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# 1. THE WELSH HOMELESSNESS LEGISLATION REVIEW: DELIVERING UNIVERSAL ACCESS TO APPROPRIATE ASSISTANCE?

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## ABSTRACT

*The United Kingdom homelessness legislation was enacted in 1977 and since its inception it has been highly regarded across the world for the right to settled accommodation which it bestows upon homeless households deemed to be in priority need of assistance. However, many criticisms have been laid upon the legal framework, particularly in relation to its selectivity – households deemed not to be in ‘priority need’ are owed no meaningful assistance under the legislation. Until the devolution settlements of 1998/9, homelessness legislation remained fairly uniform across the UK nations. However, constitutional reform brought about the opportunity for significant divergence in housing and homelessness policy. In 2009 the Welsh Assembly Government made a bold commitment to review the legal framework in order to achieve universal access to appropriate assistance for households that are homeless or threatened with homelessness in Wales. This paper critically reflects on the findings of the review and considers whether the vision of universal access to appropriate assistance is likely to be achieved.*

## INTRODUCTION

Despite considerable research and policy attention, homelessness remains a major social problem across the developed and developing world (Dwyer and Somerville, 2011; FEANTSA, 2010; Fitzpatrick et al., 2000; Speak, 2012; Tipple and Speak, 2009). We know a great deal about the causes of homelessness, which are generally attributed to structural and individual factors (Anderson

and Christian, 2003; Fitzpatrick, 2005; Fitzpatrick et al., 2011; Metraux and Culhane, 1999; Pleace, 2000, Shelton et al., 2012; Speak, 2012), and yet the problem remains. In 2012/13 Welsh local authorities recorded a total of 8,920 homeless households seeking assistance (WG, 2013), albeit this figure significantly underrepresents the actual number of homeless households in Wales as many will fail to seek assistance and local authorities also fail to record all applications for assistance.

Wales and other UK nations address homelessness in a significantly different manner relative to the rest of the world. The array of services available to homeless people, such as emergency accommodation, drug and alcohol support, mediation, and financial advice, are remarkably similar to those services available in parts of Europe, the USA, Canada and Australia, however the fundamental difference is the legal duty placed upon local authorities in the UK to provide settled accommodation to homeless households. This justiciable right to settled accommodation does not exist anywhere else in the world, and it is heralded as extremely progressive by other nations (Fitzpatrick and Pleace, 2012). Despite the apparent progressive nature of the system, there are considerable deficiencies, for example not every homeless household is entitled to this legally enforceable right; only those deemed to be in priority need for assistance such as households with children or a vulnerable adult. Those excluded tend to receive very limited assistance.

Weaknesses in the homelessness legislation in Wales have been documented in countless studies since the legislation was first conceived in 1977 and yet only minor revisions have been made to the legal framework. Significantly, the selective nature of the homelessness legislation sits uncomfortably alongside the 'Welsh social policy preference for universal, rights-based services' (Drakeford, 2012: 461). Hence, in its ten-year homelessness plan, the Welsh Assembly Government (2009) made a bold commitment to a comprehensive review of the homelessness legislation, stating:

We want to see a statutory framework that supports the vision of all-encompassing service provision. It needs to be shaped in such a way that it ensures that everyone can have access to the help that they need, to secure a home that meets their needs and provides a platform from which to address their aspirations. (WAG, 2009, p. 26)

Since making this commitment, the Welsh Government has gained primary law-making powers in the area of housing, enabling it to more easily implement any recommendations that emerge from the review. Completed by 2012, the Welsh Government review produced five separate reports (Fitzpatrick et al.,

2012; Mackie and Hoffman, 2011; Mackie et al., 2012a; 2012b; 2012c). This paper critically reflects on the key findings of these reports and considers whether the vision of universal access to appropriate assistance is likely to be achieved. After a brief discussion of the underpinning research, the paper critiques the existing legislation, it then sets out and examines proposals for an improved legislative framework, and finally the paper reflects on emerging compromises being made by Welsh Government as it progresses with the legislative programme.

## **THE UNDERPINNING RESEARCH**

The development of Welsh homelessness legislation has conformed to the emerging norm for Welsh housing policy development, which combines elements of evidence-based policy making, co-production, and there is a strong element of constraint resulting from the lack of priority afforded to housing in Wales (Fitzpatrick et al., 2013) and more recently resulting from austerity. Indeed, it was stipulated that any recommendations emerging from the review were to be deliverable at no extra cost. The legislative development process began when the Welsh Government made a commitment to examine homelessness legislation, largely as a result of discussions with voluntary and statutory sector partners; a piece of independent research was then commissioned; the Government then formulated proposals for change, upon which it consulted through various channels, before convening a group of experts from across this policy area, including the voluntary sector, local authorities, umbrella bodies and academia. From this process, the Welsh Government introduced new homelessness legislation for scrutiny and further consultation.

This paper is underpinned by four of the five studies that constituted the review of homelessness legislation in Wales: this is the first paper to draw the review findings together as no final report was produced as part of the legislative review. The four studies are: a review of selected international homelessness policy, two studies (one qualitative and one largely quantitative) assessing the impacts of existing legislation, and a study exploring options for an improved legislative framework in Wales. In this brief section the methods adopted in each study are summarized.

First, the international homelessness policy review (Fitzpatrick et al., 2012) examined policies of seven countries with promising approaches that could have provided useful lessons for Wales (England, Finland, France, Germany, Ireland, Scotland and the US). For each country, core literature was reviewed

and a key informant was interviewed. Both the interviews and literature review focussed on the following principal themes: housing and welfare systems, homelessness (scale, profile of homeless people, rights to housing, other assistance, policy trends), and outcomes of homelessness policies (on scale/nature of homelessness, overall strengths/weaknesses).

Two separate studies provide evidence of the impacts of existing legislation. First, Mackie and Hoffman (2011) undertook in-depth interviews with thirty key informants from local authorities, the voluntary sector, and national umbrella organizations, examining perspectives on the key strengths and weaknesses of the existing system. This is supplemented by a second, larger-scale study (Mackie et al., 2012a). The study included a review of the considerable volume of largely qualitative research, which, although not primarily focussed on the legislation, offers a rich insight into already documented strengths and weaknesses. It also incorporated a review of local authority administrative data. This administrative data were drawn from two sources; WHO12 data returned by local authorities to the Welsh Government and readily available through StatsWales, and data sourced directly from a sample of six Welsh local authorities, including homelessness prevention data that are not published elsewhere. The six authorities represented a mix of rural, urban and valley authorities and the sample was restricted to just six authorities due to the lack of complete and comparable data gathered by the other sixteen local authorities.

The final piece of research underpinning this paper aimed to identify options for an improved legislative framework (Mackie et al., 2012b). To achieve this aim, key stakeholders were asked for their views on the future direction of policy. In order to ensure that these were informed perspectives, the international policy review and the impact assessment of existing legislation were published and presented to key stakeholders either at an event or via the web. Stakeholder views were then elicited through three methods: three regional engagement events open to all interested stakeholders (120 attendees); an online survey open to all interested stakeholders (eleven respondents); and in-depth interviews and focus groups with a sample of key stakeholders (fifty respondents).

## **A CRITIQUE OF EXISTING HOMELESSNESS LEGISLATION IN WALES**

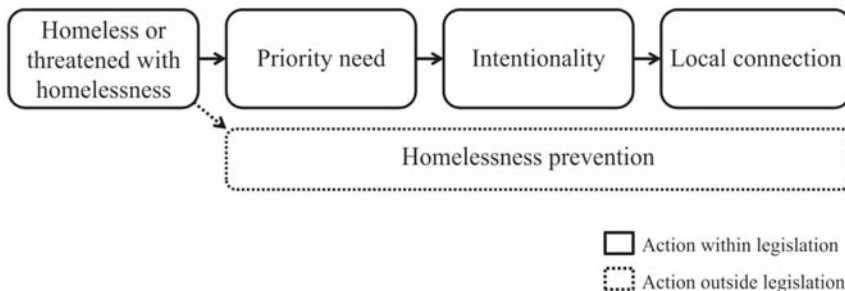
The homelessness legislation in Wales has evolved over time through primary legislative amendments made in Westminster, secondary legislative enactments

of the Welsh Government, and also through case law. The result is a complex and continuously evolving legal framework. Consequently, this section begins by outlining the main elements of the legislative framework in Wales; a detailed critique then follows. It must be noted that the overview of the current legal framework is selective and broad – entire texts are devoted to explaining its detail (Arden et al., 2012; Luba and Davies, 2012).

### The current legal framework

The homelessness legislative framework in Wales originated in the Housing (Homeless Persons) Act 1977, which was then amended by the Housing Act 1996, and later by the Homeless Persons (Priority Need) (Wales) Order 2001. The main focus of the 2001 Order was to extend the groups of people considered to be in ‘priority need’ and therefore owed settled accommodation. Figure 1 illustrates the process local authorities must follow and the ‘tests’ they must apply when a household seeks assistance due to homelessness or the threat of homelessness. In addition to the tests set out in Figure 1, local authorities would also need to determine whether the household is eligible for publicly funded assistance. For example, some migrants would be excluded from assistance.

**Figure 1**  
An overview of the homelessness legislative framework in Wales, 2013



Of course, Figure 1 is a simplification of the very complex legal system, but it does effectively illustrate the main points of the system. First, a local authority must determine whether the household is *homeless or threatened with homelessness*. In Wales, as in the rest of the UK, a very broad definition of homelessness is adopted, whereby a person is homeless if they have no accommodation available or where they do have accommodation it is not reasonable for them to occupy it, for example due to poor conditions. In Wales a person is



threatened with homelessness if they are likely to become homeless within twenty-eight days. Having determined that a person is homeless or threatened with homelessness the second test a local authority must apply is the *priority need* test. The following households would be considered to be in priority need for assistance:

- a household with a pregnant woman
- a household with dependent children
- a household with a person aged 16–17 years old
- a household with a person aged 18–21 years old leaving care or at risk of financial or sexual exploitation
- a household with a person who became homeless after leaving the armed forces
- a household with a former prisoners who became homeless after being released from custody
- a household with a person fleeing domestic violence or the threat of domestic violence
- a household with someone vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason
- a household with someone homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster

Where a household is not determined to be in priority need, the local authority has only a duty to provide advice and assistance, which is usually very limited and in some cases might simply be the provision of contact numbers for private rented landlords (Mackie, 2012). Local authorities have a duty to provide temporary accommodation to those households that are in priority need; these households then face the third test: *intentionality*. This test requires local authorities to investigate whether the household acted (e.g. committed anti-social behaviour and lost their tenancy) or failed to act (e.g. failed to pay rent that resulted in eviction) in a way that resulted in their homelessness. If the household did become homeless ‘intentionally’ then the local authority is only required to provide temporary accommodation for twenty-eight days; there is no duty to provide settled accommodation. Finally, local authorities can consider whether those households that are homeless and in priority need unintentionally have a local connection to the area. If those in the household do not normally live in the area (at least six of the last twelve months), are not employed in the area, or they do not have immediate relatives in the area, the household can be referred to a different local authority where they do have such connections. For all households that reach this final test, local authorities are required to provide settled accommodation. A less secure private rented sector tenancy can be provided but only with the agreement of the household.

Figure 1 shows that homelessness prevention sits alongside this statutory framework and while there is a duty for all local authorities to plan for homelessness prevention activities, prevention is not an integrated part of the framework, largely because the prevention agenda emerged decades after the legal framework had been developed. In Wales, as in the rest of the UK, homelessness prevention activities seek to either stop a household from becoming homeless or they find alternative solutions for households that are already homeless, for example in the private rented sector. In this instance homelessness prevention is targeted at preventing households from accessing the statutory entitlement to settled housing. While homelessness prevention does not form part of the legislative framework in Wales, it is included in this brief overview because prevention has become such an important part of homelessness service provision that the legislative framework is being undermined. Any review of the legal framework must consider the role of prevention.

### **A critique**

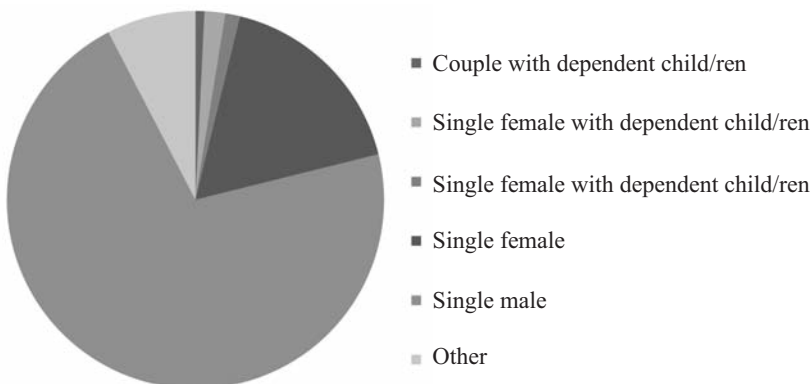
The starting point for many key stakeholders in the Welsh homelessness legislation review was to state that retaining a statutory safety net is of vital importance. Stakeholders talked of the importance of an enforceable right to accommodation in ensuring that the most vulnerable are housed. The international review of homelessness policy reinforced this point:

This very absence of legally enforceable rights linked to settled housing in the countries studied throws into sharp relief the value of retaining such rights, and the risks apparent when they do not exist or are not enforced. In some continental European countries – including Finland, Germany and France – social landlords routinely exclude low income and vulnerable households on grounds of ‘social mix’. (Fitzpatrick et al., 2012: 3)

Beyond this major strength, several key criticisms were laid upon the legislation: its selectivity, its inflexibility, a focus restricted to housing issues, the ambiguity of homelessness prevention, and its inconsistent application. Each of these will be discussed in turn. Stakeholders showed significant concern that the existing legislation is highly selective, excluding many households from any meaningful assistance. One stakeholder explained this as a result of the priority need test: ‘if they [households] are not in priority need there’s a sense that the obligation is finished and so they’re sent off’. Figure 2 shows the household types of those not in priority need in 2010/11 and therefore excluded from receiving settled accommodation through the homelessness legislation. The data clearly illustrate that single-person households, particularly single men, face the greatest exclusion.



**Figure 2**  
**Household types of non-priority need homeless households in Wales, 2010/11**



Source: Author analysis of a sample of unpublished local authority homelessness data.

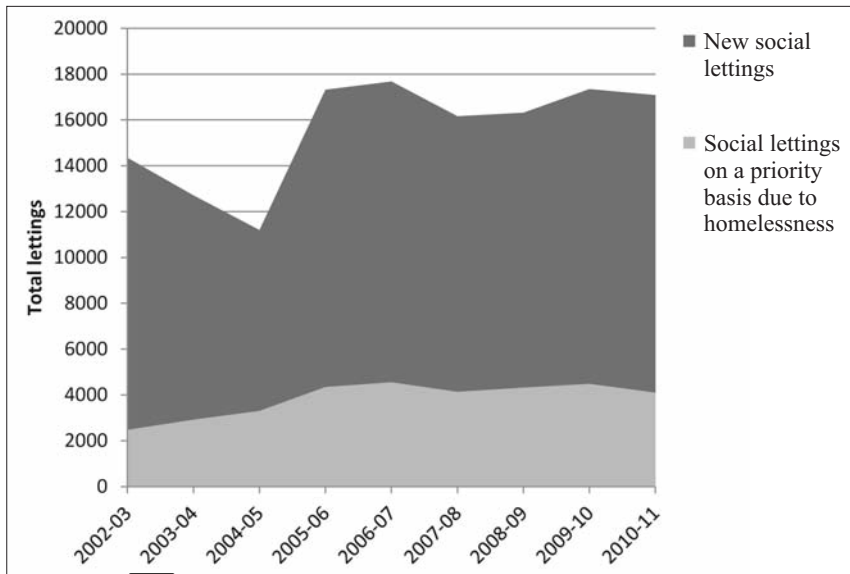
The second key critique of the legislation is its rigidity and inflexibility. Households that are in priority need and unintentionally homeless will typically spend time in temporary accommodation before finally receiving settled social rented housing. There is very limited scope for solutions to be tailored to the needs and abilities of the individual household. Indeed one stakeholder explained as follows:

There are people who have met their own needs for the bulk of their lives and end in crisis e.g. loss of a job. They may only need short term interventions and then those who are much more damaged, people for whom the triggers are much more complex, might access longer term support. There's just not enough heterogeneity in the entitlements. The route through the legislation is a bit mechanical.<sup>1</sup>

The rigid, inflexible system results in a relatively lengthy duration before homelessness is resolved. The analysis of a sample of local authority administrative data revealed that the average duration from making an application to the discharge of the homelessness duty, for households in priority need and unintentionally homeless, was three months, twice the duration of cases dealt with through prevention interventions. Delays in addressing homelessness can be detrimental to the household, as Crane et al. (2006, p. 156) observed: 'homelessness is an intolerable social malaise that, if protracted, is highly damaging to an individual's self-worth, morale and health.' The inflexibility of

the current legislation not only affects households that seek assistance, but also results in significant pressures on the limited social rented housing supply in Wales. Figure 3 shows that approximately one quarter of all new lettings made in the social rented sector in Wales are made to people who have sought assistance under the homelessness legislation.

**Figure 3**  
New social lettings made to households on a priority basis due to homelessness relative to all new social lettings in Wales (2002/03–2010/11)



Source: Welsh Government (2013, table HOUS1501).

The third critique of the existing system relates to its housing focus. Studies have proven that homelessness can result from both structural and individual causes (Anderson and Christian, 2003; Pleace, 2000; Speak, 2012) and yet the legislation focuses on addressing housing need, without effectively considering the wider issues facing households that might have caused the loss of accommodation. For example, individuals might have budgeting issues, behavioural problems, substance misuse or mental health issues, among others. Stakeholders were highly critical of the way homelessness is perceived to be solely a housing issue under the existing legislation. Moreover, failing to address wider support needs heightens the likelihood that people assisted under the legislation will

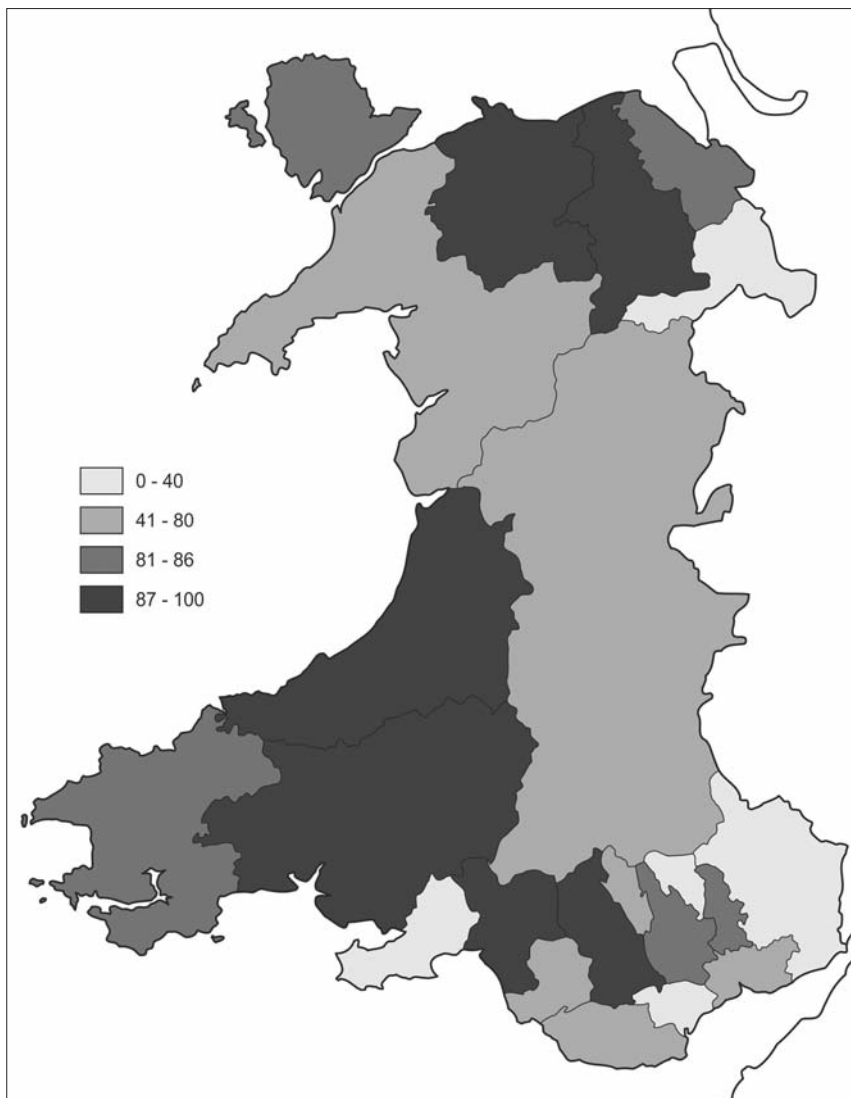
face homelessness again in the future. One stakeholder stated: ‘if we recognised it’s not just a lack of a roof that causes homelessness and we respond to this . . . Better legislation must address that and it would reap rewards.’<sup>2</sup>

The fourth critique of the existing legislation relates to the ambiguous role of homelessness prevention, an agenda that developed decades after the legislative framework was introduced. The review of a sample of local authority administrative data showed homelessness prevention cases took just six weeks from the opening of a case to its closure, therefore reducing the trauma of homelessness. Furthermore, homelessness prevention interventions are far more varied than the rigid statutory system, enabling local authorities to tailor the intervention to suit the individual. In the light of such positive impacts, the legislative review found very strong support for further pursuit of the prevention agenda, and while the Welsh Government has provided guidance to local authorities on pursuing prevention activities alongside their legal duties (WG, 2012a), stakeholders in the legislative review were generally concerned that prevention sits uncomfortably alongside the legislation, deterring a more committed pursuit of prevention interventions. One stakeholder explained as follows: ‘Prevention is the most efficient way to avoid homelessness. The local authority should be under a duty to prevent homelessness. As soon as prevention fails everything gets more expensive and so there is no argument against prevention.’<sup>3</sup>

The final critique to be laid upon the existing legislative framework focuses on its inconsistent application across Wales. Stakeholders identified inconsistencies in interpretation of the legislation at all stages but particularly in relation to the test of intentionality. However, the most dramatic inconsistency in homelessness services is in the prevention of homelessness. Figure 4 shows the substantial variation that exists between local authorities; stakeholders generally felt this variation exists because there is no legal requirement to seek to prevent and activities are poorly monitored.

The review concluded that ‘there is currently unacceptable variation in the implementation of homelessness legislation across Wales’ (Mackie et al., 2012b: 23). Discussions highlighted how complex the legislation is and the difficulties smaller local authorities face in keeping abreast of legislative changes. However, the apparent absence of a regulator of homelessness services was also highlighted as key to the inconsistent implementation of the law. Notably, the international review of homelessness policies revealed the importance of monitoring and regulation in ensuring effective and consistent delivery of homelessness services (Fitzpatrick et al., 2012).

**Figure 4**  
**The percentage of all potentially homeless households for which homelessness was prevented for at least six months by local authority in Wales, 2011/12**



Source: Welsh Government, 2013, table HHA/013.

## **AN OVERVIEW OF PROPOSED NEW HOMELESSNESS LEGISLATION FOR WALES**

Reflecting on the limits of the existing legislation and the findings of the international homelessness policy review, key stakeholders in Wales were engaged through interviews, focus groups and workshops to set out their ideas for an improved legislative framework. Many stakeholders understandably pursued very narrow interests, which often reflected the needs of the particular client group they worked with. By contrast, other stakeholders came prepared with ideas for an entirely new legislative framework. Drawing upon the complex range of stakeholder perspectives, the review team identified three models for legislative change. In the first, the right to settled accommodation would be removed, restricting people to temporary accommodation only. This ‘breaking the link’ option was preferred by a minority largely because it would reduce the use of social housing to accommodate homeless people. However, it was rejected by the review team primarily because international experience shows that this would simply lead to mass use of temporary accommodation with no clear route out (Fitzpatrick et al., 2012). The second, ‘minor amendments’, model was conservative in its aims. The review team identified areas of legislative change that gleaned almost unanimous support. Changes included: extending the definition of threatened with homelessness to fifty-six days, amending the duty to investigate intentionality to a power, allowing local authorities to discharge their duty to provide settled accommodation into the private rented sector without the consent of the household, and adding rough sleepers to the list of households considered to be in priority need. The review team recommended these changes, however they were to be delivered in addition to the more ambitious third model of legislative change. The third model, originally coined the ‘housing solutions’ model, was developed primarily in response to the overwhelming support for homelessness prevention activities to be prioritized and included within the legislative framework. The model would see homelessness legislation in Wales divided into two stages, with the first stage delivered to all and focussing on efforts to prevent homelessness or find alternative accommodation promptly. The second stage would only commence if no solution could be found at the first. This second stage would essentially replicate the existing model, whereby local authorities would have a duty to accommodate all households deemed to be in priority need. This model was recommended to the Welsh Government alongside the minor changes of model two. The new legislation is due to be enacted in spring 2015, hence the details were far from confirmed at the time of writing. However, the key

elements of the plans for legislative change, as set out in the proposals of the review team, are outlined in the remainder of this section.

**The ‘somewhere safe to stay’ duty**

Under the existing legislation local authorities need to provide only temporary accommodation to homeless households perceived to be in priority need, whereas the new proposals would see this selectivity removed; all households would be offered temporary accommodation where they have nowhere safe to stay. Such rights exist in other countries such as Germany and even in cities such as New York (Fitzpatrick et al., 2012), and while there would be significant resource implications it was seen as necessary to ensure the initial housing crisis can be ended for all households while a solution is sought. However, unlike Germany and New York, whereby temporary accommodation becomes blocked, the duty to provide safe accommodation would end as soon as the local authority has taken steps to find alternative accommodation; in essence the right to temporary accommodation is time limited and would not become blocked.

**A new first stage legal duty: taking reasonable steps to prevent or alleviate homelessness**

The most significant change proposed by the review team was a new first stage duty that would bring homelessness prevention activities into the legislative framework. Local authorities would be required to take reasonable steps to prevent or alleviate homelessness for all households that are homeless or threatened with homelessness. In essence this would mean households received help to either stay in their current accommodation, perhaps through landlord negotiation or mediation between a young person and their parents, or they would be assisted to find alternative accommodation, normally in the private rented sector. Significantly, local authorities would also be required to assess the support needs of households and make an appropriate referral to a support agency. At this new first stage local authorities would not be required to investigate priority need, intentionality or local connection. All households would receive assistance, albeit there would be no guarantee of a solution. Local authorities would have to ensure that they have a minimum set of interventions available in order to assist homeless households; this would ensure a minimum level of prevention activity is achieved in all local authorities in Wales. Where a household is enabled to stay in its current accommodation, or a suitable alternative is found, the local authority can discharge its duty. Where no solution is found, the local authority must then move to the second stage of the proposed legislative framework.



### **An amended second stage legal duty**

The second stage of the proposed legislative framework is essentially the existing framework set out earlier in this paper. The review showed that there is strong support for retaining a safety net for the most vulnerable, hence priority need, intentionality and local connection investigations will be undertaken for those households that cannot be found a solution at stage one and those determined to be in priority need and unintentionally homeless will be owed settled accommodation. However, in response to points of unanimous agreement in the review, this second stage would be amended slightly from the current situation. Local authorities would be able to discharge their duty into private rented accommodation without the consent of the household; the intentionality test would no longer be mandatory, instead local authorities would have the power to investigate, and rough sleepers would be added to the list of those considered to be in priority need. In addition to these system changes, and drawing upon experiences in other countries, the review team recommended that a homelessness regulator should be introduced in order to monitor and guide the implementation of the new legislation: ‘There was considerable support amongst interviewees for some form of independent inspectorate of housing and homelessness services in Wales in order to ensure high standards of service and to address problems of inconsistency’ (Mackie et al., 2012b, p. 11).

### **REFLECTING ON THE PROPOSED AMENDMENTS: UNIVERSAL ACCESS TO APPROPRIATE ASSISTANCE DELIVERED?**

In this penultimate section, the paper examines the extent to which the proposed amendments to Welsh homelessness legislation address the criticisms laid upon the existing framework. Moreover, this section considers whether or not the proposals meet the overarching aim set out for the legislation by the Welsh Government: to deliver access to appropriate assistance for all households that are homelessness or threatened with homelessness (WAG, 2009).

Returning to the critique of the existing legislation, the first point to make is that the safety net, which is so valuable and unique to the UK, has been retained. Under the proposed amendments, those deemed to be particularly vulnerable and therefore in priority need will be provided with accommodation but only where they could not be assisted to remain at home and no alternative solution could be found. There would no longer be guaranteed access to settled social rented accommodation, however there would be a guarantee of accom-

modation that is at least equivalent to a standard six-month tenancy in the private rented sector – which is equal to the security available to the wider community searching for private rented accommodation in the Welsh housing market.

The existing legislation was described as selective and far from the universal access to assistance sought by the Welsh Government. The new first stage, which requires local authorities to take reasonable steps to assist all households without investigating priority need, intentionality or local connection, would ensure that at the point of seeking assistance all households are treated equally and a solution would be sought. This is a significant step forward in the fight for universal assistance. Moreover, the ‘somewhere safe to stay’ duty would ensure that all households are accommodated somewhere while assistance is provided – without a place to stay it would be exceptionally challenging for service providers to find the household and assist it meaningfully. Of course, the assistance provided at stage one will not result in all households being accommodated and those that are then determined not to be in priority need, or those that are intentionally homeless at stage two, will be left without accommodation. The proposed new system clearly falls short of ensuring homelessness is resolved for all households. For the legislation to ensure homelessness is resolved for all, the priority need and intentionality tests would need to be removed from the second stage of the legislation. Due to the resource implications of such changes, and the Welsh Government demands that legislative changes would need to be achieved at no additional cost, this commitment was not included in the proposed amendments. However, since 2012 priority need is no longer investigated in Scotland, a commitment that the Scottish Government worked towards from the turn of the century. Given achievements in Scotland, the abolition of priority need would be practicable in Wales if the Welsh Government were to prioritize and resource policy in this area. Unfortunately, it is well documented that resourcing and prioritizing such progressive changes is particularly difficult in austere times (Farnsworth and Irving, 2011) and it is unlikely that the changes in Scotland would have received support had the economic climate mirrored that of today.

Existing homelessness legislation in Wales was perceived to be highly inflexible, offering a single route through temporary accommodation and on to settled accommodation in the social rented sector, largely irrespective of household needs. The proposed changes to legislation will require local authorities to develop a suite of interventions and to consider with the household what is most likely to resolve its homelessness at stage one. This will lead to a vast cultural shift away from investigating and processing decisions,

towards problem solving and dialogue with the household. Greater flexibility will also be introduced at the second stage because local authorities will not be restricted to the social rented sector in discharging their duties to provide accommodation – the private rented sector will also be an option without the consent of the household.

The proposed amendments at least partly address concerns that the existing legislation is solely focussed on meeting housing needs rather than addressing other possible causes of homelessness. The amendments recognize that a loss of accommodation is often the manifestation of a wide range of interconnected individual and structural issues such as unemployment, money management, relationship breakdown, behavioural problems, health issues, or substance misuse. Under the proposed legislation it would be a requirement to assess the support needs of all households and an appropriate referral to support services would need to be made. While this is a significant development it does not require local authorities to provide or commission the support, hence referrals may not result in appropriate support being delivered. Once again, developments in Scotland offer a more progressive example, whereby the local authority is under a duty to make an assessment and provide support to homeless households. While resource limitations prohibit such development in Wales to some extent, it is also true that stakeholders in Wales were not particularly concerned with a duty to provide support and the international evidence did not point to good examples of the outcomes of such intervention.

There were significant concerns over the ambiguity of the role of homelessness prevention interventions within the context of the existing homelessness legislation and this paper can comprehensively conclude that the ambiguity would be removed under the proposed changes, as homelessness prevention and alleviation responsibilities would be introduced at the first stage. A second concern relating to homelessness prevention was the inconsistent manner in which it is implemented across Welsh local authorities. To some extent this will be addressed because local authorities would have a legal duty to take reasonable steps to prevent homelessness, however it is likely that inconsistency will still exist above a much higher minimum level of prevention. To address the remaining inconsistencies and, indeed, inconsistencies relating to the implementation of other elements of the legislation, it was recommended that a regulator should be introduced. Experiences in other countries such as France, Ireland and Scotland (Fitzpatrick et al., 2012) suggest that this will help to address the major inconsistencies that exist in homelessness services across Wales.

Returning to the fundamental aim for the Welsh homelessness legislation, as set out by the Welsh Assembly Government (2009), the proposed legislative

changes would indeed deliver access to appropriate assistance for all households that are homeless or threatened with homelessness. People would seek assistance under the proposed system and they would be supported to find a solution that meets their needs, rather than labelling and processing them through an inflexible and selective system that excludes so many. Of course, no system is perfect; the proposals have significant limitations, most of which result from a lack of resources. Perhaps most significantly, retaining priority need at the second stage of the system is the greatest failing of the legislative review – a failing that is likely to result in many homeless households remaining in housing poverty. What is of greatest concern is that Wales, like many other developed world countries, will continue to permit households to remain homeless despite the fact the household has sought assistance.

### **CONCLUSION: THE WELSH GOVERNMENT RESPONSE TO PROPOSED LEGISLATIVE CHANGE – A DETRIMENTAL COMPROMISE**

In May 2012 the Welsh Government published the housing White Paper (WG, 2012b), which includes Government plans for developments in homelessness legislation. Since the White Paper was published further thought has been given to the legislation, largely as a result of consultation responses, an assessment of the impacts of the proposed legislative amendments (Mackie et al., 2012c), and advice from Government lawyers. Encouragingly, and perhaps most significantly, at the time of writing the Welsh Government was planning to introduce a new duty on local authorities to take reasonable steps to prevent and alleviate homelessness. All minor amendments set out in the homelessness review were also within Government plans for change, including: extending the definition of threatened with homelessness to fifty-six days, allowing local authorities to discharge their homelessness duty using private rented sector accommodation, changing the duty to test for intentionality to a power, and serious consideration was being given to the inclusion of rough sleepers as a priority need group. These developments would mark a significant step forward in Welsh homelessness legislation, however three significant compromises were being proposed.

First, the Welsh Government has indicated that households that seek assistance will be treated differently depending upon their homelessness status. If they are threatened with homelessness (i.e. they have accommodation but are at risk of losing it) then reasonable steps will be taken to prevent homelessness for all households, as recommended in the review. However, households that

are already homeless would be subject to priority need, intentionality and local connection tests. Reasonable steps would be taken to alleviate homelessness for all these households as recommended in the review, but the reintroduction of the priority need test would result in a renewed and detrimental focus on processing decisions and investigating perceived need, rather than focussing on solutions.

The reason for reintroducing priority need, intentionality and local connection tests was primarily to enable local authorities to restrict the provision of temporary accommodation to those in priority need only. The Welsh Government indicated that those not in priority need would receive no temporary accommodation, making it more challenging to work with the household and find a solution. This compromise appears to be in response to concerns over resource implications and the potential unintended consequence the review proposals might have in incentivizing homeless households from England to apply for assistance in Wales. The third major compromise is the lack of commitment to introducing a regulator for homelessness services. Currently, individual households can challenge local authority decisions through the courts, with assistance mostly funded by legal aid and generally provided by Shelter Cymru.<sup>4</sup> Significantly, this opportunity to challenge local authority decisions will be extended to include homelessness prevention duties. However the evidence in the review demonstrates that failing to monitor and regulate services at local authority and national level will potentially result in major inconsistencies in service delivery, and therefore the needs of households will not be met universally across Wales. In addition to these three major compromises, at the time of writing there was no apparent commitment to the new duty to undertake a support needs assessment. Without this important duty the legislation is less likely to succeed in addressing potential problems that might have caused homelessness, therefore increasing the likelihood households will become homeless again.

There exists a once-in-a-generation opportunity to make an unquantifiable positive impact on the lives of thousands of homeless people in Wales. The Welsh Government set out to improve homelessness legislation in Wales, in line with an ideological commitment to universal, rights-based services. However, it appears that fears of austerity, and the unknown impacts of change, are likely to dilute ambitions for universal access to appropriate assistance for homeless people in Wales.

## NOTES

- <sup>1</sup> Key informant interview 2011.
- <sup>2</sup> Key informant interview 2012.
- <sup>3</sup> Key informant interview 2012.
- <sup>4</sup> Shelter Cymru is a third sector organisation that provides independent specialist advice and legal advocacy for anyone with housing problems in Wales. See <http://www.sheltercymru.org.uk/about-us/>

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