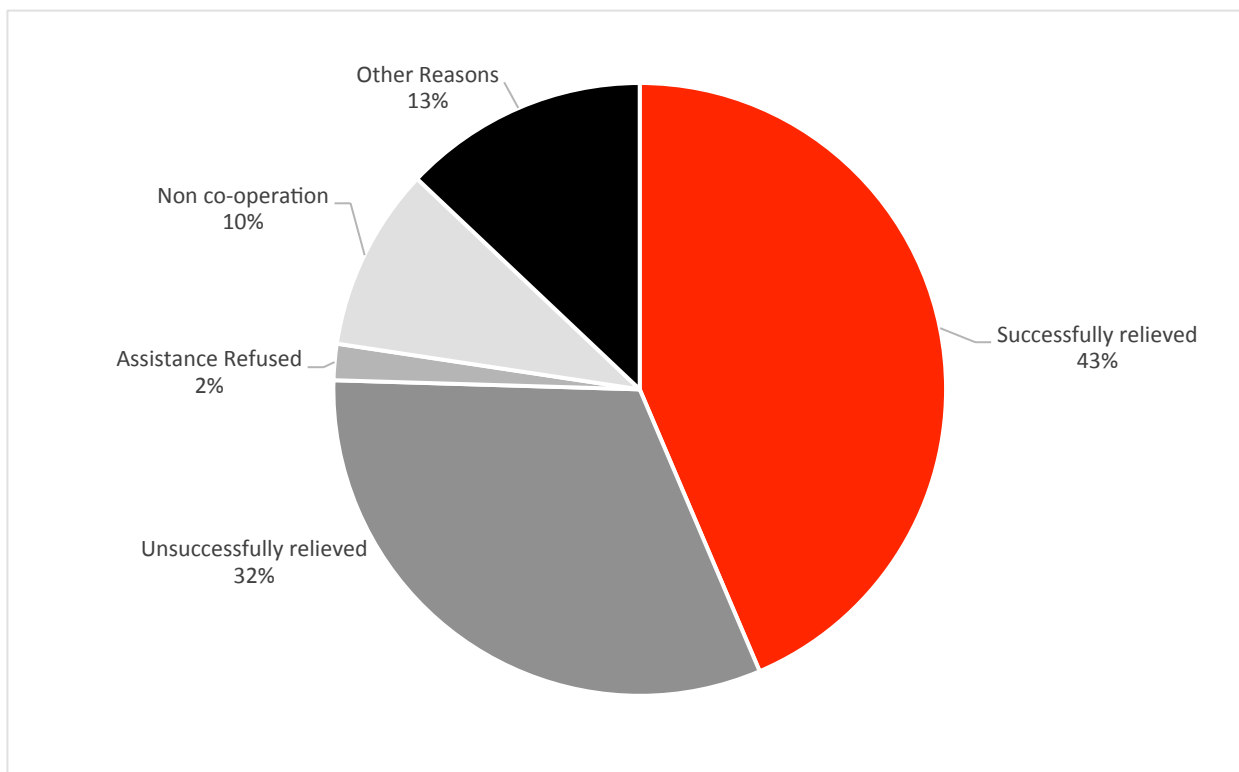
But to what extent is the new 56 day duty responsible for reducing homelessness acceptances? Under the new legislation, 65% (2,335) of applicants at risk of homelessness were prevented from losing their accommodation. The success rate was higher among non-singles than it was for singles.

Figure 3: outcome for all households at the prevention stage – July to December 2015.



Initial evidence suggests that relief work has produced less positive outcomes than the prevention stage (Figure 4, below). This reflects the complexity of trying to secure new accommodation for low-income households, in particular against a backdrop of supply pressures, lack of affordability and welfare reform. Despite watering down the suitability of accommodation by reducing minimum tenancies from 12 to 6 months, the initial evidence suggests that local authorities are struggling to find properties to meet the relief duty.

Figure 4: outcome of all households at the end of the relief stage – July to December 2015.

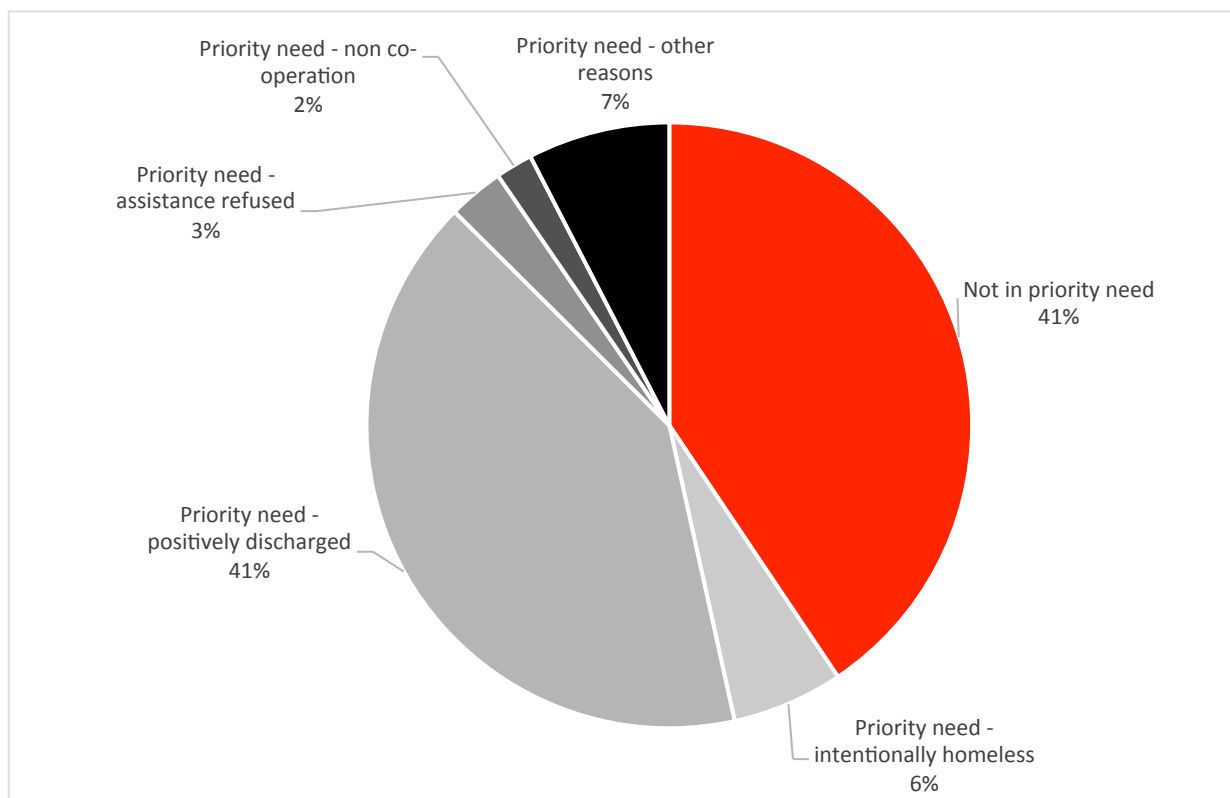


Close to half of households who are non-priority reached the end of the relief stage (Figure 5) and were still homeless. In other words, all options have been exhausted over the 56 day period, and they are now not owed a re-housing duty.

While there has been a noticeable reduction in the number of intentional homelessness decisions, compared to the same 6 months in 2014, this could be misleading. Intentionality now applies to just 6% of priority need households who reach the end of the relief duty, whereas it was 9% in the same 6 month period in 2014.

But this reduction reflects the overall decrease in people requiring assessment for the ‘full housing duty’. It is not strong enough evidence of significant changes in the way local authorities are applying intentionality to homelessness assessments. In other words, local authorities are applying intentionality at an only slighter lower rate than before the new duties came into effect.

Figure 5: outcome of all households who remain homeless at the end of the relief stage – July to December 2015.



In the last 12 months there has been a reduction in the number of households living in temporary accommodation in Wales. This is in contrast to Scotland, where the numbers have remained the same, and England, where they have increased.

Overall, 7% of households had their housing duties ended due to ‘unreasonably failing to cooperate’. This occurred mostly at the prevention or the relief stages. This is a far higher proportion of applicants than initially anticipated by Shelter Cymru or the Welsh Government.

Including these households who ‘failed to cooperate’, 1 in 5 of applicants exited the statutory system. This is a significant proportion of households, yet at present there is little understanding of why they exited the system, or what their final housing outcome was.

Regarding single homeless applicants, there is little divergence between the outcomes for this group and couples/families during the prevention and relief stage. However, at the assessment stage we start to see a similar pattern as in England: when compared to other groups, single households are far less likely to be in priority need, and more likely to be intentionally homeless or refused assistance due to not being eligible. Shelter Cymru recommend that further research is carried out to properly understand these different outcomes.

Initial evidence suggests that the new Welsh legislation is working well to *prevent* homelessness, both for singles and families. Early findings on *relieving* homelessness are less convincing, and

reflect the difficulties facing local authorities attempting to help secure new accommodation. This raises serious questions about the ability of higher demand areas to replicate the approach. It is also concerning that one in five households are exiting the statutory system – either voluntarily or because they have been deemed to be failing to cooperate with the local authority – and that little is known about their housing outcome after this decision.

Areas of concern and implications for England

We would not be opposed to the Welsh approach being introduced in England. Genuine prevention is always welcome, and quality homelessness prevention produces stronger outcomes for homeless households. For priority need households who are unintentionally homeless, being helped to remain in their home, or being offered a suitable 12 month tenancy to relieve homelessness, is arguably a better outcome in the short to medium term than being hauled through the full eviction process, and then spending months or years in temporary accommodation.

Effectively bringing the Housing Options approach into the statutory framework would improve both the accountability and transparency of what was previously a discretionary process. Most notable is the opportunity for households to challenge – by review and at court level - local authority decisions that are made prior to a homeless duty being accepted; whereas under Housing Options there is no legal basis for challenging prevention or relief work.

Bringing prevention and relief under the statutory framework also allows for a better recording of homelessness in official statistics, which in turn better represent the true scale of homelessness than statistics in England currently reveal.

But while we support the basis of the new Welsh duties, we have some specific concerns that it could weaken outcomes for our clients.

- **6 month tenancies**

Tenancies of 6 months are too short to be considered stable enough for those who have recently experienced homelessness or come close to it. Not being provided with a stable base could leave vulnerable people without support and lead to repeat homelessness. Any legislation in England must stipulate that settled accommodation is for a 12 month minimum.

- **Failure to cooperate**

The power to end the housing duties due to a failure to cooperate is a significant change in homeless legislation. There is a clear risk of subjectivity when determining the level of an applicant's cooperation. There may also be reasons unknown to a housing officer as to why an applicant is not engaging with prevention actions, and these reasons could be sensitive in nature.

There are, however, a number of safeguards built into the duty through the statutory guidance: for example, the local authority must make it clear to the applicant that this power will be triggered, and present the opportunity to reengage. The priority must be to ensure that unintentionally homeless households in priority need are re-housed.

- ***Transparency and right to review***

In theory the Welsh legislation brings the Housing Options approach under the legal framework. This means greater transparency of local authority work, as well as a clearer picture of the true scale of homelessness, through statutory recording of prevention/relief statistics. However, Shelter Cymru are concerned that local authorities are being inconsistent in their approach to letters and notices due to the complexity of the Act: for example, households can be unclear when the 56 day duty ends, or when a duty to provide interim accommodation starts.

- ***Implications for local authorities***

Some local authorities in England have voiced concerns about how effective the prevention and relief duties will be in high demand parts of England - where the housing context is far different from towns and cities in Wales – and how the duties will work practically, given that many services are already overstretched.

The new duties in Wales meant re-training all frontline housing officers in every local authority across the country, as well as updating advisers in voluntary sector organisations (such as local Citizens Advice Bureaux). A significant overhaul of legislation in England would require re-training on a large scale and with significant cost, at a time when a combination of demand and cuts to local authorities are stretching frontline services to breaking point. Without adequate training there is a risk that many of the less than desirable practices of the English approach are carried over.

The Welsh Local Government Association have highlighted differences in operational culture around homelessness in Wales and England. Due to there being less demand in major towns and cities in Wales, there is a greater level of cooperation between local authorities and voluntary sector organisations. This aids the 56 day duty, and also reduces demand for reviews of decisions (which perhaps explains the culture of decisions being issued verbally, and not in writing). It is hoped that this close working will act as a sufficient check and balance against some of the concerns highlighted above, but this may not necessarily extend to practice in England.

Finally, all local authorities in Wales are now required to keep Personal Housing Plans up to date. They are a record of actions taken by the applicant and the local authority, which help to involve clients more in devising solutions. Housing Plans are also designed to provide transparency on 'failure to cooperate'. This will be a considerable change in practice and culture for English local authorities.

Gaps in the Scottish and Welsh approaches

We have identified the following gaps in the Scottish and Welsh approaches.

- ***Reform of intentional homelessness***

So far both Wales and Scotland have opted not to reform powers around intentional homelessness decisions, although there have been some changes. In Wales local authorities now have to 'opt-in' to assessing intentionality for particular priority need groups, and have to publish their policy and rationale for doing so¹³. Furthermore, the Welsh Government has set a target in the code of guidance for local authorities to abolish intentionality for homeless households with children by 2019.

We would support reform in this area to ensure intentionally homeless priority need households can still be helped under the homeless legislation. This would be an improvement on the current system in England, which effectively passes intentionally homeless households over to social services.

- ***Section 21s and re-housing***

A continuing issue in Wales, Scotland and England is the point at which a local authority re-houses an applicant who has been evicted from a standard private rented Assured Shorthold tenancy under a 'Section 21' notice requiring possession. Guidance in all three countries states that if an applicant has been given a Section 21 notice then they should be treated as threatened with homelessness. In practice, however, we know that in many cases local authorities do not accept the notice as evidence that someone is threatened with homelessness and that people are forced to wait until they are evicted by the court bailiff before the local authority will accept a homelessness application from them.

The Section 21 notice should be treated as rendering the household 'threatened with homeless' and the end date of the notice should mark the point at which a household is considered to be homeless. Households would have a much clearer picture of where they stand and when exactly they are entitled to assistance from the authority in the light of their impending homelessness. It would avoid the unnecessary stress of a bailiff eviction, and also avoid the costs imposed on a household if they are compelled to remain until the landlord brings court proceedings. This approach would also help to address the concerns of landlords, who frequently make the case that the process of evicting tenants who have presented as homeless to their local authority is too lengthy and costly. However under this change it would still be open to the authority to require the tenant to get a court order if this seemed reasonable in the specific circumstances.

Despite this, we acknowledge that in the current climate this approach would add further pressures to local authorities. We suggest an approach whereby each case is judged on its own merits: it may be beneficial to keep some households in their accommodation after the Section 21 notice expires; for many others this will not be suitable.

¹³ Local authorities are allowed to decide which categories of people the intentionality test applies to. It may decide not to apply intentionality at all, or it may decide to apply it to one category of person (for example, households with children), but not to another category. The local authority must make their decisions, and the rationale for doing so, clear on their website.

- ***'Nowhere safe to stay' duty for non-priority applicants***

In Wales, despite improvements at the prevention and relief stages, outcomes for the majority of singles who remain homeless at the end of the 56 days are still poor. We would support moves for non-priority need applicants, who are homeless but have 'nowhere safe to stay', to be accommodated for a reasonable period of time by their local authority. We understand the cost implications on local authorities who are having to cope with cuts to funding. However the harms associated with rough sleeping, as well as the associated costs to other areas of local and national government, should make this a priority area for government spending.

- ***Local connection***

In both Scotland and Wales there have been limited moves to amend local connection criteria. The Scottish Homelessness Act contains a power to remove local connection from homelessness assessments, but this is yet to be implemented. In Wales, local connection currently applies to both relief and the assessment for the 'final' housing duty.

It is our view that under a prevention model similar to that in Wales, for households who are eligible and in priority need the normal local connection criteria should operate from the point at which the re-housing duty starts. For non-priority clients, local connection should apply at the relief stage to help manage local authority resources. This may mean some cases being transferred to a different local authority, which risks delays in re-housing or applicants falling between the gaps.

Conclusion

Initial evidence from the new approaches to homelessness in both Scotland and Wales show mixed results. Since its introduction in Scotland, the Housing Options model has reduced homelessness acceptances, despite the removal of priority need. There are however concerns that the Housing Options approach in general is not accountable to legislation, and is open to local authority malpractice. It is concerning that in Scotland the total number of households living in temporary accommodation has remained high, and households are spending longer in this form of accommodation.

In Wales, new prevention and relief duties have produced mixed results, although it is still too early to draw concrete conclusions. There has been a significant reduction in homelessness acceptances, pointing to an overall success of the new approach. The majority of outcomes under prevention are positive; but there is less success under the relief duty. Furthermore, the chances of resolving homelessness for singles at the assessment stage remain proportionately lower than for other household types, although of course they are much better than under the old system. Some local authorities are also still readily applying intentionality criteria to homelessness assessments.

While we support the broad principles of the new Welsh approach, as well as many of the specifics of the legislation, we do have some concerns which prevent us being wholehearted enthusiasts. Specifically the application of the provisions concerning 'failure to cooperate', and the ability for local authorities to meet their relief and re-housing duties with the offer of a six month tenancy. Both would put families with children at risk of prolonged homelessness.

Finally, it is essential to consider the implications of ushering in similar changes in the English context. It is clear that significant variations in supply and demand issues¹⁴, as well as less appreciated issues of operational culture and practice, mean that what works in Scotland and Wales, won't necessarily work in England. This alone should not be a reason to rule out legislative change, especially if there are clear benefits for non-priority applicants, while still maintaining protections for priority need groups. But it does mean that any legislative change must sit within a homelessness strategy that includes adequate funding for local authorities, an effective housing benefit safety net and a focus on increasing the supply of affordable housing.

Contact

Kevin Garvey – Policy officer

Kevin_garvey@shelter.org.uk

¹⁴ There is significant variation in homelessness trends across England, with 74% of households living in temporary accommodation being from a London borough.

Shelter helps millions of people every year struggling with bad housing or homelessness through our advice, support and legal services. And we campaign to make sure that, one day, no one will have to turn to us for help.

We're here so no one has to fight bad housing or homelessness on their own.

Please support us at shelter.org.uk

Shelter
88 Old Street
London EC1V 9HU

0300 330 1234
shelter.org.uk