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**REPORT TO: COMMUNITIES COMMITTEE ON 9 OCTOBER 2019**

**SUBJECT: HOMELESSNESS POLICY REVIEW**

**BY: CORPORATE DIRECTOR (ECONOMIC DEVELOPMENT,  
PLANNING AND INFRASTRUCTURE)**

**1. REASON FOR REPORT**

- 1.1 This report provides the Communities Committee with an update on the coming into force of provisions within the Homelessness etc. (Scotland) Act 2003 and amendments to the Homelessness Policy to align with the new provisions. It informs Committee of national policy development and future legislative changes.
- 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 Communities Committee:**

- (i) notes that the legal duty to carry out an intentionality investigation as part of an assessment of homelessness will become a power;**
- (ii) agrees that the Council uses its power to investigate intentionality as part of a homeless assessment;**
- (iii) considers and approves the revised Homelessness Policy as set out in Section 4 and APPENDIX I;**
- (iv) notes the national policy developments and future legislative changes set out in Section 6; and**
- (v) notes that further changes will be required to the Homelessness Policy in accordance with the changes set out in Section 6.**

**3. BACKGROUND**

- 3.1 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.

- 3.2 The Scottish Government established the Homelessness and Rough Sleeping Action Group (HARSAG) in October 2017 to provide recommendations to Scottish Government Ministers on the actions and solutions needed to eradicate rough sleeping and transform the use of temporary accommodation in Scotland.
- 3.3 HARSAG made 70 recommendations which led to the Ending Homelessness Together High Level Action Plan, which set out how the Scottish Government will work with partners to end rough sleeping and homelessness. It sets out the actions the Scottish Government will take in partnership with others to realise shared ambitions to end rough sleeping and homelessness. It affirms a commitment to transforming temporary accommodation and prioritising settled housing for all.
- 3.4 One HARSAG recommendation was to commence the Local Connection and Intentionality provisions in the Homelessness etc. (Scotland) Act 2003. The Scottish Government undertook a consultation in early 2019 to ascertain how to take this forward and seek opinions on narrowing the definition of intentionality to focus on deliberate manipulation of the homelessness system.
- 3.5 The Scottish Government announced that it intends to implement changes in law from November 2019 removing the legal duty on local authorities to investigate whether someone is intentionally homeless. Instead, this becomes a discretionary power. This will mean that individual local authorities can decide whether to investigate intentionality as part of its homeless assessment or not.

#### **4. REVIEW OF THE HOMELESSNESS POLICY**

- 4.1 The Homelessness Policy was agreed by this Committee on 23 April 2013 (paragraph 5 of the Minute refers). The overall aim of the Homelessness Policy is to prevent and alleviate homelessness in a sensitive but effective manner and when homelessness does occur, to provide responsive and sustainable solutions which minimise its impact on affected households.
- 4.2 Changes in legislation and the national policy agenda mean that the Homelessness Policy requires updating. The revised draft Homelessness Policy reflects these changes (**APPENDIX I**). Given that several changes have yet to be commenced, a light touch approach has been adopted. The amendments are minimal and other than the legislative changes and setting out the Council's approach to managing intentionality decisions (see Section 5) only minor changes have been made to the policy.
- 4.3 There is no requirement to consult with stakeholders, given that the changes to the Homelessness Policy are primarily legislative, which the Council must adhere to.

## **5. INTENTIONALLY HOMELESS**

- 5.1 The circumstances in which a person is to be regarded as having become intentionally homeless or threatened with homelessness are set out in Section 26 of the Housing (Scotland) Act 1987, as amended. There are three requirements – all of which must be satisfied:
- (1) The applicant, if homeless, must deliberately have done or failed to do something in consequence of which he or she has ceased to occupy accommodation which was at the time available to them. To be intentionally threatened with homelessness, an applicant must deliberately have done or failed to do something, the likely result of which was that he or she will be compelled to leave accommodation.
  - (2) It must have been reasonable for the applicant to have continued to occupy the accommodation. The local authority may have regard to the general circumstances prevailing in relation to its area in applying this test.
  - (3) The applicant must have been aware of all the relevant facts before taking or failing to take the deliberate actions referred to above. An act or omission in good faith is not to be regarded as deliberate.
- 5.2 It is the duty of the Council to satisfy itself whether an applicant became homeless or threatened with homelessness intentionally. There is no onus on the applicant to satisfy the Council that he or she did not become homeless intentionally.
- 5.3 As part of a homeless assessment, Officers will take a holistic view of an applicant's circumstances before reaching a decision on intentionality. They will not simply apply standard criteria and will be alert to the risk of a precipitative finding of intentional homelessness.
- 5.4 Issues surrounding intentionality decisions are often complex. Reasons for intentionality decisions can include defaulting on rent or antisocial behaviour.
- 5.5 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.
- 5.6 Moray does historically have a higher proportion of homeless cases assessed as intentionally homeless in contrast with the national average. However, in Moray, intentionality provisions are used as a positive mechanism which in many cases aids to foster a positive relationship with the applicant. Housing staff will undertake additional work with applicants, seeking to provide better outcomes for those deemed to be intentionally homeless and who are willing to engage with the service. For a large proportion of applicants this support and engagement can resolve the reason that the original intentionality decision was awarded and result in the intentionality decision being overturned.
- 5.7 Opting to remove consideration of intentionality may be perceived as removing the responsibility of the individual to retain their accommodation or

to secure suitable alternative. There is an increased risk that this would remove the responsibility of some tenants in adhering to the conditions of their tenancy and sustaining their accommodation. For some in housing need, if intentionality is removed, presenting as homeless may be perceived as a quicker route into social housing, while bypassing the need to wait on the Housing List.

- 5.8 Officers recommend that once the legal duty is changed to a power in November 2019, the Council continues to consider intentionality as part of its assessment of homelessness. Ongoing support will be provided to those applicants found to be intentionally homeless and who are willing to engage with the service with the aim of resolving the reason for the intentionality decision. In the recent Scottish Government consultation on local connection and intentionality provisions, the majority of local authorities who responded were in favour of continuing consideration of intentionality as part of homelessness assessments.

## **6. NATIONAL POLICY DEVELOPMENT AND FUTURE LEGISLATIVE CHANGES**

- 6.1 The Scottish Government confirmed in its Programme for Scotland 2019 – 2020 in an attempt to eradicate homelessness in Scotland, it intends to make changes in the following areas:

### **Local connection**

- 6.2 The Scottish Government intends to remove the requirement for people facing homelessness to have a local connection to a council area before they can receive support from that local authority.

- 6.3 Due to the more complex legislative process around changing the local connection rules, the Scottish Government is expected to commence work in November 2019, but implementation would remain a year or more away.

### **Unsuitable Accommodation**

- 6.4 The Scottish Government has announced that it will legislate to extend the Unsuitable Accommodation Order by May 2021.
- 6.5 Currently the definition of what constitutes unsuitable accommodation only applies when the household includes dependent children or when someone within the household is pregnant. The unsuitability also relates to the location of the accommodation, the quality of the accommodation and the facilities that are available there. The most common type of accommodation which would be categorised as unsuitable accommodation is bed and breakfast type accommodation.
- 6.6 The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2017 reduced the maximum time spent in unsuitable accommodation from 14 days to 7 days.
- 6.7 Moray Council has not breached the unsuitable accommodation order since 2010. The provision of temporary accommodation is subject to ongoing monitoring, assessment and reconfiguration and where necessary, improving the quality of the accommodation used, to ensure that the supply of suitable

accommodation meets demand and the use of bed and breakfast accommodation is minimised.

### **Temporary accommodation standards**

- 6.8 The Scottish Government has advised that it intends to introduce a legally enforceable temporary accommodation standards framework. Further consultation is expected in relation to legally enforceable standards in Temporary Accommodation later in 2019 which are expected to be incorporated into a revised Code of Guidance. The Scottish Government Ending Homelessness Together High Level Action Plan sets out a commitment to transform Temporary Accommodation in Scotland by 2023.

### **Prevention pathways**

- 6.9 The Scottish Government will create a domestic abuse prevention pathway to support women who have experienced domestic abuse to find safe accommodation.
- 6.10 The Scottish Government will create a care leavers homelessness prevention pathway, trying to understand what support people with care experience need to reduce the risk of them becoming homeless and what specific support they may need if they do become homeless.
- 6.11 Additional reports will be presented to this Committee when further information upon the changes become available and the impact on the Homelessness Policy has been considered.

## **7. FUTURE ACTIONS**

- 7.1 Subject to this Committee's approval of the revised Homelessness Policy, an implementation plan will be developed to support a "go live" date from November 2019. This plan will include updating procedures and reviewing of all information resources to reflect the agreed changes. This will include updating the Council's website and developing guidance for applicants on the revised process.
- 7.2 The Homelessness Policy will be subject to further review and amendment in accordance with the commencement of legislative change and national policy developments summarised in Section 6.

## **8. SUMMARY OF IMPLICATIONS**

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

The Local Housing Strategy focuses on a set of outcomes that contribute to the achievement of the Council's wider strategic aims and priorities, in particular meeting statutory obligations to homeless households.

### **(b) Policy and Legal**

This policy has been developed in line 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**

There are financial implications arising from this report.

**(d) Risk Implications**

There are no risk implications arising from this report.

**(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**

The policy has been redrafted with a view to addressing inequalities of outcome that are a result of socio-economic inequalities. As highlighted in paragraph 5.6 of this report, retaining the intentionality investigation as part of the assessment of homelessness will assist in working with customers to address the issues that have led to people becoming intentionally homeless.

**(h) Consultations**

Consultation on this report has taken place with the Acting Head of Housing and Property, Housing Needs Manager, Housing Services Manager, Acting Housing Strategy and Development Manager, and Officers within the Housing Service, Deborah O'Shea (Principal Accountant), Legal Services Manager, the Equal Opportunities Officer and Caroline Howie (Committee Services Officer) and any comments have been incorporated into the report.

**9. CONCLUSION**

- 9.1 This report provides the Communities Committee with an update on legislative provisions coming into force and seeks Committee's approval of the revised Homelessness Policy. It informs Committee of national policy developments and future legislative changes which will require further review of the Homelessness Policy.**

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Background Papers: With author  
Ref: HPR2019