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APPROACHES TO THE USE OF PRIORITY
NEED TESTING IN UK HOMELESSNESS
LEGISLATION

RESEARCH BRIEFING - NATIONAL ASSEMBLY FOR WALES RESEARCH
SERVICE FELLOWSHIP

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Paper Overview

This paper will provide an overview of the concept of priority need used within homelessness legislation in the UK. It will outline how this is used in different ways across the UK as well as potential issues around its administration. The current Welsh Government approach to the use of priority need within Welsh homelessness legislation will also be outlined.

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1. Introduction and key points

Access to housing for individuals presenting as homeless, or threatened with homelessness, to local authorities is determined by a variety of staged statutory assessments. These define whether the local authority has a duty to support a certain individual to prevent or relieve their homelessness, a duty to provide temporary or permanent accommodation for that individual, or whether no duty is owed. The priority need test is one of these mechanisms, and is used differently in homelessness legislation across the UK.

This briefing will outline the following key points:

- The priority need test is one of a number of assessments that have been used across the UK since 1977 to determine what housing duties a local authority owes to an individual. These also include eligibility based on migration status and intentionality. Local authorities also give consideration to an individuals' local connection to an area when assessing duties.
- There is a divergence in the use of the priority need test across the UK;
- Scotland has abolished the use of priority need altogether. This has strengthened the enforceable rights of single individuals who are able to access substantive support if they are unintentionally homeless, but this has not been without negative consequences as the use of temporary accommodation to meet the new duties has increased;
- The *Housing (Wales) Act 2014* introduced prevention and relief duties for all individuals who are threatened with homelessness or who are homeless. If these duties are not successful, then the priority need test is applied at this stage. The use of the priority need test is therefore retained within the new legislation, but impacts on fewer individuals.
- Decision-making around priority need, particularly regarding the 'vulnerable' criteria, is often dependent on the use of discretion by local authority officers, which can be problematic for individuals presenting as homeless;
- This use of discretion has led to the development of a raft of case law around this legal tool. As Cowan (2019) outlines there has been a high level of legal contestation around the interpretation of homelessness legislation in general, leading to a potential lack of clarity around how it can be applied;
- The Welsh Government's Rough Sleeping Action Plan committed to reduce rough sleeping and end the need for people to sleep rough, including reviewing the use of priority need;

- The Equality, Local Government and Communities Committee has raised concerns about the lack of progress made on the Welsh Government's Rough Sleeping Action Plan; and
- The Welsh Government has commissioned an independent assessment into the potential impact of amending or abolishing the use of priority need within Welsh legislation. The Rough Sleeping Action Plan states that the Welsh Government will make a decision on this in 2020.

2. A legal rights-based approach to homelessness

The UK takes a legal rights-based approach to homelessness by placing legal duties on local authorities to act in certain ways when an individual is homeless. This amounts to an enforceable legal right for individuals which is unusual in an international context.

Various countries have a right to housing built into their constitution, where states are committed to developing policies which enable individuals to access housing (Watts 2010). Individual legal rights for those who are experiencing homelessness are different in nature, in that the state has a duty to meet a need for a particular individual, rather than merely a broader structural duty to provide access to accommodation.

2.1 Assessments for homelessness assistance

Individual legal rights for those experiencing homelessness in the UK are subject to applicants meeting certain criteria. Individuals are eligible for support based on their migration status, as well as the following three assessments, which are used in different ways across the UK nations.

- **Priority need** testing assesses an individual's level of need, and whether this warrants them being a priority for accessing support;
- The **intentionality** test seeks to determine the reasons why an individual has become homeless and the role played by individual behaviour; and
- The **local connection** assessment determines whether individuals have either family connections or have lived or worked in the area in which they are seeking help and therefore which local authority owes them a duty.

The assessments establish whether individuals have a right to assistance from the local authority, as well as what that assistance will constitute. This includes a range of entitlements from advice and assistance, to prevention or relief of homelessness through temporary or settled accommodation.

2.2 Priority need testing

Priority need testing aims to determine whether individuals have a certain set of needs that mean they are a 'priority' for assistance. Although the precise details of the test and how it is used differ across the UK, the below categories form the broad definition of those in priority need:

- Pregnant women;
- Individuals with dependents;
- A person who is homeless because of an emergency such as fire, flood, or natural disaster;
- Care leavers;
- Those leaving the armed forces;
- 16 and 17 year olds;
- Individuals fleeing domestic abuse; and
- Individuals who are vulnerable because of old age, mental illness, handicap, physical disability, or another special reason.

The final category relating to vulnerability involves the most controversial assessment of need, and the complexity of this is discussed in section 4.

3. The use of priority need testing in UK legislation

As stated, the different duties owed to individuals, and the way in which the three assessments (local connection, intentionality, and priority need) are used differ across the UK. Housing and homelessness is a key area where devolved governments have progressed divergent legislation depending on devolution settlements and political priorities. The core pieces of legislation which underpin this divergence are:

- *Homelessness Reduction Act 2017* (applicable to England);
- *Housing (Wales) Act 2014*;
- *Housing (Scotland) Act 1987 (as amended)* and *Homelessness etc. (Scotland) Act 2003*; and
- *Housing (Northern Ireland) Order 1988*.

The diagrams below outline the staged set of homelessness duties within the four nations and where the use of priority need testing fits within this.

England

Duties	
Advice & assistance duty	Advice and assistance to be provided to households who approach local authority regarding homelessness
Prevention duty	Prevention work to be undertaken with households who are threatened with homelessness within 56 days
Relief duty	Work to relieve homelessness to be undertaken for households who are assessed as homeless within 56 day period
Use of priority need test	Individuals whose homelessness has not been relieved through prevention or relief duties within 56 days are subject to priority need and intentionality tests
Interim duty	Duty to provide temporary accommodation for individuals waiting for assessment who are likely to be in priority need and not intentionally homeless
Main homelessness duty	Duty to secure accommodation for individuals who are unintentionally homeless and in priority need

Northern Ireland

Duties	
Advice & assistance duty	Advice and assistance to be provided to households who approach Northern Ireland Housing Executive (NIHE) regarding homelessness
Use of priority need test	Individuals have to pass the homelessness, intentionality, priority need, and eligibility tests to receive housing support from the NIHE
Full Housing Duty	Duty to provide temporary accommodation if needed and three offers of permanent accommodation to individuals who have passed the above four tests

Wales

Duties	
Prevention duty	Prevention work to be undertaken with households who are threatened with homelessness within 56 days
Relief duty	Work to relieve homelessness to be undertaken for households who are assessed as homeless within 56 day period
Use of priority need test	Households whose homelessness has not been relieved through prevention or relief duties within 56 days are subject to priority need and intentionality tests
Interim duty	Duty to provide temporary accommodation for households waiting for assessment who are likely to be in priority need and not intentionally homeless
Main homelessness duty	Duty to secure settled accommodation for households who are unintentionally homeless and in priority need

Scotland

Duties	
Advice & assistance duty	Advice, assistance, and temporary accommodation for a reasonable time period to be provided to households who are unintentionally homeless
Full duty	Duty to secure accommodation for households who are unintentionally homeless and in priority need

3.1 Recent changes to the use of legislative tests

Until the *Housing (Wales) Act 2014* came into force, homelessness duties in England and Wales were outlined in the *Housing (Homeless Persons) Act 1977*, the *Housing Act 1996*, and the *Homelessness Act 2002*. Individuals were entitled to information and advice from local authorities when they presented as homeless, but the duties to access temporary or settled accommodation were subject to the priority need, intentionality, and local connection tests. Individuals could present to the authority for assistance if they were homeless, or threatened with homelessness within 28 days, in order to receive an in-depth assessment with a housing advisor. The implementation of this process was criticised (Crisis 2014) for the quality and consistency of both the assessments, and the advice and assistance provided.

The *Housing (Wales) Act 2014* introduced a duty on local authorities to prevent or relieve homelessness for those who were homeless or threatened with homelessness within 56 days. This created a period of divergence between England and Wales regarding homelessness duties from 2015 to 2018. At this time, the assessments of priority need, intentionality, and local connection were only applied in Wales after the 56 day period when the duties of prevention or relief had come to an end. Conversely in England, these tests were used in the initial assessment process. However, the *Homelessness Reduction Act 2017* (in England) emulated the *Housing (Wales) Act's* prevention duty. This introduced a universal duty (for those eligible for public funds) to provide individuals presenting as homeless with access to advice and support to prevent homelessness if they were threatened with homelessness, or help to secure accommodation for individuals who were already homeless.

In previous legislative approaches to homelessness, a variety of the three assessments were applied prior to receiving any substantive assistance from the local authority. These changes in legislation from 2014 represent a shift in the use of the three assessments from being applied when individuals first approach local authorities to a second stage of assessment where all individuals receive assistance to prevent or relieve their homelessness within 56 days regardless of local connection, intentionality, or priority need. The key point here is that this shift in the position of application of priority need within the system means that fewer people are subject to the test, as their homelessness or threat of homelessness should be resolved before this test is applied.

3.2 Priority need in Scotland

In Scotland, the provision of homelessness assistance is not based on whether an applicant falls into a priority need group. Priority need was abolished in Scotland by the *Homelessness etc. (Scotland) Act 2003* which was fully commenced on 31st December 2012. This means that local authorities in

Scotland have a duty to find settled accommodation for all applicants who are found to be unintentionally homeless. Scottish homelessness legislation therefore has one of the strongest legal rights-based approaches to homelessness in Europe. Unlike in the other UK countries, single homeless people who are unintentionally homeless are entitled to substantive help under this system, expanding the number of individuals considered as statutorily homeless. The phasing out of priority need began in 2003 and from 2010 this was coupled with a renewed focus on prevention, and a strengthening of the Housing Options programme. Unlike new legislation in England and Wales, Scotland does not currently have a prevention duty but the Scottish Government *Ending Homelessness Together Action Plan* published in November 2018 committed to introducing a new wide-ranging prevention duty.

The abolition of priority need has led to an increase in the use of temporary accommodation. As outlined by Watts et. al (2018), almost 11,000 households are living in temporary accommodation in Scotland which is double the number as in 2003. 60% of these are living in self-contained social rented sector accommodation, and over a quarter in hostel or bed and breakfast accommodation. The average length of time spend in temporary accommodation is 5 and a half months with this varying between half to double the national average. The use, type of accommodation available, and length of stay highlight geographical disparities in meeting this recent legislative change. There are a number of issues with using this type of accommodation as a means to meet the new duties:

- Some types of temporary accommodation, such as hostels and bed and breakfasts are not suitable to meet people's needs in terms of space, length of stay, and proximity to social networks. This is particularly pertinent for families using temporary accommodation;
- Some individuals with more complex needs are not receiving appropriate support within their temporary accommodation; and
- There is a lack of permanent accommodation in certain areas, with individuals and households staying in temporary accommodation for longer than intended or appropriate.

3.3 Priority need in England, Wales, and Northern Ireland

Priority need testing is still used in England, Wales and Northern Ireland to assess whether individuals are owed specific duties by the local authority. The priority need categories are outlined below:

England:	Wales:	Northern Ireland:
<p>a. People with dependent children who are residing with, or might be expected to reside with them</p> <p>b. People who are homeless or threatened with homelessness as a result of any emergency such as flood, fire or any other disaster</p> <p>c. Where any person who resides or who might reasonably be expected to reside with them, is vulnerable because of old age, mental illness, handicap or physical disability or other special reason</p> <p>d. Pregnant women, or a person who resides or might reasonably be expected to reside with a pregnant woman</p> <p>e. All 16 and 17-year olds</p> <p>f. 18-20-year old care leavers</p> <p>g. Vulnerable care leavers</p> <p>h. Vulnerable former members of the armed forces</p> <p>i. Vulnerable former prisoners</p> <p>j. People who are vulnerable because they are fleeing violence.</p>	<p>a. A pregnant woman, or a person who resides or might reasonably be expected to reside with a pregnant woman</p> <p>b. A person with whom a dependent child resides or might reasonably be expected to reside</p> <p>c. A person who is vulnerable as a result of some special reason - for example: old age, physical or mental illness or physical or mental disability</p> <p>d. A person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire, or disaster</p> <p>e. A person who is homeless as a result of being subject to domestic abuse</p> <p>f. A person who is aged 16 or 17 when the person applies for help</p> <p>g. A person who has attained the age of 18 but not the age of 21 when they apply for help who is at particular risk of sexual or financial exploitation or who was looked after, accommodation or fostered whilst under 18</p> <p>h. A person who has served in the regular armed forces of the Crown who has been</p>	<p>a. A pregnant woman, or a person who resides or might reasonably be expected to reside with a pregnant woman</p> <p>b. A person with whom a dependent child resides or might reasonably be expected to reside</p> <p>c. A person who is vulnerable as a result of some special reason - for example: old age, physical or mental illness or physical or mental disability</p> <p>d. A person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire, or disaster</p> <p>e. A person without dependent children who satisfies the Executive that he has been subject to violence and is at risk of violent pursuit or, if he returns home, is at risk of further violence;</p> <p>f. A young person who satisfies the Executive that he is at risk of sexual or financial exploitation.</p>

	<p>homeless since leaving those forces</p> <p>i. A person who has a local connection with the area of the local housing authority and who is vulnerable as a result of one of the following reasons—</p> <ul style="list-style-type: none"> I. having served a custodial sentence within the meaning of section 76 of the <i>Powers of Criminal Courts (Sentencing) Act 2000</i>, II. having been remanded in or committed to custody by an order of a court, or III. having been remanded to youth detention accommodation under section 91(4) of the <i>Legal Aid, Sentencing and Punishment of Offenders Act 2012</i> 	
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4. Priority need testing and decision-making

4.1 Priority need testing and discretion

A key issue with the implementation of priority need testing, and the vulnerability test (c) in particular, is the reliance on discretionary decision-making. This concept is often explored in relation to decision-making within social welfare and administrative justice, and is particularly pertinent in the context of homelessness decisions.

Bretherton et. al (2013) and Halliday (2004) discuss how the structure of UK homelessness legislation and its reliance on discretion can lead to “socially constructed” (Bretherton et. al 2013, p. 70) decisions on vulnerability. Decisions can be influenced either by external pressures, such as availability of housing, or internal pressures such as individual values. These factors can then impact on who qualifies for assistance from a local authority. These pressures differ both between

organisations and between different individuals working within the same organisation – meaning that individuals with the same needs might have different responses depending on the local authority officer who deals with their case. This variation in decision-making is highlighted in the report into the implementation of Part II of the *Housing (Wales) Act* by the University of Salford.

Research from Alden (2015) outlines a variety of influences in decision-making for frontline officers. These include central and organisational factors, the influence of supervisors, and individual values. Within this research limited resources were highlighted by participants as a motivation in decision-making, with a number of officers noting the protection of resources as an important factor when assessing households affected by homelessness. Regarding the impact of individual values, just under half of the participants within this research described themselves as either ‘hard’ or ‘soft’ decision-makers. This difference was discussed in terms of what officers viewed their role to be: gatekeeping scarce resources or providing support for individuals who need support.

4.2 The Pereira test

The final element of assessing priority need - that of vulnerability - is arguably the most controversial in trying to identify what duties are owed to an individual. In England and Wales, prior to 2015, whether an individual was deemed vulnerable was decided using a test developed as a result of case law, called the *Pereira* test. Vulnerability was defined according to the ‘ordinary homeless person comparator’, notably that an individual:

“When homeless, [is] less able to fend for himself than an ordinary homeless person so that injury or detriment to him will result when a less vulnerable man would be able to cope without harmful effects”.

Under this comparator, individual housing officers who are administering the law are required to judge whether individuals are more or less vulnerable than an ordinary homeless person and the behaviours and experiences those individuals might potentially experience. The use of this comparator under previous English legislation was often problematic, and seen as a method of gatekeeping, as issues such as severe physical and mental health were classed as ‘ordinary’ behaviours and experiences for people who are homeless (Taylor 2017).

The use of the *Pereira* test was challenged in the Supreme Court in 2015, in *Hotak (Appellant) v London Borough of Southwark (Respondent)*. The Supreme Court’s judgement outlined that some comparison was needed to make a decision on vulnerability. However, it found that the current comparator – in practice, that of an individual who was street homeless – was not sufficient as it was measuring vulnerability against an “already extremely vulnerable benchmark” (Meers 2015).

Instead, local authorities in England must use the comparator of ‘the ordinary person who is in need of accommodation’ noting that this individual should be considered as robust and healthy. Instead of defining vulnerability against the comparator of someone who already has a high level of vulnerability, the revised test now asks local authorities to assess against a robust and healthy individual who is in need of accommodation.

In Wales, the *Pereira* test was included on the face of the *Housing (Wales) Act 2014*. This means that this decision-making mechanism was elevated from case law to being part of primary legislation. The second iteration of the Code of Guidance issued under provisions in the *Housing (Wales) Act 2014* took account of the Supreme Court judgement and aimed to clarify that the comparator should be of an ‘ordinary person’ made homeless rather than an ‘ordinary homeless person’. However, the ‘ordinary homeless person comparator’ is retained within the legislation.

5. Developments in the use of priority need in Wales

There are a number of key documents that have been commissioned and published since February 2018 which address the use of priority need in Wales. Importantly, the Welsh Government has commissioned research into the amendment or abolition of the use of priority need within the *Housing (Wales) Act 2014*.

The Welsh Government’s [Rough Sleeping Action Plan](#) was published in February 2018 and provides a two year action plan for the Welsh Government to address the issue of rough sleeping.

It provides recommendations around:

- Prevention;
- Support;
- Outreach;
- Emergency accommodation;
- Housing First;
- Legislation and statutory guidance;
- Measuring and monitoring;
- Joint working; and
- Promoting good practice.

Regarding priority need, action point 16 calls for consideration of the case for amending secondary legislation to modify priority need groups, potentially including rough sleepers within these. A decision is due to be made on this in 2020.

The Equality, Local Government, and Communities Committee's report [Life on the streets: preventing and tackling rough sleeping in Wales](#) was published in April 2018. Following its inquiry into rough sleeping in Wales, the Committee's recommendations addressed:

- Effectiveness of the legislation;
- Scale of rough sleeping in Wales;
- Causes and increase in rough sleeping;
- Effectiveness and availability of accommodation;
- Steps to prevent and tackle rough sleeping; and
- Funding.

A number of recommendations related to the use of priority need testing. Recommendation 1 called for the Welsh Government to:

- Strengthen the Code of Guidance for local authorities to set out a clear expectation that rough sleepers should be determined as in priority need for accommodation under current legislation;
- Bring forward an Order under section 72 to specify that "rough sleepers" have priority need for accommodation as the first step in a phased approach to abolishing priority need entirely; and
- Work with local authorities and the homelessness sector to develop an appropriate and sufficiently robust process for verifying rough sleepers for the purpose of assessing priority need for accommodation.

Recommendation 2 called for the Welsh Government to undertake work on the implications for local authorities and the housing and homelessness sector of abolishing priority need as a matter of urgency.

If the first recommendation was not accepted, then recommendation 3 called on the Welsh Government to amend the definition of "vulnerable" in section 71 of the *Housing (Wales) Act 2014* to reflect current case law (the Hotak judgment), and to amend that Act to include a power for the Welsh Ministers to further amend the definition of "vulnerable" by Order, subject to the

affirmative procedure.

In its [response to this report](#), published in June 2018, the Welsh Government accepted recommendations 1 and 2 in principle and rejected recommendation 3. It highlighted that it is currently reviewing the Code of Guidance and is also in the process of commissioning an independent assessment of the potential implications and risks associated with changing the current priority need approach.

The Welsh Government commissioned a piece of research evaluating the implementation of Part 2 of the *Housing (Wales) Act* which was [published](#) in July 2018.

The University of Salford collected data from national stakeholders, local authorities and service users across Wales and outlined the following recommendations around priority need:

- The Welsh Government should give all priority need households ‘a second chance’;
- Non-priority need homeless people should be accommodated in temporary accommodation for a period of up to 21 days to prevent rough sleeping;
- The Welsh Government should provide discretionary funds to local authorities to facilitate this;
- The Welsh Government should explore including rough sleeping as a priority need category;
- Since ‘vulnerability’ is a highly subjective assessment, the Welsh Government should review the Code of Guidance with a view to establishing greater consistency and clarity, particularly with regard to age and mental health; and
- There should be additional training for Housing Solutions staff regarding ‘the other special reason’ (vulnerability category) definition of priority need to ensure that people’s needs are fully assessed and captured.

The Equality, Communities, and Local Government Committee held a [follow up session](#) with the Minister for Housing and Local Government (Julie James AM) on the Rough Sleeping Action Plan in March 2019.

During this session, the Minister outlined the complexity of the issue of rough sleeping and the importance of taking a considered approach to implementing ways to address this. She also noted that the independent assessment of the use of priority need has been commissioned and will

report in a year.

In its [follow up letter](#) to the Minister following the evidence session in March, the Committee welcomed the clear commitment in the Welsh Government's written evidence to "reducing and ultimately ending the need to sleep rough in Wales". However, the Committee challenged the lack of progress made against the Rough Sleeping Action Plan, as well as the lack of measurable targets for its delivery. The Committee highlighted the lack of progress in delivering the independent assessment of priority need, particularly that it will report in April 2020 after the two-year Rough Sleeping Action Plan has come to an end.

The Minister for Housing and Local Government (Julie James AM) announced the creation of a [Homelessness Action Group](#) on 28th June 2019. Chaired by Jon Sparkes from Crisis, the group is constituted of a number of representatives from the third sector, local government, housing associations, and academia. The group has been tasked with providing independent policy solutions on the actions and solutions needed to address the following questions:

- What framework of policies, approaches and plans are needed to end homelessness in Wales? (What does ending homelessness actually look like?)
- What immediate actions can we take to reduce rough sleeping between now and the winter of 2019/20, and to end rough sleeping altogether?
- How do we put the delivery of rapid and permanent rehousing at the heart of preventing, tackling and ending homelessness?
- How can we ensure joined-up local partnerships and plans are put in place to prevent, tackle and end homelessness throughout Wales?

The group will work on addressing these issues until March 2020, with a focus on listening to experts with experience of the homelessness system. A [blog](#) on their first meeting has been published by Crisis.

5.1 The Welsh Government's approach to priority need

In March 2019, the Welsh Government commissioned an independent review into the use of priority need in Wales. The tendering documents for the research asked the successful candidates to:

- Investigate the potential impacts of any change to priority need (whether that is an amendment or abolition) on local authorities, housing providers, the third sector and of course those accessing housing support.

The documents outline that the priority need test retains a fundamental position within the *Housing (Wales) Act* as a “determining factor in whether temporary accommodation is provided while earlier duties to homeless persons are being actioned”.

It highlights that there is a growing body of evidence that priority need testing, and more specifically the *Pereira* test, are being implemented differently both between local authorities and within the same local authority. This links to the discussion in section 4.1 about the role of discretion in priority need decision-making.

The Welsh Government’s concerns mirror those expressed by stakeholders about the effectiveness of the approach to priority need as highlighted in the Equality, Communities, and Local Government Committee report. In its written evidence, the Wallich asserted that the current formation of, and guidance relating to, the vulnerability test is not fit for purpose as it does not include many individuals it would consider to be vulnerable. In his written evidence, Dr Pete Mackie argued for the abolition of the priority need test, and asserted that all households should be entitled to settled accommodation. He called for a shift away from the current format of provision of support to swifter unconditional access to housing with appropriate support. The Equality, Local Government and Communities Committee report called for the phased abolition of the use of this test.

In the March 2019 follow-up scrutiny session, the Minister for Housing and Local Government (Julie James AM) emphasised the role of the independent assessment in determining the Welsh Government’s approach to priority need testing. It is likely that the work of the Homelessness Action Group will also inform decision-making in this area.

6. Conclusion – key points

This briefing has outlined the following key points:

- The priority need test is one of a number of assessments that have been used across the UK since 1977 to determine what housing duties a local authority owes to an individual. These also include eligibility based on migration status and intentionality. Local authorities also give consideration to an individuals’ local connection to an area when assessing duties.
- There is a divergence in the use of the priority need test across the UK;

- Scotland has abolished the use of priority need altogether. This has strengthened the enforceable rights of single individuals who are able to access substantive support if they are unintentionally homeless, but this has not been without negative consequences as the use of temporary accommodation to meet the new duties has increased;
- The Housing (Wales) Act 2014 introduced prevention and relief duties for all individuals who are threatened with homelessness or who are homeless. If these duties are not successful, then the priority need test is applied at this stage. The use of the priority need test is therefore retained within the new legislation, but impacts on fewer individuals.
- Decision-making around priority need, particularly regarding the 'vulnerable' criteria, is often dependent on the use of discretion by local authority officers, which can be problematic for individuals presenting as homeless;
- This use of discretion has led to the development of a raft of case law around this legal tool. As Cowan (2019) outlines there has been a high level of legal contestation around the interpretation of homelessness legislation in general, leading to a potential lack of clarity around how it can be applied;
- The Welsh Government's Rough Sleeping Action Plan committed to reduce rough sleeping and end the need for people to sleep rough, including reviewing the use of priority need;
- The Equality, Local Government and Communities Committee has raised concerns about the lack of progress made on the Welsh Government's Rough Sleeping Action Plan; and
- The Welsh Government has commissioned an independent assessment into the potential impact of amending or abolishing the use of priority need within Welsh legislation. The Rough Sleeping Action Plan states that the Welsh Government will make a decision on this in 2020.

References

- Alden, S. (2015) 'Discretion on the frontline: The street level bureaucrat in English statutory homelessness services', *Social Policy and Society*, 14(1) pp. 63–77.
- Bretherton, J. Hunter, C. and Johnsen, S. (2013) 'You can judge them on how they look...': Homelessness Officers, Medical Evidence and Decision-Making in England', *European Journal of Homelessness*, 7(1) pp. 69-92
- Cowan, D. (2019) 'Reducing Homelessness or Re-ordering the Deckchairs?' *The Modern Law Review*, 82, pp.105-128.
- Dobie, S., Sanders, B. & Teixeira, L. (2014) *Turned Away: The treatment of single homeless people by local authority homelessness services in England*. London: Crisis.
- Fitzpatrick, S. & Watts, B., (2010) 'The 'Right to Housing' for Homeless People'. *Homelessness Research in Europe*. O'Sullivan, E., Busch-Geertsema, V., Quilgars, D. & Pleace, N. (eds.). Brussels: FEANTSA. pp. 105-122
- Halliday, S. (2004) *Judicial Review and Compliance with Administrative Law*. Oxford: Hart Publishing.
- Hotak (Appellant) v London Borough of Southwark* (1999) 31 H.L.R 317.
- Mackie, P. (2018) Response to National Assembly Equality, Local Government, and Committee Inquiry into rough sleeping in Wales. Available at: <http://senedd.assembly.wales/documents/s71916/RS11%20-%20Peter%20Mackie.pdf> [Accessed: July 2019]
- Meers, J. (2015) 'A return to purer waters? 'Vulnerability' under s. 189 Housing Act 1996', *Journal of Social Welfare and Family Law*, 37(4), pp. 473-475
- R. v Camden LBC, ex p. Pereira* (1999) 31 H.L.R. 317
- Taylor, H. (2017). *Social Justice in Contemporary Housing: applying Rawls' Difference Principle*. London: Routledge.
- Watts, B., Littlewood, M., Blenkinsopp, J. & Jackson, F. (2018) *Temporary Accommodation in Scotland: Final Report*. Edinburgh: Social Bite. Welsh Government (2014) *Housing (Wales) Act 2014*. Available at: <http://www.legislation.gov.uk/anaw/2014/7/contents/enacted> [Accessed: July 2019]
- Wallich (2018) Response to National Assembly Equality, Local Government, and Committee Inquiry into rough sleeping in Wales. Available at: <http://senedd.assembly.wales/documents/s71908/RS03%20-%20Wallich.pdf> [Accessed: July 2019]
- Welsh Government (2014) *Housing (Wales) Act 2014*. Available at: <http://www.legislation.gov.uk/anaw/2014/7/contents/enacted> [Accessed: July 2019]