

# Report

Report to: **Housing and Technical Resources Committee**  
Date of Meeting: **20 March 2019**  
Report by: **Executive Director (Housing and Technical Resources)**

Subject: **Scottish Government's Consultation on 'Local connection and intentionality provisions in homelessness legislation'**

## 1. Purpose of Report

1.1. The purpose of this report is to:-

- ◆ provide an update on the Scottish Government's consultation on 'Local connection and intentionality provisions in homelessness legislation' and the proposed response for South Lanarkshire Council

## 2. Recommendations

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the consultation scope and summary of the proposed South Lanarkshire Council response, as detailed in sections 4 and 5, be noted; and
- (2) that the proposed South Lanarkshire Council response, as set out in full in Appendix 1, be approved for submission to Scottish Government by 25 April 2019.

## 3. Background

- 3.1. In October 2017, the Scottish Government set up the Homelessness and Rough Sleeping Action Group (HARSAG) to produce short and long-term solutions to end homelessness and rough sleeping.
- 3.2. The HARSAG produced a final report (June 2018) with 70 recommendations to address strategic changes at local and national levels, which informed the 'Ending Homelessness Together High Level Action Plan' published by the Scottish Government and CoSLA on 27 November 2018.
- 3.3. A specific recommendation on taking forward a joint commitment to address barriers for people facing homelessness was to commence the Local Connection and Intentionality provisions in the Homelessness etc (Scotland) Act 2003. The Scottish Government has now published a consultation paper and is inviting views on taking forward this recommendation.
- 3.4. 'Affordable Homes, Sustainable Places', South Lanarkshire's Local Housing Strategy (LHS) 2017 to 2022, was approved by Executive Committee on 30 August 2017. 4 of the 9 priority outcomes, within the Strategy, focus on addressing homelessness and are closely aligned with the emerging national policy agenda.

3.5. On 23 January 2019, Housing and Technical Resources Committee approved South Lanarkshire's first Rapid Rehousing Transition Plan (RRTP) 2019 to 2024 which sets out an ambitious vision and priority objectives for preventing and reducing homelessness in South Lanarkshire over the next 5 years.

#### **4. Local Connection and Intentionality**

4.1. The Homelessness etc. (Scotland) Act 2003 sets out how local authorities carry out their homelessness functions. Most of the provisions of the Act were implemented, however those relating to 'Local Connection' and 'Intentionality' have still to be commenced.

4.2. 'Local Connection' is defined in section 27 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

4.3. Under section 33 of this Act, local authorities have the power to refer homeless households who do not have a local connection with them to another local authority where they do have such a connection.

4.4. Section 26 of the Housing (Scotland) Act 1987 sets out the circumstances in which a person is regarded as having become intentionally homeless, which include requirements that must be satisfied to determine that a person deliberately did or failed to do anything which led to the loss of accommodation which it was reasonable for them to continue to occupy.

#### **5. Consultation proposals and South Lanarkshire Council responses**

5.1. The consultation sets out 10 questions in relation to 2 proposals for commencing provisions in the 2003 Act:-

- ◆ to bring forward secondary legislation under section 33A of the 1987 Act (as amended) to suspend the local connection referral provision
- ◆ to change the wording under section 28 of the 1987 Act to give local authorities a discretion, rather than a duty, for investigation whether a households is intentionally homeless

5.2. In relation to intentionality, the consultation also seeks initial views on a HARSAG proposal to narrow the definition of intentionality to focus on "deliberate manipulation" of the homelessness system. This would require new legislation and the consultation paper confirms the Scottish Government intend to consult on this matter separately and later.

5.3. The consultation questions seek views on the proposals, their impacts, monitoring arrangements and timing for implementation. The proposed South Lanarkshire Council responses are summarised below:-

- ◆ Rather than suspend the current local connection provision, the Council proposes that the approach is modified to strengthen a joint-working, partnership focus on meeting individual housing needs. Local connection referrals affect a very small proportion of all homeless households (less than 0.5% in South Lanarkshire). The section 33 provision allows for local authorities to take a person-centred approach to identifying where a person is most likely to achieve a suitable, settled and sustainable home
- ◆ The Council's response is not to remove the duty on local authorities to assess households for intentionality. In South Lanarkshire a very small percentage (2.15%) of all homeless presentations are determined, following investigation, to be intentionally homeless. The current duty arrangements ensure that homelessness functions are undertaken in a consistent, transparent and accountable manner. However, if this were to proceed, particular consideration should be given to the links between intentionality and vulnerable households with multiple complex needs
- ◆ The Council welcomes intentions to update the Code of Guidance on Homelessness. This provides an opportunity to consider issues of prevention and sustainability and the role of all partners in addressing homelessness. Given the significance of the proposals, it would be appropriate to align publication of updated guidance with the commencement of the Local Connection and Intentionality provisions

## **6. Next Steps**

- 6.1. Subject to approval, the response, as summarised above and included in full at Appendix 1, will be submitted to Scottish Government by 25 April 2019.
- 6.2. The progress in terms of commencement in relation to these proposals will continue to be monitored across relevant corporate and partnership groups, and reported as appropriate to management teams and Committees.

## **7. Employee implications**

- 7.1. There are no employee implications associated with this report.

## **8. Financial implications**

- 8.1. There are no financial implications associated with this report.

## **9. Other implications**

- 9.1. There are no additional risks associated with this report.
- 9.2. There are no sustainable development issues associated with this report.

## **10. Equality Impact Assessment and Consultation Arrangements**

- 10.1. This report does not introduce a new policy, function or strategy or recommend a change to existing policy function or strategy and therefore no impact assessment is required.
- 10.2. A range of consultation was undertaken within the Resource to support the preparation of the proposed response.

**Daniel Lowe**  
**Executive Director (Housing and Technical Resources)**

15 February 2019

**Links to Council Values/Ambitions/Objectives**

- ◆ Focused on people and their needs
- ◆ Improve the availability, quality and access of housing
- ◆ Support our communities by tackling disadvantage and deprivation and supporting aspiration

**Previous Reference**

- ◆ None

**List of Background Papers**

- ◆ Housing and Technical Resources Committee Report 'Rapid Rehousing Transition Plan (RRTP) 2019 to 2024 – 23 January 2019
- ◆ Executive Committee Report, 'Local Housing Strategy (LHS) 2017 to 2022 – 30 August 2019

**Contact for Further Information**

If you would like to inspect the background papers or want further information, please contact:-

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## Appendix 1: South Lanarkshire Council full response to Scottish Government's 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 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 (please give details)
  - ◆ Not commence these provisions i.e. do nothing

Please explain your answer.

The Scottish Government should modify local connection referrals in another way. Monitoring data shows that local connection referrals affect a very small proportion of all homeless households (less than 0.5%). However, the section 33 provision allows for local authorities to take a person-centred approach to identifying where a person is most likely to achieve a suitable, settled and sustainable home. Rather than suspend this provision, we propose that the approach is modified to strengthen a joint-working, partnership focus on meeting individual housing needs. This should be accompanied by consideration of Housing (Scotland) Act 1987 section 38 provisions for a local authority to make a request of another local authority to assist in the discharge of their homelessness duties, as part of the review the Code of Guidance on Homelessness. Currently, this guidance states that the body receiving that request must co-operate in giving whatever assistance is reasonable in the circumstances. In practice, refusal of requests are commonplace and can cite reasons, such as stock supply capacity, which are not directly related to the homeless person. Therefore, where it can be demonstrated the local authority is the optimal area for enabling a person to sustain a home, the guidance should be updated to reflect a clear presumption that a receiving authority would accept this referral. If this change is introduced, it will be important to continue to monitor over time in order to assess impacts for local authorities.

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....

Given the low numbers involved, there does not appear to be any specific group, including protected characteristics groups, which would be disproportionately affected by suspending referrals. However, if implemented it may limit options for providing a person-centred approach to meet the particular needs of vulnerable households, including those with multiple complex needs and would therefore be contrary to overarching aims and ambitions regarding rapid rehousing.

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.

The HL1 is the main and most appropriate record for monitoring overall homelessness. It may be useful to consider also the HL3 record for monitoring patterns of temporary accommodation usage.

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.

The Scottish Government should not remove the duty on local authorities to assess intentionality. The current duty ensures that homelessness functions are undertaken in a consistent, transparent and accountable manner. At present, a very small percentage (around 2.15%) of all homeless presentations are determined, following investigation, to be intentionally homeless. There are few cases where it can be clearly shown that a person or households satisfied all three elements of section 26 of the Housing (Scotland) Act 1987 regarding intentionality, especially section 26(3) which specifies that an applicant must be aware of all the relevant facts before acting or failing to act, as 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. The high benchmark requirements set by the current duty test provides a robust safeguard and ensures that intentionality decisions are determined appropriately and proportionately. Amending the duty to be a power could therefore result in greater inconsistency and variation in the exercise of homelessness functions across Scotland.

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....

The current duty ensures that homelessness functions are undertaken in a consistent, transparent and accountable manner. However, if this were to proceed, particular consideration should be given to the links between intentionality and vulnerable households with multiple complex needs.

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

Should a local authority see an increase in demand as a result of the removal of local connection and intentionality it may contribute to an increase in costs. Requirements for additional resource to increase capacity of existing services would include: homeless reception and assessment, temporary accommodation supply and management, emergency accommodation, furniture for temporary accommodation and overall housing stock.

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.

The current duty to assess intentionality ensures that all homeless presentations are treated in a consistent, transparent and accountable manner. We would welcome updated Code of Guidance on Homelessness to cover particular considerations in relation to vulnerable households with multiple complex needs that would enable greater consistency in the assessment of support needs as well as promoting rapid rehousing and Housing First approaches for preventing and reducing homelessness. At this point, a key concern would be the need to balance considerations in order to guard against unintended consequences whereby to introduce a narrowed definition may contribute an increase in homeless presentations as individuals may fail to adhere to their tenancy obligations, such as rent payment, on the basis that were they to lose their accommodation they would be entitled to priority rehousing.

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.

The Council welcomes intentions to update the Code of Guidance on Homelessness. This provides an opportunity to consider issues of prevention and sustainability and the role of all partners in addressing homelessness. If the Local Connection and Intentionality provisions are to commence in 2019 as set out, given the significance of the proposals it would be appropriate to align these with publication of updated Code of Guidance on Homelessness.

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 does not appear to be any specific group, including protected characteristics groups, which would be disproportionately impacted by the proposed changes.

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.

The current duties and arrangements provide for a general consistency for local authorities exercising homelessness functions and scope for consideration of person-centred needs. It is not clear that there are significant barriers for people facing homelessness that would require these proposed changes. However, in order to fulfil the ambitions as set out in the Scottish Government's 'Ending Homelessness Together High Level Action Plan', particular consideration should be given to expanding and extending the scope for promoting person-centred, partnership approaches to assessment of homelessness, housing and support needs, which would include promotion of Housing First and consideration of where individuals and households are most likely to achieve a suitable, settled and sustainable home, for preventing and reducing homelessness.