

REPORT TO COMMUNITIES COMMITTEE 28 MARCH 2019

Response to Scottish Government Consultation on Local Connection and Intentionality Provisions in Homelessness Legislation.

1 Recommendations

The Committee is recommended to:

- 1.1 Discuss and approve the proposed response to the Scottish Government's consultation on local connection and intentionality provisions in homelessness legislation."**

2 Background / Discussion

- 2.1 In April 2003, the Homelessness etc. (Scotland) Act 2003 ("the 2003 Act") was introduced to overhaul Scotland's existing homelessness laws. While the majority of the provisions have been implemented this consultation deals with proposals to implement provisions which have still to be commenced.
- 2.2 Local Connection is defined in the Housing (Scotland) Act 1987 ("the 1987 Act") as a connection which a person has with an area because they are, or were in the past, normally resident in that area. This also includes employment in the area, family associations or special circumstances. Currently under section 33 of the 1987 Act Local Authorities have the power to refer homeless households who do not have a local connection with them to another local authority area where they do have a connection.

The 2003 Act gives Scottish Ministers the power to issue a statutory instrument restricting the operation of the local connection referral rules. It allows for national modification to suspend all referrals; for suspension of referrals between particular local authorities or suspension of referrals for particular groups of people who are homeless. It also allows for the reversal of any changes made should local authorities come under undue pressure as a result of disproportionate net inflows.

For context within Scotland in 2017/18 495 applicants were assessed as having a local connection with another local authority and 117 were referred to another local authority under the 1987 Act.

- 2.3 The Housing (Scotland) Act 1987 states that a person is intentionally homeless if they deliberately did or failed to do anything which led to the loss of accommodation which it was reasonable for them to continue to occupy. The Housing (Scotland) Act 1987 places a duty on local authorities to investigate intentionality. While most homelessness applicants are found to be unintentionally homeless, if found to be intentionally homeless the person is not required to be provided with settled housing but is entitled to temporary accommodation and advice and assistance.

The Homelessness etc (Scotland) Act 2003 allows provision to change the operation of the intentionally homeless test to give authorities discretion, rather than the duty, to investigate intentionality.

For context in the last year Aberdeenshire Council found 65 applicants (5% of those assessed) to be intentionally homeless with a 3 year average of (3.6%) and 5 year average of (4.2%).

- 2.4 On the 31st January 2019 the Scottish Government published a public consultation seeking views on implementing the Homeless and Rough Sleeping Action Group (HARSAG) recommendation to commence the Local Connection and Intentionality provisions in the Homelessness etc (Scotland) Act 2003. HARSAG also recommended narrowing the definition of intentionality to focus on 'deliberate manipulation' of the homelessness system.

The consultation period closes on 25 April 2019

- 2.5 This consultation response has been developed by the Homeless and Options Team, Housing. The Housing Service, members of the Homeless Strategic Outcome Group, the Officer Member Rapid Rehousing Transition Plan working group and the Community Justice Partnership were invited to contribute to this response to the consultation.
- 2.6 The response to the consultation is attached as Appendix 1
- 2.7 On the 21 February 2019 Communities Committee agreed submission of the Rapid Rehousing Transition Plan (RRTP) to the Scottish Government. The outcome of this consultation and legislative changes may necessitate review of some of the actions identified within the RRTP, however it must be noted that the RRTP is a 5 year plan and will change over its lifecycle due to shifts in policy and best practice.
- 2.8 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and their comments are incorporated within the report and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

3 Scheme of Governance

- 3.1 The Committee can consider and take a decision on this item in terms of Section D 4.2 of the List of Committee Powers in Part 2A of the Scheme of Governance as it relates to the approval of a Council response to an external consultation on a policy matter falling within the delegation of the Committee.

4 Equalities, Staffing and Financial Implications

- 4.1 An equality impact assessment has been carried out as part of the development of the proposals set out above. It is included as Appendix 2 and
- there is a positive impact in terms of removing potential barriers to accessing homeless service and appropriate assistance, however there is the potential for increased homeless presentations should referrals be suspended and the need for appropriate monitoring and action is recommended in the consultation response
- 4.2 There are no staffing and financial implications
- 4.3 The recommendations in this report do not have an impact on the Town Centre First Principle.

Stephen Archer, Director Infrastructure Services

Report prepared by Allan Jones, Housing Manager (Options & Homelessness) and Lorraine Stewart, Project Manager (Rapid Rehousing)

Date: 1st March 2019

APPENDIX 1: Consultation Questions

1. Commencing the local connection provisions in the Homelessness etc (Scotland) Act allows Scottish Ministers to modify referrals relating to local connection. The HARSAG 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**
- **Not commence these provisions ie do nothing.**

Please explain your answer.

We suggest modifying criteria for local connection. Current criteria to satisfy family association requires period of 5 years of settled stay by the qualifying family members and this could be reduced. The employment criteria could be to include formal job offer (or job seeking?) or for certain groups eg those who are coming out of Armed Forces enabling them to remain in the area that they were based, those who have been in rehabilitation placement or long term hospital stay within an area and to address the needs of former rough sleepers. These groups currently do not establish a local connection through their placement.

Concerns related to the suspension of referrals include the removal of choice of applicant to request practical assistance from the Local Authority whose area they are currently resident in, potential negative impact in Aberdeenshire as HMP Grampian located within our administrative area and potential increased demand for resettlement on release or from family members of prisoners.

Concern that this could exacerbate prevalence of cuckooing of vulnerable individuals and organised crime in relation to county line drug supply. This is a current issue.

Concern that there would need to be clarity around presentations from those previously resident outwith Scotland where the homeless legislation is different and that this should be monitored. This is an issue around the priority need test which has been removed in Scotland but not in England.

Fear of the potential increase in homeless presentations and inability in terms of existing resources to meet this. This includes lack of available housing but could impact disproportionately in terms of health and social care and education resources.

Concern that tenancy sustainment will be adversely affected due to inability to provide accommodation within particular settlements desired.

Aberdeenshire and Aberdeen City Councils have had an informal arrangement in place to facilitate transfer of homeless duty for a couple of years and this has worked well although not measured formally (numbers are relatively low and anecdotal evidence shows positive

outcomes for individuals and households). It is easier to develop good relationships with neighbouring authorities as there is more frequent contact and when issues arise these can be addressed.

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:

People with multiple and complex needs

Greater mobility may encourage individuals to present in multiple locations and emergency presentations may involve demand for temp accommodation without the necessary support to ensure that this is sustained and that appropriate move on arrangements are made. For the individual they may feel able to present where they identify support – informal rather than formal support.

Families with children

Greater freedom to move between local authorities removes artificial constraints of LA borders and allow decisions based on needs of the individual household. Greater mobility may be problematic where there are issues concerning the welfare of children and ongoing support/stat involvement. Possibility of additional pressure being placed on existing resources eg schools or inability to meet demand to be in particular locations may negatively affect tenancy sustainment.

Other disadvantaged groups/households

Increase in homeless presentations from households with additional or complex needs may adversely affect the ability to meet the needs of other groups with economic/social needs but without statutory homeless priority.

Local authorities and partner organisations

Potential increase in presentations leading to increased demand for temporary accommodation. This may impact on actions within RRTP to reduce time spent in temporary accommodation and to cease the use of Bed and Breakfast.

Business or third sector organisations

Not appropriate to comment as this is outwith our direct sphere of knowledge.

People experiencing domestic abuse

Current referral provisions allow flexibility in applying Local Connection criteria to meet the needs of those experiencing domestic abuse. Greater mobility, due to removal of local connection, may result in relocation without support needs being assessed and appropriate arrangements put in place.

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.

We feel that this is essential to address any particular issues that may arise but that this needs to be agile and able to respond quickly and effectively if issues identified. Further detail required concerning the criteria that would be used to identify and assess need for specific intervention by the Scottish Government. The current figures may not accurately reflect the situation and the impact of change is unknown.

- 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.

Removing the duty to consider this in all cases and allowing Authorities the discretion to investigate may be problematic. Which cases would be investigated and what would be the justification/criteria for investigating one case but not another? Could there be discrimination? In practice might some Local Authorities decide to use the power to continue to investigate intentionality in all cases while others do not.

Applicants may approach multiple local authorities seeking a positive decision? While the duty to investigate currently exists, the application of the current legislation, and the tests of intentionality, allows consideration of the individual circumstances when reaching a decision. There is a duty to investigate intentionality but flexibility in the decision making and implementation of the decision. Removing consideration of intentionality may be perceived as removing the responsibility of the individual to retain their accommodation or to secure suitable alternative.

- 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:

People with multiple and complex needs

Families with children

Other disadvantaged households/groups, including those experiencing poverty and/or material deprivation

Local authorities and partner organisations

Business or third sector organisations

People experiencing domestic abuse

The removal of barriers (real or perceived) to making a homeless application is positive however the impacts of removing the duty to investigate intentionality whilst retaining the power and introducing a narrower definition of deliberate manipulation are not known at this stage.

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

The impact of commencing both the local connection and intentionality provisions may be increased homeless presentations, and provision of temporary accommodation, increased rent arrears and loss of revenue, increased costs of providing support and impact on other applicants in housing need.

- 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.**

Clear guidance would need to be given as to what would constitute deliberate manipulation. This would need to be developed in order to fully understand what the impact might be.

- 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.**

There would be concern should both these provisions be commenced at the same time and also that 2019 implementation is not realistic. There is a need to develop fully the definition of deliberate manipulation and to revise the Code of Guidance by the Scottish Government. Local authorities would need to roll this out to front line staff, providing appropriate training, and develop necessary changes in information management systems to record statistics and monitor and report difficulties. There would need to be lead in time to enable this to be planned and implemented effectively.

- 9. Please give us your views on the impact of these proposed changes on people with protected characteristics**

Age

Disability

Gender reassignment

Pregnancy and maternity

Race

Religion or belief

Sex

Sexual orientation

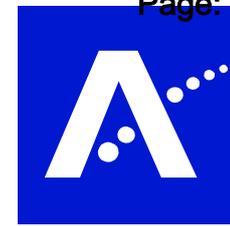
We have considered the potential impact of these changes, however as there are a number of changes each could have a potentially differing impact. We recognise that these may be positive and negative impacts and that they could apply to any of the individuals who fall within the protected characteristics as homeless services are available and accessed by all. The suspension of referrals due to local connection removes a barrier, real or perceived, to accessing services in the area that an individual wishes to settle. The changes could streamline the homeless assessment process and allow focus of resources on resolving housing issues and identifying solutions that best meet the needs of that individual or household which could also have positive effect on community cohesion, social inclusion and tenancy sustainment. The removal of the duty to investigate intentionality could have an effect on homeless decisions and ongoing duties and it is recognised that the majority of intentionality decisions are made in respect of single males aged 25 to 49yrs.

We recognise a potential increase in homeless presentations and duty towards households with additional or complex needs or specific accommodation requirements and this could impact on existing homeless applicants who may fall within the protected characteristics.

The removal of the duty to assess intentionality and replacement with power to investigate introduces discretion in which cases would be investigated and in what circumstances. This would need to be monitored to ensure that there is no adverse direct or indirect effect. The effect of potentially narrowing the definition of intentionality to deliberate manipulation could have an effect depending on the definition introduced. The impact of this is not clear.

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.

No further comments to make



APPENDIX 2: EQUALITY IMPACT ASSESSMENT

Stage 1: Title and aims of the activity (“activity” is an umbrella term covering policies, procedures, guidance and decisions).	
Service	Infrastructure Services
Section	Housing
Title of the activity etc.	Response to Scottish Government consultation on Local Connection and Intentionality provisions in homelessness legislation
Aims and desired outcomes of the activity	<p>The Scottish Government on 31 January 2019 published a public consultation seeking views on implementing the Homelessness and Rough Sleeping Action Group (HARSAG) recommendation to commence the Local Connection and Intentionality provisions in the Homelessness etc (Scotland) Act 2003.</p> <p>Specifically the changes being considered involve the modification of local connection rules used to assess homeless applications, which allow Local Authorities to refer homeless households to another local authority. Local Connection is defined in the Housing (Scotland) Act 1987 as a connection which a person has with an area because they are, or were in the past, normally resident in it. This also includes employment in it, family associations or special circumstances. The modifications being considered include suspension of all referrals, suspension of referrals between particular local authorities or for particular groups of people who are homeless.</p> <p>In addition the Scottish Government is considering changes to the duty that local authorities have to assess intentionality and to give discretion to investigate instead. The Housing (Scotland) Act 1987 states that a person is intentionally homeless if they deliberately did, or failed to do, anything which led to the loss of accommodation which it was reasonable for them to continue to occupy. The Scottish Government are also considering a change to the definition of intentionality to focus on deliberate manipulation of the homelessness system.</p>
Author(s) & Title(s)	Allan Jones, Housing Manager (Options & Homelessness), Lorraine Stewart, Project Manager (Rapid Rehousing)

Stage 2: List the evidence that has been used in this assessment.

<p>Internal data (customer satisfaction surveys; equality monitoring data; customer complaints).</p>	<p>Data collection in relation to homelessness applications and assessments</p>
<p>Internal consultation with staff and other services affected.</p>	<p>The consultation was circulated within Housing to the Options and Homelessness Team and Tenancy Services Team.</p>
<p>External consultation (partner organisations, community groups, and councils).</p>	<p>The consultation was circulated to members of the Rapid Rehousing Working Group, the Community Justice Partnership and the Homeless Strategic Outcome Group.</p>
<p>External data (census, available statistics).</p>	<p>Scottish Homelessness Statistics – Homelessness in Scotland 2017/18</p>
<p>Other (general information as appropriate).</p>	<p>Ending Homelessness Together - Scottish Government and Cosla Everybody in : How to end Homelessness in Great Britain - Crisis Housing (Scotland) Act 1987 – Sections 26, 27,28,30 and 33 Homeless etc. (Scotland) Act 2003</p>

Stage 3: Evidence Gaps.	
Are there any gaps in the information you currently hold?	The consultation proposes a number of changes and each will have potentially differing impact.

Stage 4: Measures to fill the evidence gaps.		
What measures will be taken to fill the information gaps before the activity is implemented? These should be included in the action plan at the back of this form.	Measures:	Timescale:

Stage 5: Are there potential impacts on protected groups? The protected groups covered by the equality duty are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnerships, but only in respect of eliminating unlawful discrimination. Who is affected by the activity or who is intended to benefit from the proposed policy and how? Please complete for each protected group by inserting "yes" in the applicable box/boxes below.				
	Positive	Negative	Neutral	Unknown
Age – Younger	YES	YES		
Age – Older	YES	YES		
Disability	YES	YES		
Race – (includes Gypsy Travellers)	YES	YES		
Religion or Belief	YES	YES		
Sex (Gender)	YES	YES		
Pregnancy and maternity	YES	YES		
Sexual orientation – (includes Lesbian/ Gay/Bisexual)	YES	YES		

Gender reassignment – (includes Transgender)	YES	YES		
Marriage and Civil Partnership	YES	YES		

Stage 6: What are the positive and negative impacts?

Impacts	Positive (describe the impact for each of the protected characteristics affected)	Negative (describe the impact for each of the protected characteristics affected)
<p>Please detail the potential positive and/or negative impacts on those with protected characteristics you have highlighted above. Detail the impacts and describe those affected.</p>	<p>The suspension of referrals due to local connection criteria would ensure that a barrier to accessing homeless services and assistance in the area that the applicant wishes to settle is removed.</p> <p>Homeless services are available to and accessed by individuals who may fall within any of the protected characteristics.</p>	<p>Any potential increase in homeless presentations, particularly from households with additional or complex needs or specific accommodation requirements will affect the ability to resolve homelessness for existing homeless applicants who may fall within the protected characteristics.</p>
	<p>Removal of the duty to assess intentionality and suspending local connection referrals streamlines the homeless assessment process and could enable resources to be focused on working with individuals to resolve their housing issues and identify solutions that best meet their particular needs and requirements.</p> <p>This would be a benefit for individuals and communities in terms of community cohesion and social inclusion, as accommodation is more likely to be sustained and repeat homelessness reduced.</p>	<p>Removing the duty to assess intentionality and replacing with a power could lead to potential difficulty in terms of discretion in which cases would be investigated and in what circumstances. This could affect those who may fall within the protected characteristics.</p>
	<p>The majority of intentionality decisions are made in respect of single males aged 25 to 49yrs. The removal of the duty to investigate could lead to those individuals being entitled to permanent accommodation rather than temporary accommodation only.</p>	<p>Narrowing the definition of intentionality to focus on instances of deliberate manipulation could have consequences depending on the definition used. The impact of this cannot be determined until the definition is clear.</p>

Stage 7: Have any of the affected groups been consulted?

<p>If yes, please give details of how this was done and what the results were. If no, how have you ensured that you can make an informed decision about mitigating steps?</p>	<p>The Scottish Government are consulting widely on the proposed changes and the outcome of this consultation will determine the changes that are implemented.</p>
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Stage 8: What mitigating steps will be taken to remove or reduce negative impacts?

	Mitigating Steps	Timescale
<p>These should be included in any action plan at the back of this form.</p>	<p>Monitoring of the impact of changes to the legislation in terms of homeless assessments and outcomes and pressures relating to potential increased presentations</p>	

Stage 9: What steps can be taken to promote good relations between various groups?

<p>These should be included in the action plan.</p>	
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Stage 10: How does the policy/activity create opportunities for advancing equality of opportunity?

<p>Ensuring access to homeless assistance and appropriate support are provided to those who are homeless or at risk of homelessness will promote good relations and encourage integration and promote equalities.</p>

Stage 11: What equality monitoring arrangements will be put in place? How the EIA will be used to monitor the proposal

These should be included in any action plan (for example customer satisfaction questionnaires).	Equality monitoring is carried out in relation to Statutory Homeless assessments.
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Stage 12: What is the outcome of the Assessment?		
Please complete the appropriate box/boxes	1	No negative impacts have been identified –please explain.
	2	Negative Impacts have been identified, these can be mitigated - please explain. * Please fill in Stage 13 if this option is chosen.
	3	The activity will have negative impacts which cannot be mitigated fully – please explain. * Please fill in Stage 13 if this option is chosen

* Stage 13: Set out the justification that the activity can and should go ahead despite the negative impact.
<p>We are responding to consultation on proposed changes which will have both positive and negative impacts potentially – our response identifies these issue.</p>

Stage 14: Sign off and authorisation.		
Sign off and authorisation	1) Service and Team	Infrastructure Services - Housing
	2) Title of Policy/Activity	Response to Scottish Government consultation on Local Connection and Intentionality provisions in homelessness legislation

3) Authors: I/We have completed the equality impact assessment for this policy/activity.	Name: Lorraine Stewart Position: Project Manager (Rapid Rehousing) Date: Signature:	Name: Position: Date: Signature:
	Name: Position: Date: Signature:	Name: Position: Date: Signature:
4) Consultation with Service Manager	Name: Date:	
5) Authorisation by Director or Head of Service	Name: Position: Date:	Name: Position: Date:
6) If the EIA relates to a matter that has to go before a Committee, Committee report author sends the Committee Report and this form, and any supporting assessment documents, to the Officers responsible for monitoring and the Committee Officer of the relevant Committee. e.g. Social Work and Housing Committee.		Date:
7) EIA author sends a copy of the finalised form to: equalities@aberdeenshire.gov.uk		Date:
(Equalities team to complete) Has the completed form been published on the website? YES/NO		Date:

