

# Briefing for Expert Review Panel, fourth meeting: Access to Housing

November 2022

## Purpose of the briefing

This briefing is intended to provide background and a contextual outline for the Expert Review Panel's discussion on eligibility, allocations and temporary accommodations as well as information on evictions carried over from the third meeting briefing.

**The aim of the core panel's fourth meeting is to identify existing legal barriers in Wales to accessing adequate housing and to consider recommendations on legislative reform for dismantling these barriers.**

## Content of the briefing

- 1) Eligibility
- 2) Allocations
- 3) Temporary accommodation
- 4) Suitability
- 5) Guiding points for discussion
- 6) Appendix A: Current recommendations and proposals from existing reports/ research
- 7) Appendix B: Evictions (from last paper)

### 1. Eligibility

A local authority has a duty to carry out a homelessness assessment to determine whether a person is eligible for help when they apply to the authority for accommodation or for help obtaining accommodation and it appears that they may be homeless or threatened with homelessness.

However, the duty to assess is not owed if the person has been assessed before under Section 62 and their circumstances have not materially changed and there is no new information that materially affects the assessment.

Schedule 2 of the Housing (Wales) Act 2014 also outlines that a person is not eligible for assistance under Part 2 of the Act, if;

- a. they are a person from abroad who is ineligible for housing assistance.
- b. they are a person who is subject to immigration control within the meaning of the [Asylum and Immigration Act 1996](#), unless they are of a class prescribed by regulations made by the Welsh Ministers.

Under section 160A of the Housing Act 1996, a local authority may also determine that an applicant is ineligible for housing allocation or given no preference on the grounds of unacceptable behaviour.

Further details of eligibility rules are set out in the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014.<sup>1</sup>

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<sup>1</sup> [The Allocation of Housing and Homelessness \(Eligibility\) \(Wales\) Regulations 2014 \(legislation.gov.uk\)](#)

In April 2022, The Welsh Government amended these regulations enabling those who are fleeing the current Ukraine crisis to be eligible for allocation of housing.<sup>2</sup>

### **Eligibility for other support**

The Welsh Government also introduced the Housing Support Grant (HSG) in 2019. The HSG is an early intervention grant programme to assist in preventing people from becoming homeless. As outlined in the guidance for the grant, the “HSG does not fund the statutory duty on local authorities to prevent homelessness, instead HSG funded services augment, complement and support the statutory service to ensure that the overall offer authorities provide helps people into the right homes with the right support to succeed. It supports vulnerable people to address the, sometimes multiple, problems they face, such as debt, employment, tenancy management, substance misuse, violence against women, domestic abuse and sexual violence, and mental health issues.”<sup>3</sup>

The grant is available for “any person in need of support to prevent them becoming at risk of homelessness, to address homelessness or achieve a more stable housing circumstance is eligible to receive housing support, as long as they are eligible to receive help under the Housing (Wales) Act 2014 and the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014, regardless of their tenure or lack of tenure.” However, it is not available for under 16s or for those who are not eligible to receive help under the Housing (Wales) Act 2014 and the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014, due to their immigration status.

### **Eligibility and No Recourse to Public Funds (NRPF)**

*NB. Please note this section will be accompanied by legal advice.*

In order to be eligible for certain aspects of welfare support in the UK – including benefits and housing allocation – a person must be considered to have recourse to public funds. A person is considered to have No Recourse to Public Funds (NRPF) if they are ‘subject to immigration control’, as defined at section 115 of the Immigration and Asylum Act 1999. The NRPF Network website lists the types of immigration status a person must have to access public funds.<sup>4</sup>

In practice, NRPF can include people with status who have an NRPF condition attached to their visa, people applying for asylum, and people who don’t have status, for example because their asylum claim was rejected or they overstayed their visa. The options for support for people in these different situations will vary even though all have NRPF.

There is no robust data on the total number of people who have NRPF in Wales. In general, there are barriers to collating this specific data (e.g. people may be avoiding state services due to concerns about their immigration status.) Furthermore, where data is collected there are concerns with its quality, particularly data collected by the Home Office.<sup>5</sup>

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<sup>2</sup> [The Allocation of Housing and Homelessness \(Eligibility\) \(Wales\) \(Amendment\) Regulations 2022](#)

<sup>3</sup> Housing Support Grant Practice Guidance, available at:

<https://gov.wales/sites/default/files/publications/2021-04/housing-support-grant-practice-guidance.pdf>

<sup>4</sup> See <https://www.nrpfnetwork.org.uk/information-and-resources/rights-and-entitlements/immigration-status-and-entitlements>.

<sup>5</sup> Crisis (2019) *A Home for All: Understanding migrant homelessness in Great Britain*. London: Crisis

## **What housing and homelessness support cannot be accessed by people who have no recourse to public funds?**

In Wales, the following types of housing and homelessness assistance provided by a local authority are classed as public funds for immigration purposes:

- A Local Authority allocation of housing (for example a council or housing association tenancy) made under Part VI of the Housing Act 1996.
- The provision of housing accommodation by a Local Housing Authority under Part II of the Housing Act 1985.
- Homelessness assistance under sections 66, 68, 73 and 75 of the Housing (Wales) Act 2014.

Someone who has No Recourse to Public Funds (NRPF) will not be eligible for such homelessness assistance or a housing allocation.

## **What housing support can be accessed by a person with NRPF?**

In June 2022, the Welsh Government published *No recourse to public funds (NRPF): Guidance to help local services support people that are not entitled to public funds*.<sup>6</sup>

This guidance outlines that support from social services is not a public fund for immigration purposes and assistance should not be refused for this reason alone. A local authority's obligation to conduct an assessment under the Social Services and Well-being (Wales) Act 2014 is also independent from any consideration of the type of immigration status a person or family may have. In addition, the absence of a pending immigration application must not prevent an assessment being carried out or interim support being provided when this is necessary.

However, Section 46 of the Act does allow for an exception that a local authority may not meet the needs for care and support of an adult who has NRPF and whose needs for care and support have arisen **solely** because they are destitute, or because of the physical effects, or anticipated physical effects, of being destitute.

## **Support for refugees or asylum seekers with NRPF**

In cases where a refugee or person seeking asylum has NRPF, their right to housing support depends upon the status of their application for asylum.<sup>7</sup> An adult seeking asylum and awaiting a decision will not have access to private accommodation while an application is being processed. If the adult has nowhere to live, the UK Government will determine where in the UK to place the adult within National Asylum Support Service (NASS) accommodation. This could include accommodation in Wales run by Clearsprings Ready Homes. If the adult has friends and family that they can live with, they may not qualify for asylum accommodation.

If granted asylum, the adult has to leave asylum accommodation and find somewhere else to live within 28 days. In Wales, the Welsh Government funds the Wales Refugee Council to assist with this. Refused refugees can appeal a decision or apply for "section 4" support, but there is no requirement (particularly if the refugee does not have accompanying children) to provide accommodation while

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<sup>6</sup> Welsh Government (2022) *No recourse to public funds (NRPF): guidance*, p.6

<sup>7</sup> <https://sanctuary.gov.wales/refugeesandasylumseekers/housing>

this is being processed. A young asylum seeker who can demonstrate that they are under 18 or is assessed by the local authority as being under 18, will be considered “looked after” by the local authority and placed in foster care while applying for asylum.

### **Experiences of people with NRPF in Wales**

The impact of NRPF has on a person is often devastating both in terms of mental and physical health. A person who has NRPF is much more likely to experience poverty and destitution.

Last year, in the first representative survey conducted with people with NRPF, Citizens Advice found that in the UK:

- People with NRPF are four times more likely to be behind on at least one essential bill (81% against 20% for the UK population) with rent, utilities and council tax the most common bills missed.
- Almost half (48%) report living in overcrowded accommodation and 1 in 5 (18%) have experienced homelessness or housing insecurity.
- Three-quarters (75%) have suffered from at least one negative consequence of having NRPF, including not being able to feed themselves or their family, or afford clothing and footwear appropriate for the weather.

In this research, people who have NRPF described feeling “helpless” and “invisible.”

This also echoes experiences in Wales of the difficult situations and poor conditions that asylum seekers often live in. Reports of poor and cramped facilities hit the headlines in Pembrokeshire in 2020.<sup>8</sup>

Charities working with refugees also document asylum seekers living in difficult circumstances and struggling with the Home Office systems. A refugee living in Cardiff said:

*“I like Cardiff, but the system – what the Government wants to do with us – it’s hard. They give us £39 per week. You go to Lidl one/two time and it’s almost gone. If I had a job, I can pay rent, support myself and have dignity. That’s why some people go crazy in the street, because they don’t have anything. I’ve been here for 8 years. I’ve had no accommodation for 6 of those years. I slept in my friend’s house. You know, when you put in a Fresh Claim you have to list everywhere you stay and tell the Home Office. What am I supposed to say? For 6 years I am sleeping here, sleeping there.”<sup>9</sup>*

### **A Scottish example of considering how to make support more inclusive of people with NRPF**

Last year, the Scottish Government published the Ending Destitution Together strategy<sup>10</sup> to improve support for people with NRPF living in Scotland.

The strategy maps elements of a pathway out of destitution and the three action areas to strengthen support for people living with NRPF. These include:

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<sup>8</sup> See <https://www.bbc.co.uk/news/uk-wales-54362403>

<sup>9</sup> See Stories from Home 4 U residents [at www.home4ucardiff.org](http://www.home4ucardiff.org)

<sup>10</sup> See <https://www.gov.scot/publications/ending-destitution-together>

- **Essential Needs** – the practical things people need, particularly at a point of crisis (including access to food, shelter and healthcare);
- **Advice and Advocacy** – access to specialist advice and supporting advocacy needed to navigate asylum and immigration systems and secure rights (including specialist legal advice); and
- **Inclusion** – promoting fair access and participation for everyone (including people with lived experience informing service design; involvement in communities; and employment).

Each of these action areas is accompanied by information on what is already happening to meet these needs in Scotland, what people with NRPF have told the Government about this area, and what actions the Government will commit to delivering.

For example, actions include piloting a hardship fund for people who face NRPF and are in crisis; working with COSLA to develop funding lines and models to meet the needs of people with NRPF; updating guidance and training to support local authority provision of services to NRPF; and investing in the diagnostic provision of legal advice and advocacy for people with NRPF.

### **Wales as a nation of sanctuary**

The Welsh Government declared Wales a Nation of Sanctuary and launched its *Nation of Sanctuary Plan* in 2019.<sup>11</sup> The Plan pledges positive measures to support integration of people seeking sanctuary in Wales and to mitigate destitution. Actions include:

- Ensure refugees are supported to transition from asylum accommodation to sustainable accommodation.
- Promote good quality asylum accommodation provided by the UK Government.
- Support asylum seeker tenants to advocate for improvements to their accommodation.

In their feasibility study<sup>12</sup> on providing accommodation for refused asylum seekers in Wales, Petch and Stirling outline that the Nation of Sanctuary Plan,<sup>13</sup> requires cross-Government actions across Welsh Government and Westminster.

### **Existing reports and recommendations to improve accommodation for people with NRPF in Wales**

In 2019, Tai Pawb published a report which explores the feasibility of establishing temporary accommodation and support specifically for refugees in Wales, based on models already established by specialist providers in England.<sup>14</sup> The report recommendations are listed at Appendix A.

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<sup>11</sup> [https://gov.wales/sites/default/files/publications/2019-03/nation-of-sanctuary-refugee-and-asylum-seeker-plan\\_0.pdf](https://gov.wales/sites/default/files/publications/2019-03/nation-of-sanctuary-refugee-and-asylum-seeker-plan_0.pdf)

<sup>12</sup> H. Petch, T. Stirling (2020) Providing Accommodation for Refused Asylum Seekers in Wales

<sup>13</sup> [https://gov.wales/sites/default/files/publications/2019-03/nation-of-sanctuary-refugee-and-asylum-seeker-plan\\_0.pdf](https://gov.wales/sites/default/files/publications/2019-03/nation-of-sanctuary-refugee-and-asylum-seeker-plan_0.pdf)

<sup>14</sup> Tai Pawb (2019) [Refugee Housing and Support Feasibility Study](#)

The Homelessness Action Group in Wales has made a set of recommendations<sup>15</sup> to Welsh Government to help prevent and end homelessness specifically for people who have migrated to Wales from outside the UK. These are listed in Appendix A.

The NRPF Network, which seeks to safeguard the welfare of destitute families, adults and care leavers who are unable to access benefits due to their immigration status, has made a series of recommends to the UK Government, which are also found at Appendix A.

## 2. Allocations

### Current Allocations legislation and regulation in Wales

*NB. Please note this section will be accompanied by legal advice.*

Local authorities in Wales have wide discretionary powers to provide housing accommodation under section 9 of the [Housing Act 1985](#) (HA 1985). They are not obliged to hold housing stock and as a result, a number of local authorities transferred their housing stock to Registered Social Landlords (“RSLs”). Where local authorities decide to provide social housing themselves, Part 6 of the [Housing Act 1996](#) (HA 1996) applies.<sup>16</sup>

Two of the most relevant Sections of Part 6 to consider for the Welsh context are:

- Section 167, which provides that each local authority in Wales shall have an allocations scheme outlining how housing allocations are to be prioritised and allocated. The scheme should ensure it gives “reasonable preference” to certain categories of applicant, including people who are homeless.
- Section 169, under which the Welsh Ministers issued statutory guidance entitled the ‘[Code of Guidance for Local Authorities on Allocation of Accommodation and Homelessness](#)’ which applies to both the housing and Social Services functions of local authorities.

The Code of Guidance for Local Authorities on Allocation of Accommodation and Homelessness advises that local authorities should consider the wider objectives of meeting the area's housing needs; how their allocation and homelessness policies interact with other areas of welfare provision; and what arrangements are required to ensure a smooth relationship with different providers.

Part 1 of the Code gives an overview of existing and emerging types of allocation scheme and provides guidance on how to comply with the legislative requirements of the Act in formulating housing allocation policies.<sup>17</sup>

Housing Associations (also known as Registered Social Landlords/ RSLs) are distinguished from other landlords by having the principal objective of meeting housing need and, in Wales, being not-for-profit organisations. Whilst the Regulatory Framework for Housing Associations Registered in Wales<sup>18</sup> includes several references to an RSL’s need to achieve its social purpose, there is no specific mention of allocations schemes in relation to homelessness.

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<sup>15</sup> Report from the Homelessness Action Group for the Welsh Government, (March 2020), The framework of policies, approaches and plans needed to end homelessness in Wales (What ending homelessness in Wales looks like), p.45-46

<sup>16</sup> <https://law.gov.wales/local-authorities-0>

<sup>17</sup> <https://gov.wales/allocation-accommodation-and-homelessness-guidance-local-authorities>

<sup>18</sup> <https://gov.wales/housing-associations-registered-wales-regulatory-framework>

The 1996 Act requires registered social landlords to co-operate with local authorities in offering accommodation to people with priority on the local authority's housing register and in offering assistance to homeless persons.

### **Allocations in the policy context of Rapid Rehousing**

When considering allocations, it is important to be aware of the policy context and that Wales is moving towards an approach of 'Rapid Rehousing'.<sup>19</sup>

Rapid rehousing is an approach which seeks to ensure homeless people are allocated long-term homes as soon as possible. Local authorities in Wales have been asked to produce Rapid Rehousing Transition Plans which outline a five-year timescale for the transformation to Rapid Rehousing.<sup>20</sup> These plans will link housing development, support and supply to housing need, resulting in allocation processes that focus on appropriate settled homes and support to meet their needs.

### **Collaboration between local authorities and housing associations on allocations**

The Welsh Government encourages local authorities to develop close working, strategic and operational partnerships with Housing Associations.<sup>21</sup> This is to ensure best use is made of the available social housing and applicants are offered the widest choice of accommodation.

At the time the CIH 2020 review was published, 19 of the 22 local authorities in Wales were utilising a common housing register (CHR). This is a joint waiting list for housing provided by the local authority and any partner housing associations. The review outlines that local authority staff felt that, though not without its challenges, working with a CHR promoted better relationships and collaboration with their housing association partners:

*'The partnership works very well and our partner landlords are very well engaged in delivering the common register. We have an agreement with our partners that they advertise their properties via the Common Housing Register and these are advertised in accordance with our common policy. Aside from the stock transfer agreement, we have an agreed lettings plan with all of our RSL partners which helps to determine allocations to priority groups (enabling the Council to discharge its duties to households in housing need).'*<sup>22</sup>

The review also reported that local authority and housing association partners that have adopted a choice-based lettings (CBL) approach were positive about its impact for people looking for housing, social landlords and partner relationships. Meanwhile, others highlighted challenges in relation to responding to households accepted as homeless.

*'The banding prioritises highest housing need (i.e. homeless in temporary accommodation) but due to the lack of affordable housing (including social housing) we struggle to offer properties to other applicants with lower banding but still in housing need.'*<sup>23</sup>

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<sup>19</sup> [Rapid rehousing transition plans: guidance for local authorities and partners \(gov.wales\)](https://gov.wales/rapid-rehousing-transition-plans-guidance-for-local-authorities-and-partners)

<sup>20</sup> <https://gov.wales/rapid-rehousing-guidance-html>

<sup>21</sup> Welsh Government guidance (2016), Allocation of accommodation and homelessness: guidance for local authorities

<sup>22</sup> J. Kent, E. Brock (2020) Time to re-focus? A review of the allocation of social rented housing in Wales within the context of COVID-19, p.5.

<sup>23</sup> J. Kent, E. Brock (2020) Time to re-focus? A review of the allocation of social rented housing in Wales within the context of COVID-19, p.6.

Where local authorities transfer stock to housing associations, guidance in Wales (both the Allocation of Accommodation and Homelessness Guidance and the Housing Transfer Guidelines) highlights the need for nomination agreements to be in place. Such agreements outline how many places are to be nominated by local authorities. The Allocation of Accommodation and Homelessness Guidance for Local Authorities states:

*“It is vital that Local Authorities are vigorous in establishing and implementing nomination arrangements with Housing Associations which play a full part in housing people who are threatened with homelessness as well as those who are homeless.”<sup>24</sup>*

### **Allocations and supply**

In 2020, CIH Cymru published a review of the allocation of social rented housing in Wales within the context of COVID-19.<sup>25</sup> This review suggested that the biggest issue facing those responsible for allocating social housing is the mismatch between supply and demand which subsequently leads to allocation schemes becoming part of a rationing process. However, the most recent GB Homelessness Monitor 2022<sup>26</sup> makes it clear that for homeless and other households in urgent need of a suitable house, the annual flow of lettings has a bigger impact than new provision. In the last decade, the annual flow of lettings has tightened.

Throughout 2012-20, the Scottish rate of lettings to households new to the social housing is seen to remain higher than elsewhere,<sup>27</sup> aided by comparatively high levels of social rented stock. The Monitor notes how Scotland and Wales also saw minimal change in the rate of such lettings, owing to a fall in the proportion of lettings to existing tenants and higher rates of newly constructed social homes. In contrast, the English lettings rate steadily declined, driven by a lack of new homes to replace Right to Buy sales and a fall in the share of lettings to new social renters.

People trying to secure social housing in Wales are found to have very different experiences depending on where they present. Analysis from the review of the allocation of social rented housing in Wales found that under normal circumstances (i.e., before the COVID-19 pandemic), the schemes used by at least 7 local authorities in Wales do not place homeless applicants, or those threatened with homelessness in the highest priority banding.<sup>28</sup>

The majority of local authorities responding to the Homelessness Monitor (Wales) 2021, seemed to indicate it was a lack of appropriate accommodation rather than necessarily RSL allocation policies which were a key barrier to finding people secure housing. However, one LA did reference the risk averse allocations policies of social landlords:

*“Operationally there are some challenges with local lettings policies and concerns about suitability of lettings in some high-risk locations. Community tensions, history of ASB, drug*

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<sup>24</sup> See here: [allocation-of-accommodation-and-homelessness-guidance-for-local-authorities.pdf \(gov.wales\)](#), paragraph 12.20.

<sup>25</sup> J. Kent, E. Brock (2020) Time to re-focus? A review of the allocation of social rented housing in Wales within the context of COVID-19

<sup>26</sup> B. Watts, G. Bramley, S. Fitzpatrick, L. McMordie, H. Pawson, G. Young (2022) The homelessness monitor: Great Britain 2022

<sup>27</sup> B. Watts, G. Bramley, S. Fitzpatrick, L. McMordie, H. Pawson, G. Young (2022) The homelessness monitor: Great Britain 2022

<sup>28</sup> J. Kent, E. Brock (2020) Time to re-focus? A review of the allocation of social rented housing in Wales within the context of COVID-19, p.7.



*dealing lead to at times more stringent lettings through local lettings policies which are often a barrier to some of our homelessness clients.” (Other LA)<sup>29</sup>*

### **Ombudsman Report on Homelessness and Allocations**

In 2006, the Local Government Ombudsman for Wales published a special report on homelessness and allocations. The report states that the Ombudsman wanted to look at whether legislative amendments made in 2002 had met with the policy intention of encouraging RSLs to move from being “housing allocators” to a social lettings service that is more responsive to applicant needs.<sup>30</sup>

The Ombudsman report stated:

*“A number of complaints received by my office concerning housing allocations and homelessness issues have revealed a widespread problem with how such applications are dealt with. A significant number of the 22 Welsh local authorities have failed to introduce housing allocation and homelessness policies and procedures that implement in practice the relevant legislative requirements, in particular those introduced by the Homelessness Act 2002 [...]*

*“In relation to homelessness matters, the issues ranged from a failure to properly conduct homelessness enquiries to a failure to inform the applicant of statutory rights of appeal against an authority’s decision.*

*“So far as housing allocation policies are concerned, the problems varied in significance from there being no apparent changes evident in the policy since the introduction of the legislative changes - thus potentially calling into question every subsequent allocation of housing - to specific problems with the number of points awarded and the proper reflection of reasonable preference for particular categories of individual.”*

The report outlined that in many cases, the Ombudsman had found local authority allocations policies to be unlawful. For example, applying blanket policies that failed to take account of individual needs, adopting points systems in allocations that placed homeless people at a disadvantage; and failure to create an allocations scheme at all.

The Ombudsman’s report made a number of considerations around ensuring that local authorities were to be aware of and reflect on allocation practices in accordance with the law. See the full list at Appendix A.

### **Statistics on housing association allocations to homeless households**

The Homelessness Monitor Wales (2021) suggests that RSLs have taken positive steps around ending evictions into homelessness but highlighted that some key informants were of the view that this had not yet been matched with a similar level of commitment on allocations to homeless households.<sup>[5]</sup>

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<sup>29</sup> Fitzpatrick, S., Pawson, H., Bramley, G., Young, G., Watts, B. & Wood, J. (2021) The Homelessness Monitor: Wales 2021. London: Crisis, p.59.

<sup>30</sup> Housing Allocations and Homelessness: A Special Report by the Local Government Ombudsman for Wales, 2018. See <https://www.ombudsman.wales/wp-content/uploads/2018/03/Housing-Allocations-and-Homelessness-E-1.pdf>

StatsWales data suggests that a lower proportion of housing association homes are let to homeless households than local authority housing.<sup>31</sup> The Homelessness GB monitor (2022)<sup>32</sup> also shows housing associations in Wales as having the lowest proportion of allocations to homeless households. The monitor reports highlights that in 2018-19 (the latest year data available for all three GB countries), 39% of lettings to new social tenants in Scotland were used to resolve homelessness compared to 25% in England and 22% in Wales.<sup>33</sup>

It should be acknowledged<sup>34</sup> that data collection on Housing Association allocations in Wales is regarded by many as flawed and may not accurately represent the number of households experiencing homelessness being accommodated by RSLs. The Wales Homelessness Monitor<sup>35</sup> identified that key informants criticised these statistics on the grounds that the basis on which they are compiled had failed to be updated to take account of changes in the homelessness legislation post the passage of the Housing (Wales) Act 2014. However, irrespective of this, there is also evidence to suggest that there are still improvements that could be made in this area.

### **Allocations to homeless households during the pandemic**

The Homelessness Monitor<sup>36</sup> identified that many RSLs, including housing associations ‘stepped up’ during the Covid-19 pandemic, prioritising allocations to those in emergency accommodation and others vulnerable to homelessness. However, while there was widespread appreciation and acknowledgement that the full extent of RSL’s contribution in terms of allocations to homeless households was not properly captured in the official statistics, it was still communicated that positive change had to go further:<sup>37</sup>

*“...we’ve had enormous cultural change among housing associations in Wales in recent years, particularly around eviction prevention. I think also potentially on the allocations front as well, although I don’t think to the same extent...” (Key informant, voluntary sector)*

*“...undoubtedly we need to do something about allocations in Wales. Welsh Government is interested in doing something. I think they recognise that there’s a lot of variation in approach... It’s hard when you haven’t got accurate data to work from is part of the issue, to understand exactly what contribution each landlord is making to ending homelessness.” (Key informant, voluntary sector)*

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<sup>31</sup> [Number of lettings during the financial year by local authority area and type of letting \(gov.wales\)](https://gov.wales)

<sup>32</sup> B. Watts, G. Bramley, S. Fitzpatrick, L. McMordie, H. Pawson, G. Young (2022) The homelessness monitor: Great Britain 2022. London: Crisis

<sup>33</sup> Note that the scale of the gap is overstated because of data problems, especially with the Welsh data, but the overall picture of Scotland’s more generous policy towards rehousing those accepted as homeless is accurate.

<sup>34</sup> Community Housing Cymru (2019) The Allocation of Social Housing to Homeless Households in Wales

<sup>35</sup> Fitzpatrick, S., Pawson, H., Bramley, G., Young, G., Watts, B. & Wood, J. (2021) The Homelessness Monitor: Wales 2021. London: Crisis

<sup>36</sup> Fitzpatrick, S., Pawson, H., Bramley, G., Young, G., Watts, B. & Wood, J. (2021) The Homelessness Monitor: Wales 2021. London: Crisis

<sup>37</sup> Fitzpatrick, S., Pawson, H., Bramley, G., Young, G., Watts, B. & Wood, J. (2021) The Homelessness Monitor: Wales 2021. London: Crisis, p.59.

The idea that approaches to allocations can vary across housing associations is echoed in an English scoping study published by the UK Collaborative Centre for Housing Evidence:

*“Because of the privatisation of social housing, the allocation of housing becomes an arena in which tensions between different actors are played out, a site of struggle in which organisations exercise their power, seek control, and forge their identities.”<sup>38</sup>*

### **Approach to RSL allocations in Scotland**

Scotland is taking a different approach to ensuring allocations policies are not a barrier to people experiencing homelessness securing a tenancy with RSLs.

Under section 5 of the Housing (Scotland) Act 2001 (‘the 2001 Act’), Registered Social Landlords (RSLs) have duties to house statutory homeless people. RSLs have to meet section 5 requests from local authorities unless there are good reasons not to. [Guidance](#) was issued alongside the introduction of section 5 by the Housing (Scotland) Act 2001. The guidance describes circumstances where an RSL may have good reason not to comply with a section 5 request and the time period within which local authorities and RSLs should reach agreement. In summary, these reasons might include:

- An RSL is unable to make suitable housing available within six weeks of the request; or
- The only housing the RSL has available is of a particular nature (for example sheltered housing for older people) and this is not suitable for the applicant.

There are no other grounds for an RSL to refuse a section 5 referral. RSLs cannot use any other terms of their allocation policy for refusing to deal with a section 5 referral. RSLs should make sure that their allocation policy reflects arrangements for section 5 referrals and nomination agreements, where these exist.

As is the case with the Welsh Government, the Scottish Government also encourages RSLs and local authorities to work in partnership to make sure there is a common understanding of each party's duties and responsibilities. It could, perhaps, be considered that the very presence of Section 5 helps to set the cultural context for promoting such collaboration in Scotland.

It is noted that section 5 was introduced in Scotland at a time when the Scottish Government was writing off substantial social housing debt and local authorities were transferring significant housing stock to housing association ownership. This may have assisted with the introduction of section 5.

A review of section 5 in 2009<sup>39</sup> expressed that as owners of a growing proportion of the housing in the social rented sector, RSLs have an increasingly important role in providing housing for homeless households. The review recognised section 5 as an important tool in achieving the outcome of providing access to RSL housing for statutorily homeless households but felt it’s implication could be better supported. The report recommended:

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<sup>38</sup> Dr J. Preece, Dr E. Bimpson, Prof D. Robinsn, Dr K. McKee, Prof J. Flint (2020) Forms and mechanisms of exclusion in contemporary housing systems, p.30.

<sup>39</sup> A. Britain, L. Robertson, J. Tate, S. Livingstone Craigforth (2009) Review of Section 5 of the Housing (Scotland) Act 2001.

*The Scottish Government should issue clarification to local authorities about the total number of reasonable offers, whether from an RSL or the local authority, which should be made to a statutorily homeless household.*

*Local authorities and RSLs should be encouraged to share information amongst themselves about respective contributions to housing statutorily homeless households in relation to overall lets on a regular and continuing basis.*

### **Existing recommendations on improvements to social housing allocations**

Please refer to appendix A for relevant suggestions on improving social housing allocations in the 2020, review of social housing allocations in Wales, which takes onboard learnings from the pandemic period.<sup>40</sup>

Recommendations can also be found in appendix A on Shelter Cymru's 2020 report, *Allocation of social housing in Swansea*,<sup>41</sup> which although based on a review of Swansea services, includes recommendations that are applicable elsewhere.

In addition, this appendix includes recommendations on financially inclusive lettings from *Accessing and sustaining social tenancies: exploring barriers to homelessness prevention*.<sup>42</sup>

### **3. Temporary accommodation**

*Please note: Information on the suitability and condition of temporary accommodation is covered in the next section of the briefing (4. Suitability).*

Temporary accommodation is designed to give homeless households a safety net whilst acting as a bridge to more settled accommodation. A local authority's duty to provide accommodation to a homelessness applicant depends on a number of factors, as explained below.

#### **Relief duty (Section 73)**

The relief duty applies when an applicant is homeless and eligible for assistance. It applies for 56 days.

The relief duty requires an authority to 'take reasonable steps to help the applicant secure that suitable accommodation becomes available for the applicant's occupation for at least six months.'

This does not mean that the local authority has a duty to provide accommodation for the applicant, but they can meet the duty by doing so.

If an applicant is in priority need, the interim accommodation duty (Section 68) applies and runs concurrently with the relief duty. This means the authority has a duty to provide interim (emergency) accommodation.

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<sup>40</sup> J. Kent, E. Brock (2020) Time to re-focus? A review of the allocation of social rented housing in Wales within the context of COVID-19, p.14.

<sup>41</sup> P. Bevan, (2020), Shelter Cymru, *Allocation of social housing in Swansea*, p.42.

<sup>42</sup> Dr J. Campbell, A. Golten, R. Jackson, R. Evans (2016) Shelter Cymru, *Accessing and sustaining social tenancies: exploring barriers to homelessness prevention*, p.66.

The relief duty is owed by the authority to which the application was made, unless the application meets the conditions for a local connection referral to another local authority.

If homelessness is not relieved within 56 days and if the applicant is in priority need and not intentionally homeless, the main duty then applies.

In other circumstances the local authority can give notice to end the relief duty after 56 days or even earlier.

### **Main duty (Section 75)**

When the relief duty has ended, the local authority is subject to the main housing duty if the applicant is:

- Homeless
- Eligible for assistance
- In priority need
- Not intentionally homeless

The duty is owed by the authority to which the application was made unless the application meets the conditions for a local connection referral to another local authority.

The main duty means that the authority has to secure temporary accommodation for the applicant until the duty is ended.

### **Current figures**

Due to a multitude of factors, application levels for temporary accommodation are currently very high in Wales.

Welsh Government statistics on *Homelessness accommodation provision and rough sleeping: August 2022* showed that:<sup>43</sup>

- Throughout Wales, 1,480 people presenting as homeless were placed into temporary accommodation during August 2022, 163 more than in July 2022. Of these, 458 were dependent children aged under 16, an increase of 66 from July 2022.
- At 31 August 2022, 8,545 individuals were in temporary accommodation, an increase of 77 from 31 July 2022. 2,515 of these were dependent children aged under 16, an increase of 60 from 31 July 2022.
- Between the beginning of the COVID-19 pandemic and the end of August 2022, over 26,400 people who were previously homeless have been supported into emergency temporary accommodation.
- 708 homeless individuals were moved into suitable long-term accommodation, 164 more than in July 2022. Of the individuals moved into suitable long-term accommodation, 248 were dependent children aged under 16, an increase of 65 from July 2022.

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<sup>43</sup> <https://gov.wales/homelessness-accommodation-provision-and-rough-sleeping-august-2022>

### **Length of time spent in temporary accommodation**

In principle, temporary accommodation should be used for short periods of time only. In Wales, the 2015 Suitability Order<sup>44</sup> sets out that those who are priority need should only be placed in temporary bed and breakfast accommodation in an emergency and generally should not remain there for longer than **six weeks**. Where the accommodation is classed as a “basic standard,” the length of stay should be reduced to **two weeks**. However, time limits do not apply when:

1. *The authority believes that the applicant may be homeless or threatened with homelessness as a result of an emergency such as fire, flood or other disaster, and no other accommodation is reasonably available to the authority; or*
2. *The authority has offered suitable accommodation to the applicant, but the applicant wishes to be accommodated in other accommodation.*

In May 2022 and in light of the pandemic, the Welsh Government issued a consultation to add “public emergency” to these exemptions.

In relation to time limits on staying in shared accommodation, there is no statutory time limit where that accommodation meets a higher standard. Applicants in priority need may also be placed in basic standard shared accommodation for up to two weeks generally. This can rise for up to six weeks if it is social owned housing and the authority has offered a suitable alternative, but the applicant has chosen to remain. There is also no time limit on basic shared accommodation used wholly or mainly as temporary accommodation for those fleeing from abuse where the accommodation is run by a not-for-profit organisation (except a local housing authority) and the person has been offered suitable alternative accommodation but chosen to stay.

The average length of stay in temporary accommodation is not currently routinely collated on an all-Wales basis. Local authorities collect this data for their own locality, and national averages have previously been calculated by collating Freedom of Information request responses from individual local authorities.

A study, published by Shelter Cymru in 2015<sup>45</sup> revealed that participants spent widely varying lengths of time in temporary accommodation. Although some had spent less than the national average of 111 days, the majority had stayed for more than five months and the longest for four years. Some participants moved between different types of temporary accommodation, moving from supported to unsupported accommodation or from B&B to private sector leasing accommodation. Many participants said that the length of time they spent in the initial accommodation depended on how much they ‘pestered’<sup>46</sup> the local authority, sometimes with the assistance of third sector advocates.

### **Other areas that are impacting on temporary accommodation**

It is acknowledged that a range of factors are contributing to stays in temporary accommodation that are beyond the time-limit.

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<sup>44</sup> See <https://www.legislation.gov.uk/wsi/2015/1268/body/made>.

<sup>45</sup> A. Golten (2015), Shelter Cymru *Unsuitable: People’s experiences of temporary accommodation in Wales*

<sup>46</sup> A. Golten (2015), Shelter Cymru *Unsuitable: People’s experiences of temporary accommodation in Wales*, p.3

In its May 2022 consultation around interim measures on homelessness, the Welsh Government stated:

*“The (Homelessness) Suitability of Accommodation (Wales) Order 2015 (“The 2015 Suitability Order”) specifies that B&B is not to be considered suitable accommodation. Due to the ‘no-one left out’ approach and the wider pressures created by the pandemic, however, there are now more than 7,500 people and households residing in temporary accommodation, many of whom are in B&B and hotel accommodation. Despite Welsh Government’s strong commitment to move all households into permanent accommodation as soon as possible, the increasing cost of private rented housing and the severe shortage of single person accommodation has meant that many are residing in B&Bs and hotels beyond the legally permissible time limits.”*

A 2022 report from the Bevan Foundation suggests that the gap between rental costs and the Local Housing Allowance (LHA) can both push people into homelessness and ‘undermine Welsh Government and local authority efforts to reduce homelessness.’<sup>47</sup> The report reasons that the same shortage of accommodation at LHA rates that can cause people to become homeless in the first place, also hinders local authorities in finding long-term accommodation for people in temporary housing.

The report also illustrates that despite the primary purpose of Discretionary Housing Payments (DHPs) being to provide short-term support for people on low-income with their housing costs, many local authorities have used DHPs over a longer period to support tenants struggling to cover the cost of their rent due to the LHA gap.

*“I’ve done this job for years now in (local authority), and I’ve yet to see LHA cover rent for anyone... it has always been topped up by DHPs”<sup>48</sup>*

In light of this, it is important to consider how amendments to legislation on time-limited use of temporary accommodation could dovetail with initiatives around wider access to affordable housing and prevention.

### **Senedd Inquiry**

This month (November 2022) the Local Government and Housing Committee is consulting on Homelessness and Temporary Accommodation. This is an ongoing evidence gathering process which should help to inform the panel’s work in this area.

In this call to evidence Community Housing Cymru responded:

*‘HAs recognise the impact that living in temporary accommodation has on individuals and families, and that this is exacerbated by the length of time that some people live there. We would highlight that there are two aspects to this impact: the suitability and quality of the accommodation for that household, and the instability and uncertainty that comes from not having a settled home. Just as homelessness should be rare, brief and unrepeatable, we believe that time living in temporary accommodation should also be rare, brief and unrepeatable. In order to achieve this goal, we must invest in the development of high quality, affordable settled*

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<sup>47</sup> Bevan foundation (2022) Wales Housing Crisis: making the LHA work for Wales, p.15.

<sup>48</sup> Bevan foundation (2022) Wales Housing Crisis: making the LHA work for Wales, p.15.

*housing while ensuring that temporary accommodation is of an appropriate and proportionate standard.'*

In this call to evidence Crisis responded:

*'A further issue is that many people are being offered 'out of area' temporary accommodation, far from their support networks and the services they depend upon. For example, one of our Crisis members was offered temporary accommodation in Cardiff, even though they were required to attend regular probation meetings in Swansea – the logistics and financial burden of travelling back and forth would have placed considerable strain on the member, but if they missed the meetings, they would have been penalised and their rehabilitation jeopardised.*

*With regard to support services, many of our members have reported that they do not receive support when they are in temporary accommodation. This has resulted in some of our members falling into debt and arrears, which damages their chances of being accepted into settled housing.'*

Shelter Cymru responded:

*'It is equally important to consider the ongoing stress of living in this situation and the impact of not knowing what comes next and when. The people we see talk about their life being on hold and a feeling of being in limbo. Employment opportunities, education, relationships, and health and wellbeing are adversely affected.*

*Many are living without the usual freedom of being an adult citizen, are not allowed to have visits from friends and family, have been separated from beloved pets and may even have to abide by an evening curfew as early as 6pm with any incursion on these rules potentially carrying the threat of eviction. People have told us about their feelings of loneliness and isolation and the limits it places on their ability to socialise, find or keep work, and access services.'*

### **Other approaches to Temporary Accommodation**

Perth and Kinross Council in Scotland<sup>49</sup> have worked to transform their homelessness services and use of temporary accommodation from 2014. The councils have reconfigured their services, merging Housing Options, homelessness and housing allocations in an effort to offer a rapid rehousing system called Homes First. They reported reducing the length of time people spend in temporary accommodation to 79 days, compared to 199 in the whole of Scotland. The councils also report a 25% reduction in the number of homeless people waiting on settled accommodation.

Various articles in the European Journal of Homelessness have examined an individual European country's temporary accommodation usage. In 2017, one article reported that Denmark's target of an average maximum stay of three months in temporary accommodation had not been achieved,<sup>50</sup> and in 2021 Engelman confirmed the continuation of the 'everlasting temporary status', initially reported by Busch-Geertsema and Sahlin in 2007.<sup>51</sup> It is clear from the research across Europe that extended stays in temporary accommodation is not a problem unique to Wales or the U.K.

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<sup>49</sup> <https://www.pkc.gov.uk/article/22181/Council-making-great-progress-towards-delivering-on-national-Ending-Homelessness-ambition>

<sup>50</sup> Dyb, E. (2017). Counting Homelessness and Politics: The Case of Norway. European Journal of Homelessness.

<sup>51</sup> Busch-Geertsema, V., Sahlin I. (2007) The Role of Hostels and Temporary Accommodation. European Journal of Homelessness.



A European Commission discussion paper published earlier this year highlights an interesting strategy to reduce the use of emergency and temporary accommodation in Denmark:

*“Central government in Denmark has, until now, reimbursed municipalities 50% of the cost of maintaining people in temporary and emergency accommodation without a time limit. However, with the new reforms, this reimbursement will be given for up to 90 days only, after which the full costs for shelter stays will be carried by municipalities. Instead, the central government reimbursement will be transferred to be available for various forms of support in housing following a stay in temporary and emergency accommodation. Further with the political agreement follow, that rent levels in just over 4 000 units of existing and new public housing will be reduced to facilitate moving those in temporary and emergency accommodation into housing.”<sup>52</sup>*

#### **4. Suitability**

In the discharge of any of the homelessness duties in Part 2 of the Housing (Wales) Act 2014, local authorities must confirm that the accommodation is suitable for the applicant and all members of their household.

Considerations for assessing suitability are included in Sections 9 and 10 of the Housing Act 1985, Sections 1-4 of the Housing Act 2004, Section 59 of the Housing (Wales) Act 2014 and the Homelessness (Suitability of Accommodation) (Wales) Order 2015.

These considerations can be summarised as follows:

- Overcrowding.
- Safety in the home – compliance with health and safety standards, in reasonable condition and free from hazards.
- Location – proximity to support networks, services, employment.
- Affordability – ability to afford the housing costs without being deprived of basic essentials such as food, clothing, utilities and transport.

An applicant has the right to turn down an accommodation offer if it is not suitable for their needs and continue to be owed the rehousing duty. A suitability [review](#) must be requested within 21 days of receiving the offer.

Temporary accommodation is provided in a variety of settings including local authorities, housing associations (RSLs), and the voluntary and private sectors and as such there are varying and complex rules governing physical standards. However, in determining whether any temporary accommodation is suitable, the local authority must take into account the factors outlined above.

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<sup>52</sup> O’Sullivan, E. (2022). Key Elements in Homelessness Strategies to End Homelessness by 2030: A Discussion Paper European Platform on Combatting Homelessness.

## **Bed and breakfast accommodation**

The 2015 Suitability Order<sup>53</sup> specifies that B&Bs are not considered suitable accommodation but that it is permissible for an individual to be temporarily accommodated in a B&B if they are in priority need for the following statutory time limits:

- Two weeks if it is a 'basic standard' B&B.
- Six weeks if it is a 'higher standard' B&B.

'Basic standard accommodation' means accommodation that has:

- All applicable statutory requirements (fire, gas, electrical and other safety; planning; and HMO licensing).
- A manager that is classed as 'a fit and proper person' with the ability to manage B&B accommodation.

'Higher standard accommodation' means accommodation that meets higher standards specified in the Order which pertain to:

- Space standards.
- Heating installations.
- Kitchen, toilet and washing facilities.
- Security.
- Communal areas.
- Additional management standards.

The 2015 Suitability Order also outlines some exceptional circumstances under which the local authority would be permitted to offer accommodation that would not be classified as suitable, including if a person is homeless as the result of an emergency such as fire or flood.

Earlier this year, the Welsh Government proposed adding a new temporary exception of 'pressures caused by Covid-19' and a permanent exception of 'public health emergency' and 'pressures caused by Covid-19' to this list. This proposal has not come into force.

## **Is temporary accommodation meeting the suitability standards?**

The most recent Wales Homelessness Monitor (2021) references a 2019, 'snapshot' where overall core homelessness in Wales stood at 8,980 households, of which 550 households were in unsuitable temporary accommodation. This figure represents the situation prior to the introduction of the 'everyone in'/'no-one left out' policy employed during the pandemic, and as the Monitor predicted, core homelessness continues to rise, so it is possible that this number has increased since this snapshot was taken.

A report published by Shelter Cymru in 2015 found very few of the report's participants (people with experience of temporary accommodation) agreed that their temporary accommodation was suitable to their needs. Many participants felt that their needs were not properly assessed and that their wishes were not listened to. This was often most acute for disabled applicants. This lack of sufficient needs assessments led to many being housed away from their support networks and public

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<sup>53</sup> See <https://www.legislation.gov.uk/wsi/2015/1268/made>.

transport links, leaving them feeling isolated and lonely which in some cases directly contributed to deterioration in mental health.

Where temporary accommodation worked best for the participants was in an environment of open discussion and negotiation with the authority, rather than being placed somewhere without any choice, people were happiest when they felt like their concerns were being listened to.

The difficult situations and poor conditions that asylum seekers often live in are well documented. Reports of poor and cramped facilities hit the headlines in Pembrokeshire in 2020.<sup>54</sup>

The Welsh Government proposed temporarily adding 'pressures caused by Covid-19' as an exceptional circumstance under which the local authority would be permitted to offer accommodation that would not be classified as suitable. The suggested end date for this exception was 31 March 2023. In response to this suggestion, many local authorities expressed that it would be unachievable to move people on from temporary accommodation in time to meet this deadline.

### **Impact of unsuitable Temporary Accommodation on people's lives**

The negative impact that prolonged stays in unsuitable temporary accommodation can have on a person's wellbeing are well documented.

Shelter Cymru's report looking into suitability of temporary accommodation in Wales in 2015 stated that "very few" of the participants had found their temporary accommodation to be suitable for their needs.<sup>55</sup> The report highlighted that suitability was a particularly acute issue for disabled people. Other impacts outlined included:

- Inaccessible locations leading to feelings of isolation and difficulties with mental health.
- A lack of facilities leading to tensions and even violence among residents.
- Feeling abandoned where placed in accommodation that did not meet their support needs.

Similarly, in 2018, Crisis conducted research on the experiences of people in Scotland being housed in unsuitable temporary accommodation, such as B&Bs, for prolonged periods.<sup>56</sup> Participants in the research spoke about how staying in unsuitable temporary accommodation led to isolation and loneliness which, in turn, caused a deterioration in their mental health. The lack of access to cooking facilities meant that 4 in 10 participants went without a meal on a daily basis.

Crisis' recent written evidence to the Senedd Local Government and Housing Committee<sup>57</sup> reports the substandard conditions Crisis members have experienced in temporary accommodation:

- Emergency accommodation infested with scabies, rats and fleas.
- Heating controlled centrally and not switched on until November.
- Hot water controlled centrally – residents must request that it is switched on every time they need to take a shower.

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<sup>54</sup> See <https://www.bbc.co.uk/news/uk-wales-56434093>.

<sup>55</sup> Golten, A. (2015). *Unsuitable: People's experiences of temporary accommodation in Wales*.

<sup>56</sup> Sanders, B. with Reid, B. (2018). *"I won't last long in here:" experiences of unsuitable accommodation in Scotland*.

<sup>57</sup> Crisis written evidence to the Senedd's Local Government and Housing Committee in November 2022. Unpublished at the time of writing.

- Lack of security – doors with broken locks resulting in theft of possessions by other residents.
- No access to cooking facilities, not even a microwave - this forces people to skip meals or rely on takeaway food which is often expensive and lacking in nutritional value.
- Constant noise throughout the night making it impossible to sleep.

These unstable environments are especially difficult for people with experience of trauma, adverse childhood experiences and/or mental illness, all of which are common among people experiencing homelessness.

For those who have a history of substance misuse, it is almost impossible to recover and rehabilitate in these environments as they are often surrounded by the substances they are trying to escape, or by people connected with their substance misuse past. Beyond returning to using substances, it is common for residents in temporary accommodation to be targeted and coerced into drug-related work.

This presence of illegal activity also represents a particular challenge for people who have a history of offending. It is incredibly difficult for them to avoid re-involving themselves with criminal practice when living within an environment where it is so common. Probation licence conditions often include curfews which mean that a person must stay inside their accommodation between 7pm-7am – this is particularly difficult when the environment is as volatile as described above.

The Crisis evidence also raises the issue that many people are offered ‘out of area’ temporary accommodation, far from their support networks and the services they depend upon. For example, one Crisis member was offered temporary accommodation in Cardiff, even though they were required to attend regular probation meetings in Swansea – the logistics and financial burden of travelling back and forth would have placed considerable strain on the member, but if they missed the meetings, they would have been penalised and their rehabilitation jeopardised.

*Please note: a list of recommendations around the suitability of temporary accommodation made with Shelter Cymru’s 2015 report, *Unsuitable: People’s experiences of temporary accommodation in Wales*<sup>58</sup> can be found in Appendix A.*

## **Suitability of settled accommodation**

### **Welsh Housing Quality Standards**

The Welsh Housing Quality Standard (WHQS) is the Welsh Government standard of social housing quality. The WHQS was first introduced in 2002 and aims to ensure that all dwellings are of good quality and suitable for the needs of existing and future residents. The WHQS measures 41 individual elements within seven categories:

- In a good state of repair.
- Safe and secure.
- Adequately heated, fuel efficient and well insulated.
- Contain up-to-date kitchens and bathrooms.
- Well managed (for rented housing).
- Located in attractive and safe environments.

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<sup>58</sup> A. Golten (2015), Shelter Cymru *Unsuitable: People’s experiences of temporary accommodation in Wales*, p.23

- As far as possible suit the specific requirements of the household (e.g., disabilities).

In August 2022, the Welsh Government consulted on proposed updates to these standards, including an emphasis around energy efficiency standards. The responses to this consultation are being collated and considered at present.<sup>59</sup>

### **The Regulatory Framework for Housing Associations Registered in Wales**

The Welsh Ministers have general functions under section 75 of the Housing Associations Act 1985 to facilitate the proper performance of the functions of registered social landlords and to maintain a register of social landlords.

In addition, under the 1996 Act, Welsh Ministers have powers to regulate registered social landlords in Wales. Furthermore, under section 33A,<sup>60</sup> the Welsh Ministers may set standards of performance (the regulatory standards) to be met by registered social landlords in connection with their functions relating to the provision of housing and matters relating to their governance and financial management.

The Regulatory Framework for Housing Associations Registered in Wales was first introduced in December 2011, replacing the March 2006 Regulatory Code for housing associations registered in Wales. The most recent version was published in 2022.<sup>61</sup> The Framework sets out Regulatory Standards to ensure that Housing Associations are:

- Well-governed – led effectively and well managed by boards, executives and staff, and working with tenants and partners to make and implement effective business decisions.
- Delivering high quality homes and services - providing homes and services that meet people’s diverse needs and expectations, with an emphasis on high quality services and continuous improvement.
- Financially viable – with well-managed finances, and the resources and cash flow to meet current and future business commitments.

A number of reviews and evaluations of the Framework have been conducted since it initially came into effect. A review commissioned by the Welsh Government in 2011<sup>62</sup> and another published by TPAS (Tenant Participation Advisory Service) in 2018<sup>63</sup> both questioned whether the Housing Regulation Team had adequate resources to carry out its role in the regulation process. They also suggested that further clarity was needed regarding the Framework’s purpose.

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<sup>59</sup> See <https://gov.wales/welsh-housing-quality-standard-2023-html#section-97171>.

<sup>60</sup> Welsh Government and Community Housing Cymru, (2011) The Regulatory Framework for Housing Associations Registered in Wales

<sup>61</sup> See [WG44078 \(gov.wales\)](https://gov.wales/WG44078)

<sup>62</sup> Smith R., Card P., Campbell J., Mackie P. (2013) The Interim Evaluation of the Regulatory Framework for Housing Associations in Wales: A report commissioned by the Welsh Government on behalf of the Regulatory Board for Wales.

<sup>63</sup> Hedges, D. (2018) A Stakeholder review of the Regulatory Framework for housing associations in Wales.

## **Renting Homes (Wales) Act 2016 - Fitness for Human Habitation**

The Renting Homes Act sets out a requirement for properties in Wales to be 'fit for human habitation'. This is based on the 29 hazards under Housing Health and Safety Rating System and includes keeping the exterior such as drains and gutters in repair as well as all services like gas, electricity, and water.

The property must also have:

- A battery powered Carbon Monoxide alarm in every room that has a solid fuel burning appliance.
- Hard wired fire and smoke alarms installed at the property.
- An Electronic Installation Condition Report (EICR) of the fixed wiring at the property at least every five years.

### **Is settled accommodation meeting the suitability standards?**

The most recent WHQS report, published in November 2022, reported that 78% of all social housing dwellings were fully compliant with the WHQS on 31 March 2022.<sup>64</sup> However, anecdotally, it should be noted that the extent to which WHQS reports reflect the reality of standards is questioned across the housing and homelessness sector.

Since the Renting Homes Act has not yet come into force, it is difficult to formally assess whether or not the fitness for human habitation standard is being met.

### **Access barriers**

A 2022 report by the Bevan Foundation<sup>65</sup> stated private landlord requirements make it extremely difficult for low-income tenants to access housing. The report highlighted a list of commonly used "requirements that act as a barrier," including:

- *Deposits more than equivalent of one month's rent;*
- *Guarantors;*
- *Credit checks;*
- *'Professionals only' requirements;*
- *Minimum income requirements.*<sup>66</sup>

The report found that 33 per cent (1,731) of all adverts examined mentioned at least one of these requirements. It also stated that these barriers were even more prevalent within shared accommodation properties with 46 per cent adverts featuring at least one requirement that was likely to act as a barrier to a low-income tenant. For one-bedroom properties, 35 per cent of the advertised properties included similar requirements. This may be an underestimate as the figure does not take into account any landlord requirements or prejudices that are not advertised online.

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<sup>64</sup> [Welsh Housing Quality Standard \(WHQS\), as at 31 March 2022 \(gov.wales\)](#)

<sup>65</sup> Bevan foundation (2022) Wales Housing Crisis: making the LHA work for Wales

<sup>66</sup> Bevan foundation (2022) Wales Housing Crisis: making the LHA work for Wales, p.52.

The same report conveyed concerns from disabled tenants or tenants with a long-term health condition that landlord requirements were preventing them from accessing housing. One tenant involved in the drafting of the report felt that landlords were reluctant to allow him to rent their property due to his long-term health condition. The Bevan Foundation also heard from one tenant who had been forced to move into temporary accommodation due to this shortage of adapted housing. He reported that it had taken social services two years to find him accommodation that was suitable for his needs.

In addition to people with disabilities, there are a number of other population groups that may find it especially difficult to access suitable housing for their needs. These groups include, but are not limited to, people that identify as LGBTQIA+, people from minority ethnic groups, victims of domestic abuse, and people from Gypsy, Roma and Traveller communities.<sup>67</sup>

### **The connection between suitability and retained tenancies**

It should be noted that work to prevent evictions could start at allocations stage. Officers should work with prospective tenants to ensure the potential property is both affordable and meets their various needs, with the hope of reducing the chance that they will later end up leaving it or getting into arrears.

[The Public Services Ombudsman’s investigation into the homelessness system](#), published in 2021,<sup>68</sup> found that many local authorities were failing to adequately consider suitability when offering accommodation. It stated:

*“It appears that most of the review requests that I have seen relate to the suitability of interim and permanent accommodation. However, it is my view that unsuitable accommodation is also the cause for many tenancies breaking down and the local authorities ending their duties.*

*“Accommodation may be unsuitable for a client for many reasons: location, size, disability needs. Whilst I accept that, in some cases, it is not possible to meet all of the client’s needs and wishes, they should, at the very least, be fully explored and taken into account when making an offer of interim and permanent accommodation.”*

The report cited the failure to consider suitability of a placement as one of three core reasons for assessments being overturned. It referenced a host of examples of unsuitable accommodation, including being located near a perpetrator of abuse; being located away from support networks; being placed in accommodation that didn’t meet a person’s disability requirements; and being placed in the presence of influences when seeking to rehabilitate from substance misuse or criminal behaviour.

The Ombudsman made a series of recommendations to the local authorities investigated and also invited the Welsh Government to:

- i. Review the HWA and the associated Code of Guidance to ensure a more consistent approach to homelessness – particularly post COVID-19.

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<sup>67</sup> Alma Economics, commissioned by Tai Pawb, the Chartered Institute for Housing and Shelter Cymru (2021). The Right to Adequate Housing in Wales: The Evidence Base, p.10.

<sup>68</sup> See <https://www.ombudsman.wales/own-initiative-reports/> page 76.

- ii. Review the Code of Guidance to ensure that it is explicit that human rights and equality must be taken into account when assessing homelessness applications, reviewing decisions and when allocating housing.
- iii. Standardise review documentation across Wales.
- iv. Review the effectiveness of the post-review appeal process, given the difficulties clients have accessing Legal Aid.
- v. Improve and standardise the homelessness service across Wales by considering the creation of a Housing/Homelessness Regulator role to support and provide information and guidance to local authorities.<sup>69</sup>

## 5. Guiding points for discussion

**Appendix A. offers existing drafted proposals/ recommendations from a range of sources in order to further aid the Expert Review Panel’s discussion and shape recommendations with accompanying policy rationale.**

The below are intended to assist the panel in its discussion and considerations during its fourth meeting.

### Eligibility

Points to consider:

- What are the boundaries of eligibility for housing support in Wales?
- What scope is there for Welsh Government to make the current offer more inclusive generally?
- What scope is there for Welsh Government to make the current offer more inclusive for those with NRPF? For example, would the panel like to consider/endorse some of the recommendations outlined in this regard? Might it be possible to look at extending the HSG or similar funds?

### Allocations

Points to consider:

- Could current legislation and regulations play a greater role in increasing the number of allocations to homeless households?
- Have local authority allocation schemes improved since the Ombudsman report in 2006? Is there a need to further monitor allocation schemes and their implementation?
- What support might be provided to local authorities and housing associations in allocations policies and homelessness?
- Could the “section 5” duty in Scotland be a suitable approach/ adapted for the Wales context?

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<sup>69</sup> See <https://www.ombudsman.wales/own-initiative-reports/>



## **Temporary Accommodation**

Points to consider:

- Wales currently has a much narrower entitlement to temporary accommodation than those are entitled to the prevention and relief duties. Should this continue?
- How can time limits in temporary accommodations be best met where housing supply is limited?
- How can conditions in temporary accommodation be improved?

## **Suitability**

Points to consider:

- Are the Welsh Housing Standards sufficient for raising standards? What more could be done?
- Is there a further role for or improvements that could be made to the Regulatory Framework for Housing Associations Registered in Wales to help improve suitability of accommodation?
- Is there a role for a Housing Regulator as suggested in the Public Ombudsman report and could this be utilised to improve suitability?
- Are there duties that can be placed upon services to help consider suitability when allocating a home? How can this be balanced against widely reported issues in supply?
- How should consideration of developing housing supply take account of the specific and varied housing needs of applicants? Could a regional approach be utilised or improved in this way?

## **Evictions**

*Please note: discussion on evictions is carried over from meeting 3 and the relevant aspect of this briefing paper can be found in Appendix B.*

Key points to consider include:

- Should the Welsh Government consider further changes to eviction law and regulations?
- Could landlords (social and private) play a greater role in supporting tenants prior to eviction and in referring cases of those at risk of homelessness?
- What measures could be taken to ensure that suitability is better assessed at allocations stage?

## Appendix A.

### 6. Current recommendations and proposals from existing reports/ research

#### Recommendations from the 2019 Tai Pawb report *Refugee Housing and Support Feasibility Study*<sup>70</sup>

- Further exploratory work is carried out, led by Tai Pawb but involving the partners who have already contributed to this report as well as representatives from other sectors and organisations who could usefully contribute. We suggest the group includes:
  - Organisations that have already contributed – Wales Refugee Council, Taff Housing, YMCA Cardiff, The Red Cross, Cardiff Council, the WLGA; As well as new partners such as:
    - The Residential Landlord Association,
    - Religious organisations working in this area,
    - Interested philanthropic organisations such as Community Foundation in Wales,
    - Cymorth Cymru, and
    - Other interested RSLs from the dispersal cities.
- This group continues to work with organisations in England and potentially beyond who have developed successful housing and support provision in comparable operating environments.
- Explore with philanthropic organisations, RSLs, and local authorities the possibility to secure rent-free or low rent properties.
- Explore the potential offered by the recent focus on empty properties and consider whether properties could be identified that could be brought back in to use by refugee-led organisations working in partnership with local authorities and RSLs and used on a long-term lease to provide supported accommodation for refugees.
- Establish with Supporting People colleagues nationally and regionally the potential for funding a refugee project.
- Discuss with Welsh Government and local government how such a scheme or schemes would contribute to the achievement of Wales becoming a Nation of Sanctuary.

**The Homelessness Action Group in Wales** made a set of recommendations<sup>71</sup> to Welsh Government to help prevent and end homelessness specifically for people who have migrated to Wales from outside the UK. These include:

- Making nationals from the European Economic Area (EEA) eligible for statutory homelessness assistance.
- Providing guidance to local authorities, clearly setting out the duties owed to migrant households with NRPF.
- Considering how best to grant access to the statutory homelessness system for people with migrant status. This should be done in consultation with the UK Government and alongside

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<sup>70</sup> See <https://www.taipawb.org/wp-content/uploads/2019/06/FINAL-Tai-Pawb-Refugee-Housing-Feasibility.pdf>.

<sup>71</sup> Report from the Homelessness Action Group for the Welsh Government, (March 2020), The framework of policies, approaches and plans needed to end homelessness in Wales (What ending homelessness in Wales looks like), p.45-46

access to any other services needed to help end someone's homelessness (e.g., health services, employment support, access to benefits, and drug and alcohol support).

- Making available a properly supported and voluntary (in word and spirit) end-to-end reconnection service to enable people to relocate to their country of origin rather than become homeless in Wales, only if this is in their best interests and is their preferred option.
- Ensuring availability of short-term, suitable emergency accommodation and independent immigration advice for migrants who are homeless, or at imminent risk of becoming homeless to prevent and end homelessness, drawing from the review,<sup>72</sup> commissioned by the Welsh Government, of accommodation options.
- Lobbying the UK Government to make changes to UK law and policy to facilitate better housing-related support for people with migrant status, including extending the move-on period for newly recognised refugees from 28 days to 56 days.
- Lobbying the UK Government to allow survivors of VAWDASV (violence against women, domestic abuse and sexual violence) who have no recourse to public funds to access housing and support services.

### **Recommendations on No Recourse to Public Funds from *the NRPF Network***

The NRPF Network, which seeks to safeguard the welfare of destitute families, adults and care leavers who are unable to access benefits due to their immigration status recommends that the UK Government:

1. Undertake a one-off case resolution exercise to grant leave to remain with recourse to public funds to individuals and families receiving social services' support.
2. Provide financial reimbursement to councils for supporting households with no recourse to public funds.
3. Review all immigration policies that give rise to homelessness and child poverty, or that impede the resolution of immigration claims made by households supported by social services, with a view to making the following changes:
  - Reinstating legal aid for immigration matters,
  - Suspension of the NRPF condition,
  - Reducing fees for immigration and citizenship applications,
  - Processing asylum support applications expediently,
  - Extending eligibility for benefits to all European Economic Area (EEA) nationals with pre-settled status.

### **Recommendations on reforming the allocations process from *Time to Refocus? A review of the allocation of social rented housing in Wales within the context of COVID-19*<sup>73</sup>**

1. We recommend a wholesale review of how social rented housing is allocated in light of lessons learnt from the pandemic as a matter of urgency. This review needs to consider the impact of inadequate housing on health and wellbeing across all tenures through the lens of housing's contribution to public health.

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<sup>72</sup> H. Petch, T. Stirling (2020) PROVIDING ACCOMMODATION FOR REFUSED ASYLUM SEEKERS IN WALES

<sup>73</sup> J. Kent, E. Brock (2020) Time to re-focus? A review of the allocation of social rented housing in Wales within the context of COVID-19, p.14.

2. The review should be led by Welsh Government and needs to engage citizens, local government, housing and homelessness organisations, health bodies as well as other relevant agencies and bodies.
3. A more consistent approach needs to be taken across Wales to how social rented housing is publicised and accessed to make it simpler and fairer for citizens wherever they live in Wales.
4. Data collection needs to be consistent and part of a long-term strategy to make sure that across Wales we can be confident that we are meeting the needs of people whose health and wellbeing is at most risk through inadequate housing. We support the recommendation of the Homeless Action Group in relation to continuous recording of data<sup>1</sup>.
5. Now is the time to refocus Social Housing Grant so that it can be allocated where severe housing need is evidenced and where housing is going to be allocated to people who are in severe housing need/homeless or at greater risk to future pandemics because of their housing situation.
6. We need to see social rented housing allocations within a wider “one housing system” approach. The broader range of housing options developed by Local Authorities and Housing Associations such as low-cost home ownership models, intermediate rented accommodation, land trusts, housing co-ops etc. need to be properly supported to reduce the pressure on social rented housing and enable the housing sector to meet a wider range of housing aspirations.
7. Allocation processes need to modernise so that people can find out about and access a home without personal contact, on-line using a mobile phone.

**Recommendations on allocations from *Allocation of social housing in Swansea*<sup>74</sup>**

Although these recommendations focussed on Swansea, they will be relevant to other landlords and organisations across Wales to consider in their local context.

1. The social landlords must ensure that their policies on former tenancy issues (such as rent arrears, housing debt and anti-social behaviour) do not create obstacles to accessing social housing. Social landlords should ensure that all general needs allocations policies adopt the Housing First principles which promote easier access to housing for people who had difficulties with former tenancies.
2. The social landlords should move away from assessing the need for tenants to being fully ‘tenancy ready’ in order to move into social housing, and instead put more emphasis on trying to ensure that people are ‘tenancy supported’ by the most appropriate range of agencies in their homes.

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<sup>74</sup> P. Bevan, (2020), Shelter Cymru, *Allocation of social housing in Swansea*, p.42.

3. The social landlords should relax their policies on the number of times applicants can refuse reasonable offers of housing. People should not be penalised for turning down offers of housing.
4. The council should explore opportunities with the housing associations to allocate more of their homes to homeless households.
5. The social landlords should collect statistical data in a more unified manner and should consider widening the information that is collected to a level such as the CORE social housing lettings data collection in England.
6. The Welsh Government should introduce a data gathering system such as the CORE social housing lettings data collection in England. As an immediate step the Welsh Government should review the data collection on social housing allocations to ensure it is accurate, particularly for allocations due to homelessness.
7. As part of the review of the Move-On Strategy the council and partner agencies should address the following issues:
  - Increase the number of homes offered by each landlord to replace the concept of being fully 'tenancy ready' with being 'tenancy supported' in line with a rapid rehousing ethos.
  - Create opportunities for the voices of people referred to the Panel to be heard more directly.
  - Shorten the length of time between acceptance of applications by the Panel and allocation of suitable housing.
  - regularly update people who have been accepted by the Panel on when they are likely to be rehoused.
8. The social landlords should review the system of applying for and allocating social housing to make it simpler for people. An immediate improvement would be to develop a single-entry point/one stop shop to make it easier for people to apply for social housing.

**Recommendations on financially inclusive lettings from *Accessing and sustaining social tenancies: exploring barriers to homelessness prevention*.<sup>75</sup>**

- An agreed common pathway for people refused a tenancy on affordability grounds, so they are proactively assisted into affordable alternative accommodation.
- Recording and monitoring of the demographics of applicants refused a tenancy on affordability grounds, including protected characteristics.
- We also argue that it must include a commitment by landlords to never deny a tenancy on affordability grounds if a tenant's rent is fully covered by Housing Benefit/UC, if there are no other suitable housing options available at the time.

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<sup>75</sup> Dr J. Campbell, A. Golten, R. Jackson, R. Evans (2016) Shelter Cymru, *Accessing and sustaining social tenancies: exploring barriers to homelessness prevention*, p.66.

**Recommendations on the suitability of temporary accommodation** from *Unsuitable: People's experiences of temporary accommodation in Wales*<sup>76</sup>

- Despite reductions in use over recent years, bed and breakfasts (B&Bs) remain a drain on public resources. Our research found that people's experiences of B&B were overwhelmingly negative. We recommend that the Welsh Government continue to strategically reduce usage of B&B across Wales, investing in alternatives to ensure that public money is used more effectively.
- We also recommend the Welsh Government sets a target for a total ban on placing independent 16-17 year olds in unsupported B&B. This could be achieved by an expansion of specialist supported accommodation and an active promotion of alternatives such as volunteer host schemes, which are currently only offered in a handful of Welsh authorities. In the meantime the Welsh Government should be monitoring the numbers of 16-17 year olds in temporary accommodation (TA), broken down by accommodation type.
- Local authorities provide more temporary accommodation places than Registered Social Landlords (RSLs) despite only owning around two-thirds the amount of stock. We recommend that authorities work closely with RSLs to increase their contribution.
- The Private Rented Sector's (PRS) contribution to TA provision has increased in recent years and our research suggests that this is largely positive. However, more needs to be done to ensure that Private Sector Leasing (PSL) schemes are more responsive to the needs of tenants. We recommend that the Welsh Government work with PSL scheme managers to develop a set of consistent customer service standards. These standards should include clear processes and timescales for dealing with disrepair and maintenance issues. We also recommend greater use of furnished tenancy schemes and better links with local furniture recycling schemes.
- In order to manage the cost of PSL, scheme managers should ensure that agreements with individual property owners are clear about responsibilities for meeting repairs and maintenance costs.
- The official data on temporary accommodation use needs to be clearer in order to understand how effective provision is at preventing repeat homelessness. We recommend that the Welsh Government should revise the way that outcomes are recorded so that it is clear when households leave voluntarily or are evicted. We also recommend that these figures should be published broken down by accommodation provider.
- Some authorities need to do more to assist homeless families to keep their pets. This may mean stronger links to local animal shelters or fosterers.

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<sup>76</sup> A. Golten (2015), Shelter Cymru *Unsuitable: People's experiences of temporary accommodation in Wales*, p.23

- We welcome the widespread adoption of the Personal Housing Plan approach among local authorities, which should help to ensure that support needs are taken into account at an early stage. Local authorities should offer support to all households entering temporary accommodation. Support should be available from day one until an agreement between all parties is made that this should end.

**Considerations from *Homelessness Reviewed: an open door to positive change*, The Public Services Ombudsman for Wales 2021**

As a result of the investigation, the Investigated Authorities have agreed to a number of measures, including:

- Creating Easy Read versions of homelessness factsheets and standard homelessness correspondence, for clients with learning difficulties or whose first language is not Welsh or English.
- Reviewing the use of alternative communication methods, such as ‘WhatsApp’ and text, to convey decisions which could be then followed up with a letter.
- Implementing a Psychologically Informed Environment approach to correspondence.
- Reminding officers of their duty to properly investigate and verify information received, by seeking information from third parties and taking account of all relevant information.
- Ensuring there is a plan to provide regular training on equality and human rights to all decision makers and to reviewing officers.
- Including the reviewing officers in the development of future homelessness training.

In view of the potential for wider learning, I am inviting the other 19 local authorities in Wales to:

- Make arrangements at an all-Wales level to discuss and improve consistency of the Review Process.
- Create working relationships with stakeholder/ partner agencies, such as ‘Take Notice’, to help improve services.
- Formulate a framework, in conjunction with advocacy groups, which will empower officers to make decisions/take action, particularly in ‘Easy Read’ refers to the presentation of text in an accessible, easy to understand format. It is often useful to help people with learning disabilities and may also be beneficial for people with other conditions that affect how they process information in relation to human rights and equality and reduce unnecessary reviews, without impacting upon the client’s statutory right to a review.
- Consider the recommendations made to the 3 Investigated Authorities and to take forward any learning points that would improve their service provision. I am also inviting the Welsh Government to:
  - Review the HWA and the associated Code of Guidance to ensure a more consistent approach to homelessness – particularly post COVID-19.

- Review the Code of Guidance to ensure that it is explicit that human rights and equality must be taken into account when assessing homelessness applications, reviewing decisions and when allocating housing.
- Standardise review documentation across Wales.
- Review the effectiveness of the post-review appeal process, given the difficulties clients have accessing Legal Aid.
- Improve and standardise the homelessness service across Wales by considering the creation of a Housing/Homelessness Regulator role to support and provide information and guidance to local authorities.

*Note:* The invitations made to the other 19 local authorities and the Welsh Government are not formal recommendations made in accordance with the Act because I did not formally investigate those bodies. They are included to assist with driving improvements in public service delivery across Wales. This was the purpose and intention of the Senedd when my new power of own initiative investigation was enacted and I trust that all local authorities will embrace the opportunity to learn from this investigation. I will be liaising with the local authorities, the Welsh Local Government Association and the Welsh Government on improvements made following the publication of this report.

#### **Suggestions from the Public Services Ombudsman in *Housing Allocations and Homelessness, 2006***

To help ensure that such shortcomings do not arise in future councils should:

- Review as a matter of urgency the lawfulness of the authority's existing housing allocation policy and procedures, and of the authority's policy and procedures for dealing with homelessness applications, with particular reference to the changes introduced by the Homelessness Act 2002 and to the National Assembly for Wales Code of Guidance for Local Authorities on Allocation of Accommodation and Homelessness.
- Review the authority's procedures for keeping abreast of legislative changes and for the dissemination of such information to members and to appropriate personnel.
- Make a senior officer responsible for ensuring that any changes to the authority's policies or practice which are required as a result of legislative change, or of new statutory guidance, are introduced in a timely way.
- Make a senior officer responsible for reviewing the procedures in place for keeping abreast with legislative changes and government guidance including putting mechanisms in place for the dissemination of such information to appropriate personnel for cascading down to officers. One means of achieving this could be by an appropriate departmental training strategy and input from the authority's legal section.
- Ensure adequate training is given to all staff on appropriate recording practices and their importance, in order to ensure all key information from housing applicants is properly recorded whether by written correspondence or evidence of oral contacts.
- A senior officer should undertake a review of, and monitor the quality and standard of, decision letters issued to housing applicants.



- Consider the appropriate use of standard letters and/or paragraphs to ensure critical standard information applying to all applicants is conveyed. At the same time, all information specific to the applicant's case must be clearly set out.
- Ensure effective liaison with other relevant departments of the authority and relevant statutory and voluntary agencies particularly in homelessness cases.

## Appendix B (carried over from briefing paper 3)

### 7. Evictions – Can legal reform around evictions help end/ prevent people's homelessness?

Eviction notices can be a significant factor in becoming homeless or seriously at risk of homelessness. While some question whether temporary eviction bans prevent homelessness in the longer-term,<sup>77</sup> protections against eviction during the pandemic are considered to have played a role in reducing homelessness during that period.<sup>78</sup>

StatsWales records 3,441 people as threatened with homelessness as a result of loss of rented or tied accommodation in Wales in the year 2018/2019.<sup>79</sup>

The reasons leading a landlord to seek eviction can vary, e.g., breach of contract, anti-social behaviour, consistent late payments, falling into rent arrears, among others. While data is not readily available for each of these categories, StatsWales does record the number of people threatened with homelessness as a result of rent arrears. In 2018/19, there were 900 social housing tenants and 741 private sector tenants at risk of homelessness as a result of rent arrears.<sup>80</sup>

Further information is available from the Office of National Statistics on court action around landlord possessions in Wales across both private and social sectors, see appendix B. Although it should be noted that the data within appendix B is in relation to possessions generally, as opposed to evictions that specifically leave tenants at risk of homelessness. This briefing and the discussions of the panel will focus on evictions within the context of risk to homelessness.

#### Evictions from Social Housing

**The current position:** Evictions from housing association or council accommodation should be regarded as last resort, having followed pre-action protocols prior to seeking court action. The exact rights depend on the type of tenancy, but generally, housing associations require legal ground for eviction. Common reasons include not paying the rent, or regularly paying it late; causing nuisance to neighbours; or using the property for illegal activities.<sup>81</sup>

<sup>77</sup> See the Senedd Plaid Cymru Debate: The Private Rental Sector, 12 October 2022, available [here](#).

<sup>78</sup> Fitzpatrick, S., Pawson, H., Bramley, G., Young, G., Watts, B. & Wood, J. (2021) *The Homelessness Monitor: Wales 2021*. London: Crisis

<sup>79</sup> StatsWales, Households found to be threatened with homelessness during the year. Main reason for being threatened with homelessness by type of household (Section 66), available [here](#).

<sup>80</sup> StatsWales, Households found to be threatened with homelessness during the year. Main reason for being threatened with homelessness by type of household (Section 66), available [here](#).

<sup>81</sup> See Shelter Cymru website, <https://sheltercymru.org.uk/get-advice/renting/housing-association-tenancies/assured-tenancies/>

Those placed on a demoted tenancy (tenants displaying anti-social behaviour may have been moved to a demoted tenancy) or a starter tenancy (new tenants may be on a trial period) have less rights in relation to eviction. In these cases, the housing association is not required to hold a legal ground for eviction in court, but they do have to follow procedures. For demoted tenants, four weeks written notice is required prior to seeking a court eviction, for starter tenants this is a period of two months.

Most council tenants also have protection against eviction, unless they are found to be breaking the terms of their residence. Those who are on an introductory or demoted tenancy have fewer rights in relation to eviction. For these tenants, the council does not require legal grounds to seek eviction but does need to provide 4 weeks' notice prior to seeking a court eviction.

**The position following December 2022:** From 1 December 2022, the Renting Homes (Wales) Act will come into force. Under this new law there will be two types of contract - a secure contract and a standard contract. Most social housing tenants will have a secure contract, which is similar to the current secure tenancy.

However, there are some circumstances where a social housing tenant may be issued with a standard contract. For example, a person moving into supported housing might be placed on a standard contract in recognition of the intention to move onto a permanent home once the person is equipped to live independently.<sup>82</sup> Under a standard contract, community landlords (councils and housing associations) will be required to provide 6 months' notice for a "no-fault eviction" and would not be entitled to issue such a notice until 6 months of tenancy. Where the contract-holder has breached the occupation contract, the minimum notice period that must be given is one month. However, this notice period can be shorter where it relates to a breach of the anti-social behaviour or the serious rent arrears terms. Some social housing tenants may also still hold an introductory contract, which will convert to an Introductory Standard Contract under the Renting Homes Act.

### **Registered Social Landlords (RSLs) and 'no evictions into homelessness'**

Prior to the pandemic, Wales was working towards a policy of 'no evictions into homelessness.' In October 2019, the Homelessness Action Group recommended that a 'pact' should be agreed to ensure no evictions from social housing (or housing supported by the public purse) into homelessness and increased allocations to homeless households.<sup>83</sup> The Homelessness Action Group also noted the wider debate about regulation in this area, e.g., housing association regulations and/or a regulator with powers to address homelessness. This policy was approached by several housing associations with enthusiasm, with one authority reporting an 85% drop in their evictions following their commitment to the policy.<sup>84</sup>

During the pandemic, legal restraints were placed on evicting a tenant into homelessness, but the Welsh Government's high level Homelessness Action plan<sup>85</sup> also sites how local authorities and registered social landlords adapted their practices further during this period. The Homelessness Monitor (Wales) emphasises a drive towards improved practices, with 18 out of 22 local authority respondents agreeing that social landlords in their area were 'making every effort' to prevent and relieve homelessness. However, it should be noted that more than half of local authorities felt these

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<sup>82</sup> <https://gov.wales/landlords-housing-law-changing-renting-homes#section-86381>

<sup>83</sup> Report to Welsh Ministers from the Homelessness Action Group, (October 2019), Preventing rough sleeping in Wales and reducing it in the short-term

<sup>84</sup> Shelter Cymru (2021) Working together to end homelessness from social housing

<sup>85</sup> <https://gov.wales/ending-homelessness-wales-high-level-action-plan-2021-2026>

efforts were hampered as 13 of 22 respondents strongly disagreed that social housing provision in their locality was adequate.<sup>86</sup>

The Welsh Government indicated in its Action plan that it wants to use the reduction in evictions due to pandemic measures to as a catalyst for a ‘no evictions into homelessness’ policy to be ‘adopted close to a universal level’.

### **Learning from Scotland on Social Landlords and prevention of homelessness**

The Prevention Review Group in Scotland found social landlords are well placed to carry out work which prevents homelessness, particularly through good tenancy management practice. However, the Group also found that 14% of homeless households were previously housed in social tenancies in 2019/20.<sup>87</sup> This demonstrates that there more could be done to minimise the number of people who become homeless after living in a social rented home.

Through recommendations in its final report, the Prevention Review Group sought to formalise existing good practice as duties, so that social landlords can take action within their powers to identify and mitigate risk of homelessness as early as possible. This includes risks resulting from rent arrears, neighbour and relationship concerns, possible domestic abuse and risk to tenancy due to impending court action.

The group recommended that where a social landlord identifies circumstances which may lead to a risk of homelessness, they must take reasonable steps to mitigate that risk.

Identifiers may include:

- Rent arrears or other financial difficulty which may give rise to risk of homelessness (i.e., before difficulties have led to impending homelessness, such as eviction action).
- Tenant behaviour or action which may give rise to risk of homelessness.
- Other circumstances, including domestic abuse, or court proceedings for example relating to criminal charges, which may give rise to a loss of accommodation due to remand or imprisonment.

Reasonable steps to mitigate a tenant’s risk of homelessness would include:

- Housing management practices to sustain tenancies.
- Engaging with the tenant to address relevant financial circumstances.
- Engaging the tenant to address behaviour.
- Putting protocols in place to address relevant circumstances and mitigate risk of homelessness at an early stage, including protocols relating to domestic abuse and tenants facing court proceedings.

If the landlord considers the risk of homelessness for a tenant to require assistance beyond their powers, including where there is a growing risk of eviction, then they should notify the local authority as early as possible that there is a risk of homelessness (Section 24A).<sup>88</sup> This is similar to

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<sup>86</sup> Fitzpatrick, S., Pawson, H., Bramley, G., Young, G., Watts, B. & Wood, J. (2021) The Homelessness Monitor: Wales 2021. London: Crisis, p.58.

<sup>87</sup> Scottish Government (2020) Homelessness in Scotland 2019/20

<sup>88</sup> <https://www.legislation.gov.uk/ukpga/1987/26/section/24>

the existing section 11 duty under the Homelessness (Scotland) Act 2001,<sup>89</sup> but the intention is to ensure that the referral is as far upstream as possible. It seeks to have a clear process in place between the social landlord and the local authority so that no one is evicted from social housing without somewhere to stay that night.

### **Evictions in the Private Rented Sector (PRS)**

**The current position:** A tenant's eviction rights in the private rented sector can vary depending on tenancy type. For fixed-term tenancies, a private landlord should have grounds for seeking eviction. However, for periodic assured shorthold tenancies, which are the default in the PRS, the section 21 no-fault ground is available. Depending on tenancy type and any grounds for eviction, notice periods can vary but may be between 14 days and 2 months.

**Following December 2022:** Due to changes resulting from implementation of the Renting Homes (Wales) Act 2016,<sup>90</sup> renters with private landlords will generally be issued with a 'standard contract.' Under these contracts, tenants will be entitled to a minimum six month 'no-fault' notice to end the contract. Such a notice can only be served after six months of occupation. This means that, provided a contract-holder does not breach their contract, they will be entitled to a minimum occupation of one year. As a result, current security of tenure in the private rented sector is effectively doubled.

The Act also includes provision to prevent retaliatory eviction. A court can choose not to make a possession order where a tenant issued with a no-fault notice has complained that the property is in a poor state of repair. A court would need to be satisfied the landlord hasn't issued the notice to avoid carrying out the repair.

### **Approaches to Section 21**

Ordinarily, Section 21 of the Housing Act 1988 provides landlords the power to evict their tenants without having to prove a reason – hence 'no fault.' Section 21 applies where a tenant has an Assured Shorthold Tenancy which is not within a fixed term agreement or during the first four months of the tenancy. Once a tenant has received a section 21 notice, they have two months to move out of the accommodation. If they haven't left in that time, the landlord can apply to the court for a possession order, for which there are only limited defences, mainly of a technical nature.

In addition to powers under section 21, landlords can also gain possession through section 8 of the Housing Act 1988. This applies in cases where there's been alleged anti-social behaviour or rent arrears and can be used during a fixed term as well as outside it. Landlords need to provide evidence to demonstrate why they are seeking possession under section 8, which can lead to excessive use of section 21 as a 'quicker option'.

The three Great Britain nations have taken different approaches in relation to section 21, which could each come with potential benefits alongside unintended consequences. Current proposals at Westminster, if implemented, would see an end to Section 21 altogether.<sup>91</sup> Supporters of these proposals would highlight greater tenant security and guarding against unscrupulous evictions, but others suggest the move may disincentivise landlords from remaining in the sector or could

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<sup>89</sup> <https://www.legislation.gov.uk/asp/2001/10/contents>

<sup>90</sup> See <https://gov.wales/housing-law-changing-renting-homes>.

<sup>91</sup> See <https://www.gov.uk/government/publications/a-fairer-private-rented-sector>.

potentially reduce the availability of buy to let mortgages and subsequent availability of rental properties.<sup>92</sup>

The position in Scotland is that a landlord wishing to live in the property need give 28 days' notice if the tenant has been living in the property for less than six months or meets specific criteria (including rent arrears).<sup>93</sup> In the case of tenancies over six months, the landlord must give notice of 84 days. Some could question whether these timescales provide sufficient time for a tenant to source alternative accommodation, particularly for those being evicted due to rent arrears. The Scottish Homelessness and Rough Sleeping Action Group (HARSAG) has recommended early engagement with those facing potential eviction from the private rented sector, or the social rented sector, including particular approaches on rent arrears.<sup>94</sup>

The Welsh Government's approach is that, where a tenant is not at fault, they should receive six months' notice for possession. This notice cannot be issued until six months after a tenancy begins. The advantages and disadvantages of this approach are outlined in the explanatory memorandum accompanying the Renting Homes (Wales) Act. For example, the legislation enables renters a longer period of security, but 47% of landlords surveyed said the six-month moratorium means they are less likely to rent to those they considered "higher risk" tenants.<sup>95</sup>

A further point for consideration is whether there are implications of human rights law for private landlord access to a property in certain situations where the tenant is not at fault, such as to live in the property themselves.<sup>96</sup>

### **Learnings from Scotland on Private Rental Sector (PRS) and prevention**

The Prevention Review Group in Scotland acknowledged the private rented sector had a role to play in both preventing homelessness and in resolving it once it has occurred. In its final report, the group recommended the following:

- That pre-action requirements created in emergency coronavirus legislation, requiring private landlords to provide information and put in place support for tenants in rent arrears, should be made permanent.
- If the tenant consents, the landlord may make a homelessness prevention referral to the local authority if they are concerned that there may be an emerging risk of homelessness. A local authority must respond to a referral from a private landlord under section 28.
- If a local authority is assisting a person threatened with homelessness as a result of pending eviction from a private tenancy and a landlord fails to co-operate, the local authority should have a power to request that the first-tier tribunal delay execution of an eviction order proceeding.
- That homelessness advice and assistance is designed to meet the needs of persons living in and seeking to access the PRS (section 27A). In practice, this would include PRS access schemes, landlord liaison and rent deposit guarantee schemes.

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<sup>92</sup> See <https://pm-law.co.uk/2019/04/section-21-evictions-to-be-banned/>.

<sup>93</sup> <https://www.mygov.scot/tell-your-tenant-they-need-to-leave>

<sup>94</sup> <https://www.gov.scot/groups/homelessness-and-rough-sleeping-action-group/>

<sup>95</sup> See Renting Homes (Wales) Bill, Explanatory Memorandum 2015, available at <https://senedd.wales/media/2utnjm01/pri-ld10098-em-r-e.pdf>

<sup>96</sup> See [https://england.shelter.org.uk/professional\\_resources/legal/possession\\_and\\_eviction/possession\\_process\\_for\\_rented\\_property/public\\_law\\_and\\_human\\_rights\\_defences\\_in\\_possession\\_proceedings#title-4](https://england.shelter.org.uk/professional_resources/legal/possession_and_eviction/possession_process_for_rented_property/public_law_and_human_rights_defences_in_possession_proceedings#title-4)

In 2017, Scotland introduced changes to private residential tenancy. These changes replaced assured and short assured tenancy agreements for all new tenancies.<sup>97</sup> Following this, landlords need to ensure the tenancy:

- Is open-ended, which means a landlord will no longer be able to ask a tenant to leave simply because the fixed term has ended.
- Provides more predictable rents and protection for tenants against excessive rent increases.
- Includes the ability to introduce local rent caps for rent pressure areas.
- Provides comprehensive and robust grounds for repossession that will allow landlords to regain possession in 18 specified circumstances.

Shortly after the introduction of Scottish reforms to the private rented sector, Shelter Scotland published research<sup>98</sup> assessing the impact of reforms. It found that half of renters on the new contracts (50%) agreed that the new tenancies have 'improved the experience of renting for me, overall', with only 8% disagreeing. However, research from Nationwide Foundation<sup>99</sup> RentBetter Wave 1 (2019/20) and Wave 2 (2021/2022) has indicated that tenants feel more secure in their rented homes, but that the minority who feel less secure are those with less financial power – those living in deprived areas, on lower incomes and housing benefit.

#### **'No fault evictions' in Wales during the pandemic**

Welsh Government's high level Homelessness Action Plan sites that, as a result of the measures put in place during the pandemic, eviction action leading to tenants being made homeless had reduced significantly. These measures included:

- Legal measures to prevent evictions from December 2020 to June 2021.
- Legal measures to extend notice periods to six months before court action and eviction can take place in almost all cases - to the end of December 2021.

However, the Homelessness Monitor Wales (2021) anticipated, based on local authority perceptions, that the post-lockdown (or, perhaps, post-pandemic) period is likely to see varied impacts on different homelessness cohorts. Almost all local authority representatives who responded to the Homelessness Monitor Wales survey anticipated an increase in private landlord evictions due to the relaxation of restrictions imposed in 2020. Most participants also expected increases in home-owner repossessions, newly unemployed people and survivors of domestic abuse.<sup>100</sup>

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<sup>97</sup> <https://www.gov.scot/policies/private-renting/private-tenancy-reform/>

<sup>98</sup> Shelter Scotland (2019), *The New Private Rental Tenancies: Evaluating Changes to Rental Agreements in Scotland*, p.6.

<sup>99</sup> A. Evans, B. Nugent, M. Littlewood, E. Dore, R. Serpa, D. Robertson (2022) *RentBetter Wave 2 – Final Report*, p.64.

<sup>100</sup> Fitzpatrick, S., Pawson, H., Bramley, G., Young, G., Watts, B. & Wood, J. (2021) *The Homelessness Monitor: Wales 2021*. London: Crisis, p.53