

Item: 12

Education, Leisure and Housing Committee: 3 April 2019.

Consultation on Local Connection and Intentionality Provisions in Homelessness Legislation.

Report by Executive Director of Education, Leisure and Housing.

1. Purpose of Report

To consider the Council's response to the consultation of local connection and intentionality provisions in homelessness legislation.

2. Recommendations

The Committee is invited to note:

2.1.

That the Scottish Government's Homelessness and Rough Sleepers Action Group made a range of recommendations intended to eradicate rough sleeping, transform the use of temporary accommodation in Scotland and end homelessness.

2.2.

That the recommendations included the implementation of the changes to the intentionality and local connection criteria within the Homelessness etc (Scotland) Act 2003.

2.3.

That the Scottish Government is undertaking a consultation in respect of the implementation of the changes to intentionality and local connection criteria outlined at paragraph 2.2 above, during 2019.

2.4.

That the deadline for consultation responses is 25 April 2019.

2.5.

The Council's draft response to the consultation of local connection and intentionality provisions in homelessness legislation, attached as Appendix 1 to this report.

It is recommended:

2.6.

That the Council's response to the consultation by the Scottish Government on local connection and intentionality provisions in homelessness legislation, attached at Appendix 1 to this report, be approved.

The Committee is invited to note:

2.7.

That, due to the time constraints involved, the Chief Executive would be requested to exercise emergency powers to authorise submission of the response, referred to at paragraph 2.6 above, prior to approval by Council.

3. Background

3.1.

Members were previously advised of the establishment of the Scottish Government's group entitled the Homelessness and Rough Sleeping Action Group and its commitment to eradicate rough sleeping, transform the use of temporary accommodation in Scotland and end homelessness.

3.2.

Homelessness is a significant national issue currently and the Scottish Government has committed to ensuring that everyone has a safe, warm settled home of their own by building on strong foundations to go further to prevent, tackle and ultimately end homelessness.

3.3.

Housing is being viewed as a basic human right and housing is viewed as one of the most important factors in any person's quality of life.

3.4.

Scotland has the most progressive homelessness legislation in Europe. A significant piece of legislation was introduced in 2003 being the Homelessness etc (Scotland) Act which introduced the intention of amending the then four hurdles within homelessness legislation, ultimately, to one.

3.5.

From 1 January 2013, the homelessness legislation changed. The result was that the priority need classification "assessment of vulnerability" was removed nationally leaving three remaining hurdles. These are:

- Is the household homeless?
- Has the household become homeless intentionally?

- Does the household have a local connection (for example have they lived in the area for six out of the last 12 months, three out of the last five years, have a connection as a result of employment or some other special reason)?

3.6.

This process will continue to change as a result of the Homelessness etc (Scotland) Act 2003 and ultimately consideration will only require to be given to whether the household is homeless.

3.7.

The Homelessness and Rough Sleeping Action Group made a specific recommendation aimed at reducing barriers to people getting the support they need so that they can be helped at the earliest opportunity.

3.8.

This recommended that legislative arrangements which could result in difficulties with people being able to access their rights and should be revised. Specifically, this focussed on the legislative arrangements on local connection and intentionality. The suggestion was that the current provisions on intentionality in the Homelessness etc (Scotland) Act 2003 should be commenced and that the definition of intentionality be narrowed to focus on instances of 'deliberate manipulation' of the homelessness system. In addition, provisions on local connection should be progressed to allow the suspension of referrals between local authorities to remove barriers to support for people who are homeless or rough sleeping or at risk of homelessness or rough sleeping. It was also recommended that the impact of these changes on local authorities should be monitored to respond to any local authorities coming under undue pressure as a result of disproportionate impacts as a result of people relocating.

3.9.

The Scottish Government have launched a consultation paper which sets out the current position and proposals to commence the current local connection and intentionality provisions within homelessness legislation.

4. Intentionality Classification

4.1.

Currently a duty is placed on local authorities to investigate whether a person they have found to be homeless or threatened with homelessness became homeless or threatened with homelessness, intentionally.

4.2.

Most homeless households are found to be homeless unintentionally, but the use of the intentionality criteria allows local authorities to distinguish between the case of a person who has become homeless through no fault of their own, and the case of a

person, who through deliberate action or inaction, has contributed to their homelessness.

4.3.

Currently, in order for a household to be found intentionally homeless, the local authority must be satisfied that they were aware of the facts before they took the action or failed to take any action which ultimately resulted in the loss of their home. It must have been reasonable for the household to have continued to occupy the accommodation. An act or omission in good faith on the part of a person unaware of any relevant fact is not to be regarded as deliberate.

4.4.

Where a household is found to be intentionally homeless, a local authority must provide temporary accommodation and advice and assistance but is not required to provide permanent accommodation.

4.5.

The Homelessness etc (Scotland) Act 2003 makes provision to change the operation of the intentionally homeless test which, if commenced, would give local authorities discretion, rather than the current duty, to investigate intentionality.

4.6.

When commenced, the following effects would apply:

- Discretion is given to local authorities as to whether to investigate intentionality.
- Local authorities are not under a duty to notify the applicant of their findings as to intentionality where they have not carried out an investigation.

4.7.

If, once this change is introduced, a local authority finds a household to be intentionally homeless they will be required to ensure that the household is given a Short Scottish Secure Tenancy with support to tackle the reasons which led to their homelessness.

4.8.

This Short Scottish Secure Tenancy can be provided by either the local authority from its stock or by a Housing Association.

4.9.

The Short Scottish Secure Tenancy with support is to be provided for a period of one year. At the end of that period of time the Short Scottish Secure Tenancy will automatically convert to being a full Scottish Secure Tenancy, provided the tenant has managed their tenancy appropriately and no action has been taken by the landlord to bring the tenancy to an end.

4.10

The Homelessness and Rough Sleepers Action Group also recommended changing the definition of intentionality to focus on the deliberate manipulation of the homelessness system.

4.11

The level of households found to be intentionally homeless in Orkney is outlined below.

Financial Year.	Number of Homeless Presentations.	Percentage of Homeless Households the Council Accepted a Duty to Permanently Rehouse.	Intentionally Homeless Households.
2017 to 2018	119.	68.9%.	9.
2016 to 2017	127.	73.2%.	9.

5. Local Connection

5.1.

Local connection is currently defined as a connection which a household has with an area because:

- They are or were in the past normally resident in it, and this residence was of their own choice.
- They are employed in it.
- They have family associations.
- They have special circumstances.

5.2.

Local authorities currently have the power to refer homeless households who do not have a local connection with their area to another local authority where they do have such a connection.

5.3.

This power does not apply where the person has been assessed as intentionally homeless and this assessment cannot be revisited by the receiving authority. A referral on the grounds of local connection cannot be made where the applicant household would face the risk of domestic abuse or harassment in the area where they have a local connection.

5.4.

The proposed changes are that the Scottish Ministers have the power to issue a statutory instrument restricting the operation of the local connection referral rules. This power may be applied to all local authorities or to selected local authorities and

can include making referrals, receiving referrals to both making and receiving referrals.

5.5.

The level of households found to have no local connection to Orkney is outlined below.

Financial Year.	Households with No Local Connection.
2017 to 2018.	3.
2016 to 2017.	2.

6. Consultation Paper

6.1.

The Scottish Government's consultation paper is available from:
<https://www.gov.scot/publications/consultation-local-connection-intentionality-provisions-homelessness-legislation/>

6.2.

The draft Council response is attached at Appendix 1 to this report.

6.3.

The consultation will close on 25 April 2019.

7. Links to Council Plan

This report relates to governance and procedural issues and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

8. Financial Implications

8.1.

Expenditure on homelessness is charged to the Other Housing budget within the General Fund.

8.2.

The net homelessness budget for 2017 to 2018 was £749,500 with an actual net spend of £704,200 which gives an underspend for the financial year of £45,300.

9. Legal Aspects

9.1.

There are no direct legal implications arising from this noting report. The statutory definition of homelessness is given below.

9.2.

In terms of section 24 of the Housing (Scotland) Act 1987, a person is homeless or threatened with homelessness if there is no accommodation in the UK or elsewhere, which he, together with any other person who normally resides with him as a member of his family or in circumstances in which the local authority consider it reasonable for that person to reside with him:

- Is entitled to occupy by virtue of an interest in it or by virtue of an order of a court.
- Has a right or permission, or an implied right or permission to occupy, or in England and Wales has an express or implied licence to occupy.
- Occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession.

9.3.

Further, a person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.

9.4.

Regard may be had in determining whether it would be reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the area of the local authority to whom he has applied for accommodation or for assistance in obtaining accommodation.

9.5.

In terms of Section 24(3), a person is also homeless if he has accommodation but:

- He cannot secure entry to it.
- It is probable that occupation of it will lead to [abuse (within the meaning of the Protection from Abuse (Scotland) Act 2001 (asp 14)), or it is probable that occupation of it will lead to abuse (within the meaning of that Act) from some other person who previously resided with that person, whether in that accommodation or elsewhere.
- It consists of a movable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it.
- It is overcrowded within the meaning of section 135 and may endanger the health of the occupants.

- It is not permanent accommodation, in circumstances where, immediately before the commencement of his occupation of it, a local authority had a duty under section 31(2) in relation to him ie a local authority is satisfied that an applicant is homeless.

9.6.

A person is threatened with homelessness if it is likely that he will become homeless within 2 months.

9.7.

For the purposes of subsection (3)(e), “permanent accommodation” includes accommodation:

- Of which the person is the heritable proprietor.
- Secured by a Scottish secure tenancy.
- Secured by an assured tenancy or private residential tenancy that is not a short assured tenancy.
- Where paragraph 1 or 2 of schedule 6 to the Housing (Scotland) Act 2001 (asp 10) is satisfied in relation to the person, secured by a short Scottish secure tenancy, i.e. has been evicted previously and therefore tenancy has been granted as a short Scottish secure tenancy.

10. Contact Officers

Wilfred Weir, Executive Director of Education, Leisure and Housing, extension 2436, Email wilf.weir@orkney.gov.uk.

Frances Troup, Head of Housing, Homelessness and Schoolcare Accommodation Services, extension 2177, Email frances.troup@orkney.gov.uk.

11. Appendix

Appendix 1: Draft response to consultation questions.

Appendix 1.

Consultation on Local Connection and Intentionality Provisions in Homelessness Legislation

1. Commencing the local connection provisions in the Homelessness etc. (Scotland) Act allows Scottish Ministers to modify referrals relating to local connection. The Homelessness and Rough Sleepers Action Group has recommended that referrals should be suspended between all local authorities for all groups. Do you think we should:

- **Suspend all local connection referrals**
- **Modify local connection referrals in another way (please give details)**
- **Not commence these provisions i.e. do nothing**

Please explain your answer.

The concept of the removal of local connection has been debated for a significant number of years. While there is some appreciation that all local authorities could not be in the position of attracting greater numbers of people, there are some areas where this is likely to be the case. There is some recognition that city areas may be a draw but equally some rural areas may prove to be generally popular. While we agree that people should ideally have some choice around where they settle, there is also merit in the current local connection rules as these ensure there is some access to informal support in the form of family members – support that is often missing from many homeless people's lives.

Orkney has been voted the most popular place to live in the UK and already has a tendency to attract people from outside seeking either a fresh start or a perceived different lifestyle. Its resources and location make it difficult to support people with significant particular needs.

Alongside this, there is a need to ensure resources are appropriately allocated. An island location means that there is a finite number of properties for housing the population and providing for the local economy. There is therefore a need to ensure that migration flows can be managed appropriately.

It may be more appropriate for local authorities to be able to have some flexibility to determine whether they continue to look at local connection. However, there would require to be clarity in respect of how that would work when considering referrals to other areas.

2. Please tell us about any potential impacts of suspending referrals relating to local connection for people who are homeless or at risk of homelessness. Please include any positive or negative impacts.

We are particularly interested in your views on the potential impacts for the following:

- (i) People with multiple and complex needs....**
- (ii) Families with children....**
- (iii) Other disadvantaged households/groups, including those experiencing poverty and/or material deprivation....**
- (iv) Local authorities and partner organisations....**
- (v) Business or third sector organisations...**
- (vi) People experiencing domestic abuse...**
- (vii) Others....**

The potential impacts on particular groups such as people with multiple and complex needs and families with children, would depend on where they choose to present as homeless coupled with the level of resources available to house and support them in that given area. In an island context, supporting people with multiple and complex needs has additional difficulties and currently numbers are relatively low as is the provision of resources allocated to such support. This may require to be enhanced but there is no suggestion of additional funding being available.

People experiencing domestic abuse can already present to an area of their choice so there is unlikely to be any significant impact on that particular group.

Local authorities require to house a range of people which is much broader than simply those who present through the homeless route. There is a need to ensure that an unintended consequence of changing local connection, doesn't become a failure to house others and therefore an inability to provide for local economies.

The impact on third sector agencies is likely to be greater difficulty in planning for service delivery and being able to assess what the demands on their service provision may be. Currently this would be based on a local profile, if people can present from elsewhere in the country, this would distort this ability.

In an island context, it is important for businesses to be sure that their workforce can be housed. If there is potentially greater demand on social housing provision as a result of the removal of local connection, this may place additional demands on the private sector. The current era is one of significant change with issues such as the introduction of the private residential tenancy leading to a loss of landlords from the sector and therefore reduced private sector availability. There are also the economic uncertainties pending as a result of the referendum to leave the European Union.

3. We propose monitoring the impact of any changes to the local connection legislation through continued collection and analysis of HL1 data. Please give us your views on this.

It is difficult to determine exactly how this will be done. Presumably there will be a means of recording how many people have been accepted into a local authority area where they would previously have had no local connection. While this would provide an indication of sheer numbers it would not allow an assessment of the impact on support services or the impact on other groups within society who may have more difficulty in being housed as a result.

4. Commencing the intentionality provisions in the Homelessness etc. (Scotland) Act 2003 leads to giving authorities a discretion, rather than a duty, as to whether to investigate whether or not a household is intentionally homeless. Do you think we should:

- **Remove the duty on local authorities to assess households for intentionality**
- **Not remove the duty on local authorities to assess households for intentionality**

Please explain your answer.

Allowing local authorities the discretion to determine whether they wish to investigate intentionality does allow some local flexibility and would suggest that appropriate regional decisions can be made in this respect and potentially reviewed in the future. However, a patch-work system across Scotland may not be ideal and if the local connection criteria were to remain, this introduces additional difficulties when referring a household to another area which has a different approach towards intentionality.

The main issue in respect of intentionality is not necessarily whether to remove the duty or retain the duty. While the number of households found to be intentionally homeless is relatively low, this criteria has allowed there to be a suitable penalty to prevent households from taking steps which may result in their homelessness. If that penalty is in effect removed, there is a risk that households may take different decisions surrounding issues such as payment of rent / mortgage costs. If non payment of rent purely leads to eviction from one property and being moved to another, a household may not find this to be a suitable deterrent from that course of action. In some situations a household may even choose this as their chances of getting a transfer may in effect be higher than if they completed a form asking for a transfer and simply waited.

Care needs to be taken to ensure that changes to the intentionality criteria does not inadvertently create a means of people effectively achieving free housing and housing providers being put in a position of having greatly increasing arrears and an inability to tackle the issue. Value for money for existing tenants is also important and part of that is ensuring that robust procedures are in place for the recovery of debt due to councils.

5. Please tell us about any potential impacts for people who are homeless or at risk of homelessness, of commencing the intentionality provisions in the Homelessness etc. (Scotland) Act 2003. Please include any positive or negative impacts.

We are particularly interested in your views on the potential impacts for the following:

- (i) People with multiple and complex needs....**
- (ii) Families with children....**
- (iii) Other disadvantaged households/groups, including those experiencing poverty and/or material deprivation....**
- (iv) Local authorities and partner organisations....**
- (v) Business or third sector organisations...**
- (vi) People experiencing domestic abuse...**
- (vii) Others....**

People who have multiple and complex needs may have previously required additional support to enable them to manage their tenancies. If the intentionality criteria is removed, there may be a reduction in this support as the risks of them losing their tenancies are reduced.

As regards other disadvantaged households and groups, there is a risk that those experiencing poverty may fail to pay rent if there is no significant penalty attached. While in the past landlords would have received rent directly through housing benefit, this is less assured under Universal Credit. As mentioned above, there is a need to remember that the overall affordability of the Housing Revenue Account is important as is value for money for the tenants. If arrears are effectively allowed to rise, there is likely to be a negative impact in this respect.

There may well be an impact on private sector landlords if there is a belief that permanent social rented housing will be available if a private tenant fails to pay their rent. This may result in there being a corresponding decline in the number of private sector landlords which, in turn, may impact on local businesses who are reliant on the private rental sector for housing a workforce which may be relatively transient.

There should be no impact on people who have experienced domestic abuse as they would not have been found to be intentionally homeless anyway.

6. Please detail any potential costs that maybe incurred should the local connection and intentionality provisions be commenced.

If a local authority were to have a rise in homeless presentations as a result of the changes to the local connection criteria, there would be direct cost implications as a result. The same may be true if the rise in homeless presentations also came from groups which have relatively high support needs.

At present the intentionality criteria is likely to discourage households from doing anything that may lead directly to their homelessness. If this discouragement is removed, there may well be a swelling of numbers as a result of direct additional homeless presentations and consequently a rise in costs. This may be further exacerbated if households were to determine there was limited advantage in paying rent, for instance and this may have a consequence for housing revenue accounts accordingly and potentially also for registered social landlords and private sector landlords as well.

Until the impact on numbers has been appropriately assessed by each local authority, it is difficult to determine whether current staffing levels will remain appropriate. There may also be a corresponding impact on the type of housing resources and support currently available in each given area.

7. HARSAG recommended narrowing the definition of intentionality to focus only on instances of deliberate manipulation. Please provide your initial views on the advantages and disadvantages of amending the definition. As noted in section 2 we intend to carry out further work on this at a later date and your initial thoughts will help inform this.

It is difficult to determine whether this move would be appropriate. The current classification is well tested but the same does not apply to a new concept. What balance of proof would be required to be able to evidence “deliberate manipulation”? It sounds more closely related to criminality and therefore it is unlikely that it will be as successful in addressing a general manipulation of a system intended to achieve a desired result for instance a move to a more popular area or to a newer house. Would it for instance require to be tested in court or would it be something that Council officers could determine?

8. While we are in a position to commence these provisions in 2019 we would welcome your views about the most effective timing, including reasons for your response.

Local authorities are currently in a position of responding to the requirements to introduce a Rapid Rehousing Transition Plan and to endeavour to eradicate rough sleeping, transform the use of temporary accommodation in Scotland and end homelessness. There is a need to allow sufficient time for the Rapid Rehousing Transition Plans to become embedded and for an appropriate evaluation of the success of the plans and the financial impact on local authorities.

Any change process requires planning and time for appropriate delivery including ensuring that staff are appropriately trained and resourced. Local Authorities are already in a position of functioning on reduced resources and therefore resources, both financial and human, are under some strain.

We are also functioning in an era of change. The introduction of the private residential tenancy has not had sufficient time to enable an appropriate assessment of the impact on the number of private sector landlords leaving the sector. Meantime however it is clear that there is an impact there and numbers are declining. There are also the uncertainties introduced by the referendum to leave the European Union coupled with ongoing austerity.

Locally, in Orkney, we have reached a stage of being unable to afford to continue to build social rented housing and this is also likely to have a significant impact on the speed at which we can permanently rehouse households and also the number of households we can ultimately house.

If the provisions in respect of intentionality and local connection are all introduced at the same time there is a risk that plans to implement this are not sufficiently robust and that individual changes cannot be sufficiently well implemented.

It would be better to allow a period of time between changes being introduced.

9. Please give us your views on the impact of these proposed changes on people with protected characteristics (see Annexes E and F for currently available national statistics):

- **age**
- **disability**
- **gender reassignment**
- **pregnancy and maternity**
- **race**

- **religion or belief**
- **sex**
- **sexual orientation**

There is unlikely to be significantly different impacts on any groups within the protected characteristic criteria. Households could come from any group within society. However, when considering impacts on households who live in poverty etc, there is likely to be a differential impact as outlined above.

10. In relation to local connection and intentionality provisions in homelessness legislation, please outline any other comments you wish to make, including whether you think there may be unintended consequences (you have not mentioned elsewhere) related to commencing these provisions.