

ANGUS COUNCIL

COMMUNITIES COMMITTEE – 16 APRIL 2019

**A CONSULTATION ON LOCAL CONNECTION AND INTENTIONALITY PROVISIONS
IN HOMELESSNESS LEGISLATION**

1. BACKGROUND

- 1.1 The Programme for Government announced by the First Minister on 5 September 2017 set out a new commitment to eradicate rough sleeping, transform the use of temporary accommodation in Scotland and end homelessness. Ministers subsequently established the Homelessness and Rough Sleeping Action Group (HARSAG) to make recommendations on how these transformational changes can be achieved.
- 1.2 In June 2018, the HARSAG completed their work, producing a comprehensive set of 70 recommendations aiming to secure strategic changes at both the national and local level which would help support delivery on the front-line. All 70 recommendations have been translated into the Ending Homelessness Together High Level Action Plan which was published by the Scottish Government and COSLA on 27 November 2018. This plan sets out the actions required to end rough sleeping and homelessness.
- 1.3 The Scottish Government are consulting on taking forward their commitment to address barriers for people facing homelessness by implementing the HARSAG recommendations to commence the Local Connection and Intentionality provisions in the Homelessness etc. (Scotland) Act 2003. They have also committed to narrowing the definition of intentionality to focus on 'deliberate manipulation' of the homelessness system, as recommended by the HARSAG.

2. CURRENT LEGISLATIVE POSITION

- 2.1 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, and this residence was of their own choice; or
 - they are employed in it; or
 - they have family associations; or
 - they have special circumstances.
- 2.2 Local authorities currently have the power under section 33 of the 1987 Act to refer homeless households who do not have a local connection with them to another local authority where they do have such a connection. Section 8 of the 2003 Act gives Scottish Ministers 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 or both making and receiving referrals.
- 2.3 The Housing (Scotland) Act 1987 currently places a duty 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. While most homelessness applicants are found to be unintentionally homeless, 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. Whether or not someone is found to be intentionally homeless the local authority should seek to find solutions to the person's homelessness and offer support to address any difficulties that they face. However, if found to be intentionally homeless local authorities are not obliged to provide the person with settled housing.
- 2.4 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.

2.5 To date the powers and provisions of the 2003 Act have not been commenced.

3. PROPOSED CHANGES

3.1 In line with the HARSAG recommendations the Scottish Government is proposing to bring forward secondary legislation under the 1987 Act which will allow them to suspend the local connection referral provision which is currently in place, aiming to remove barriers to support for people who are homeless or rough sleeping or at risk of homelessness or rough sleeping.

3.2 It is also proposed to change the wording of intentionality provisions under section 28 of the 1987 Act in order to give local authorities a discretion, rather than a duty, as to whether to investigate whether or not a household is intentionally homeless. The changes made would mean that the authority may, if they think fit, make any further inquiries necessary to satisfy themselves as to whether a household has become homeless or threatened with homelessness intentionally.

3.3 The Scottish Government are in a position to commence these provisions in 2019 and are seeking views on the proposed changes and the timings.

3.4 The HARSAG also recommended narrowing the definition of intentionality to focus on instances of applicants 'deliberately manipulating' the homelessness system. Currently, there are no provisions in the legislation for the definition of intentionality to be changed. The Scottish Government are considering the options regarding this element of the recommendation and plan to take this forward separately (timing to be confirmed).

4. CONSULTATION RESPONSE

4.1 There are a number of potential impacts of suspending referrals relating to local connection for people who are homeless or at risk of homelessness. We believe local connection referrals should be modified in another way and not suspended all together, to allow referrals to continue to be made for applicants, led by their request, to return to an area or move to another area. Maximising choice is likely to lead to better outcomes and avoid repeat homelessness. This will also help to avoid situations where someone is rehoused within the area they present as homeless to but have no support network and will also avoid people being forced to close their application and present elsewhere, with no planning or notice.

4.2 There are arguments for and against removing the duty on local authorities to assess households for intentionality. Removing this duty will free up the staff resource required to investigate intentionality and will enable resources to be redirected into prevention work and refocus on the needs of the household. Removing the duty to assess for intentionality will also ensure that everyone who is homeless can access secure accommodation.

4.3 However there is a risk that by removing the duty, there will be inconsistencies between local authorities. Introducing a discretion to assess for intentionality may also lead to discrimination or profiling, there is a risk this could be applied to those who are viewed as 'undeserving'. There is also a risk that commencing the intentionality provisions could potentially act as a perverse incentive for people to give up accommodation before sourcing alternative suitable housing. This may have a negative impact on landlords in both the private and social rented sector. There is also an argument that in areas where availability of social housing is under pressure, priority should be given to those who are unintentionally homeless and there is likely to be strong opposition from tenants and existing waiting list applicants due to pressures on waiting lists for social housing.

Appendix 1 sets out the full consultation response submitted to the Scottish Government.

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