



**REPORT TO: HOUSING AND COMMUNITY SAFETY COMMITTEE ON 14
FEBRUARY 2023**

SUBJECT: HOMELESSNESS POLICY UPDATE

**BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT AND
FINANCE)**

1. REASON FOR REPORT

- 1.1 The purpose of this report is to inform Committee of the requirement to amend the Homelessness Policy, resulting from the Homeless Persons (Scotland) Order 2022, which was laid before Parliament on 20 September 2022 and came into force on 29 November 2022.
- 1.2 This report is submitted to Committee in terms of Section III (G) (4) of the Council's Scheme of Administration relating to the allocation and letting of houses and homelessness.

2. RECOMMENDATION

2.1 It is recommended that the Committee:

- (i) notes the requirement to amend the Homelessness Policy, as detailed in Section 3 and Section 6;**
- (ii) notes that legislative changes, set out in Section 5, were enacted on 29 November 2022;**
- (iii) agree the amendments to the Homelessness Policy, as set out in Section 6 and APPENDIX I; and**
- (iv) notes that monitoring will be undertaken to establish the impact of the changes.**

3. BACKGROUND

- 3.1 The Homelessness Policy was last reviewed and updated in 2021 in order to provide clarity on when the Council would assess a homeless application for intentionality, the context in which this would be applied and to reaffirm the Public Sector Equality Duty. The Homelessness Policy was agreed by the Moray Council on 30 June 2021 (Paragraph 16 of the Minute refers).

- 3.2 The Housing (Scotland) Act 1987 (as amended), sets out how local authorities carry out their homelessness functions. The legislation requires local authorities to make inquiries into the circumstances of the applicant to satisfy themselves if the applicant is homeless or at risk of homelessness within 56 days. Thereafter, the local authority has the power (not a legal duty), if it thinks fit, to determine if the applicant is unintentionally homeless and, in certain cases, if the applicant has a local connection to another local area.
- 3.3 Where the applicant meets the criteria detailed above, the Council has a legal duty to ensure that permanent accommodation is made available for the applicant and any person who might reasonably be expected to reside with them and must provide temporary accommodation until permanent accommodation can be secured.
- 3.4 In 2017 the Scottish Government set up the Homelessness and Rough Sleeping Action Group (HARSAG) in order to develop solutions to end homelessness and rough sleeping in Scotland. In their interim report, HARSAG recommended that local connection referrals be suspended between local authorities in Scotland only, referrals would still be possible to local authorities in England and Wales. Ending the referral powers in Scotland would result in a more consistent service for homeless households across Scotland and avoid homeless households in one area receiving a different service from homeless households in another area. This was accepted by the Scottish Government in 2018 based on the belief that people who are homeless or are at risk of homelessness generally have good reasons to present to a particular authority, and that these reasons should be acknowledged.
- 3.5 In 2019, the Scottish Government consulted on the following HARSAG recommendations:
- to commence the provision in Section 8 of the Homelessness etc. (Scotland) Act 2003 to give Scottish Ministers the power to modify, by statutory order, referrals for local connection;
 - that Ministers use the new power to suspend referrals between local authorities in Scotland; and
 - to commence the provision in Section 4 of the Homelessness etc. (Scotland) Act 2003 to change the duty for local authorities to investigate for intentionality to a power to investigate.
- 3.6 The Homelessness etc. (Scotland) Act 2003 (Commencement No. 4) Order 2019 came into force on 7 November 2019. This legislation:
- required Scottish Ministers make a statement, within 18 months of Section 8 of the Homelessness etc. (Scotland) Act 2003 coming into force, setting out the circumstances in which, and the general criteria by reference to which, the power to modify the local connection provisions are to be exercised. This was extended from 12 months as part of the Coronavirus (Scotland) (No2) Act 2020, in recognition of the sectors ability to respond to the statement during the pandemic. The Ministerial Statement was published in March 2021;
 - gave Scottish Ministers the power to modify the operation of referrals between local authorities within Scotland; and
 - removed the duty for local authorities to investigate intentionality and replaced it with the power to investigate.

- 3.7 The Ministerial Statement on Modifying Local Connection Referrals in Scotland asserted “that those who are experiencing or threatened with homelessness are more likely to resettlement successfully, and avoid repeat homelessness, if they are living in an area of their choosing where they can access the specific services and person-centred support they require and where they are able to integrate successfully into the local community. Additionally, for some households who are homeless or experiencing homelessness, the ability to have a fresh start in another area can be a vitally important factor in helping them to sustain a safe and settled home.”
- 3.8 The changes to the local connection rules, which were due to commence in May 2021, were delayed due to COVID-19 and the need to restrict movement between local authority areas as well as the uncertainty of the impact which the Ukrainian refugee programme may have on homelessness services. The enactment of legislation has amended the rules regarding local connection, as detailed in Section 4 below, to the new position as detailed in Section 5 of this report, requiring further amendment to the Homelessness Policy in order to ensure compliance.

4. LOCAL CONNECTION PROVISIONS

- 4.1 Local authorities have a power to refer unintentionally homeless applicants to another local authority if they were unable to demonstrate their local connection to the area in which they were applying for accommodation. Local connection is defined in section 27 of 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.
- 4.2 Prior to 29 November 2022, Moray Council had a discretionary power to refer unintentionally homeless applicants to another local authority if they were able to demonstrate the applicant had no local connection to Moray but did have a local connection to another local authority in Scotland, England or Wales a notification was sent to the authority under section 33(1) of the Housing (Scotland) Act 1987. Duty to house was then accepted by that authority. Where the applicant had no local connection with any local authority, the applicant could apply to any local authority.

5. SUSPENSION OF LOCAL CONNECTION PROVISIONS

- 5.1 The rules on local connection have been modified so that people in housing crisis have the freedom to settle where they choose, with access to the support they need.
- 5.2 The Homeless Persons (Suspension of Referrals between Local Authorities) (Scotland) Order 2022, which came into force on 29 November 2022, suspends the discretionary power of local authorities in Scotland to refer people without a local connection to another Scottish local authority where they do have a local connection.

- 5.3 The suspension of referrals between Scottish local authorities means that households can choose where to make a homeless application. Homeless households will be able to present and receive homelessness assistance, including accommodation, in any Scottish local authority area of their choice, regardless of whether they have a local connection to that area.
- 5.4 Scottish local authorities can still refer applicants to local authorities in England and Wales. The policy behind this is to make sure scarce housing resources are appropriately allocated within Scotland. Moray Council will still accept homeless applications from applicants with a local connection to an English or Welsh local authority and will still have the discretion to determine if the applicant should be referred back to a local authority outwith Scotland.

6. HOMELESSNESS POLICY

- 6.1 The Homelessness Policy (**APPENDIX I**) has been amended to comply with the Homeless Persons (Scotland) Order 2022. Section 16 of the Homelessness Policy sets out that the Council will only use the discretionary power under Section 33 of the Housing (Scotland) Act 1987, as amended, when the following circumstances apply:
- if the applicant has been assessed as unintentionally homeless or threatened with homelessness; and
 - if there are reasons to suggest that the applicant, or any person who might reasonably be expected to reside with him, does not have a local connection with Moray and the applicant, or someone who can reasonably be expected to reside with the applicant, has a local connection with another local authority and there is no risk of domestic abuse in the other local authority area; and
 - if the local authority which either the applicant, or someone who can reasonably be expected to reside with the applicant has a connection with, is outwith Scotland.

7. MONITORING OF ANY IMPACT

- 7.1 The Homeless Persons (Scotland) Order 2022 does not make any changes to the rules on the allocation of housing. Local authorities will have a duty to secure permanent accommodation for any applicants who are not intentionally homeless.
- 7.2 The following table shows the assessment of local connection for homeless applicants in Moray over the last five years and demonstrates that the number of referrals made to another local authority is low. Of the referrals made to other authorities, the majority were made to other Scottish local authorities, which the Council can no longer do.

	2017/18	2018/19	2019/20	2020/21	2021/22
Applications assessed by Moray Council as having a local connection with this LA	527	545	520	448	485
Local connection with another LA (and not with this LA)	8	15	9	5	15
No local connection with any LA	2	7	3	2	6
All	537	567	532	455	506

(Data from the HL1 Annual Return for Moray provided by the Scottish Government)

- 7.3 Although the impact of the Order is not yet known, it is likely that homelessness applications from households with no local connection to the area will increase. There is potential that this may have unintended consequences, despite the low numbers involved. For example:
- Increased homeless presentations which will result in a longer time spent in temporary accommodation and increased waiting times to access suitable permanent accommodation.
 - Increased homeless presentations from households with additional or complex needs will place pressure on services in terms of identifying suitable accommodation, both temporary and permanent and providing support to sustain tenancies.
- Any increase in the number of households entitled to homelessness assistance may create additional pressures on the service and increase the demand for housing which is already high and housing supply is limited. Any additional increase may impact on the ability to deliver ongoing reconfiguration of temporary accommodation and delivery of rapid rehousing as set out in the Rapid Rehousing Transition Plan. The Council will monitor homelessness data to assess the impact of the suspension of local connection provisions and identify any increased demand for and increased pressure on services.
- 7.4 It should be noted that the Order means that local connection powers have been suspended and not permanently repealed. The Scottish Government has acknowledged that there should be a mechanism for dealing with a situation where a particular authority cannot cope with an increased flow of applicants, should this occur. The Housing (Scotland) 1987 Act (as amended), allows for action to be taken in these circumstances and Scottish Ministers retain the power to reverse or alter these modifications, in the event that information comes to light that suggests they are no longer appropriate.
- 7.5 The Scottish Government has stated that it will ensure robust monitoring on the impact on homeless applicants and local authorities to decide whether the power can be permanently removed. In addition, it will engage regularly with local authorities and frontline services to gather qualitative information on the impact of the new legislation, particularly regarding the impact on homelessness services and support services. In the event that monitoring

evidences that a local authority is experiencing difficulties, they will engage directly with the local authority to consider how they can support it.

8. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

The Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP)) identify the need to address the shortage of affordable housing and tackle homelessness. The Homelessness Policy will assist the Council to meet its strategic priority within the Local Housing Strategy which is “to prevent and alleviate homelessness”.

(b) Policy and Legal

The Homelessness Policy has been amended to adhere with the Homeless Persons (Scotland) Order 2022, enacted on November 29 2022 and complies with the legal framework contained within the Housing (Scotland) Act 1987 (as amended by the Housing (Scotland) Act 2001 and the Homelessness etc. (Scotland) Act 2003.

(c) Financial implications

Given the relatively low numbers of referral figures for homeless applicants over the past five years, the cost associated with any low level increase in homeless applications locally will be absorbed within existing staffing and resources.

(d) Risk Implications

The removal of local connection provisions may cause an increase in homeless applications. Robust monitoring arrangements in relation to homelessness data have been put in place both locally and nationally. Where the data starts to identify any significant increases in the number of homeless applications being received, Moray Council will work with the Scottish Government to ensure any potential impact is fully re-evaluated.

(e) Staffing Implications

There are no staffing implications arising from this report.

(f) Property

There are no property implications arising from this report.

(g) Equalities/Socio Economic Impact

There are no specific equalities/socio economic impacts arising from this report. An Equality Impact Assessment is not required.

(h) Climate Change and Biodiversity Impacts

There are no climate change/biodiversity impacts arising from this report.

(i) Consultations

This report has been subject to consultation with the Head of Housing and Property, the Housing Needs Manager, the Housing Strategy and Development Manager, Lorraine Paisey (Chief Financial Officer),

Georgina Anderson (Legal Services Senior Solicitor) and Lindsey Robinson (Committee Services Officer) and any comments have been incorporated into the report.

9. CONCLUSION

- 9.1 This report provides Committee with an update on amendments made to the Homelessness Policy in light of legislative changes enacted on 29 November 2022. It details the legislative changes and notes that monitoring will be undertaken both locally and nationally in order to assess the impact of the change.**

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