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**REPORT TO: MORAY COUNCIL ON 30 JUNE 2021**

**SUBJECT: HOMELESSNESS POLICY UPDATE**

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

**1. REASON FOR REPORT**

- 1.1 This report provides the Council with an update of requirement to amend the Homelessness Policy and informs the Committee of future legislative changes.
- 1.2 This report is submitted to Council 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 Council:**

- (i) notes the requirement to amend the Homelessness Policy as set out in Section 4;**
- (ii) considers the amendments and approves the revised draft Homelessness Policy as set out in Section 4 and APPENDIX I;**
- (iii) notes the future legislative changes set out in Section 5; and**
- (iv) notes that further changes will be required to the Homelessness Policy in accordance with the changes set out in Section 5.**

**3. BACKGROUND**

- 3.1 The Homelessness Policy was last reviewed and updated in 2019 to reflect changes in legislation which were due to be commenced and the national policy agenda. The Homelessness Policy was agreed by the Communities Committee on 9 October 2019 (paragraph 6 of the Minute refers).
- 3.2 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. HOMELESSNESS POLICY AMENDMENT**

4.1 The Homelessness Policy sets out the framework, in accordance with legislation and guidance, which the Council will use to assess if an applicant is homeless or threatened with homelessness.

4.2 The Homelessness Policy has been reviewed following a recent challenge and amended in two areas to provide clarity when being applied operationally.

##### Intentionality

4.3 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. The intentionality criteria allows the Council 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.

4.4 Changes to homeless legislation, which came into force on 7 November 2019, mean that local authorities now have a discretionary power, rather than a duty, to investigate whether a household is intentionally homeless. There was no change to the statutory test, referred to above, to determine intentionality.

4.5 The Homelessness Policy was updated and approved on 9 October 2019 and the Communities Committee agreed that the Council would continue to use its power to investigate intentionality as part of a homeless assessment (paragraph 6 of the Minute refers).

4.6 Legal advice received has advised that interpretation of Section 28 of the Housing (Scotland) Act 1987 (as amended) can be ambiguous and it should be interpreted in accordance with national policy. The intentionality provisions set out in Section 28 should not be interpreted at high level (i.e. policy level) instead, the discretion to investigate intentionality should be exercised in relation to individual applications.

4.7 Although the Council does apply the discretion to investigate intentionality at an individual level and assess each case on its own merit, taking into account the specific circumstances associated with each case, the Homelessness Policy has been further revised to provide greater clarity and to reduce the risk of further challenge.

4.8 Section 13.3 and Section 15 of the revised draft Homelessness Policy (**APPENDIX I**) clarifies that as part of a homeless assessment the Council can decide to use the discretionary power under Section 28 of the Housing (Scotland) Act 1987 (as amended) Act, if it thinks fit, to investigate whether the applicant became homeless intentionally.

4.9 The policy has been amended so that where the Council opts to use its discretionary power to investigate if an applicant is intentionally homeless, it

should advise the applicant that the Council has chosen to exercise the discretion and confirm how the decision was reached and the outcome of the assessment in its decision letter. Section 18 of the revised draft Homelessness Policy has been amended to reflect this.

#### Public Sector Equality Duty

- 4.10 The general Public Sector Equality Duty (PSED) is contained in Part II of the Equality Act 2010 (sections 149 to 157). This places a continued obligation on public bodies, in the exercise of their functions to pay “due regard” to equality issues. The PSED applies to a wide range of functions ranging from national policy development, application of policies to decision making on individual cases.
- 4.11 The public sector equality duty under section 149 of the Equality Act 2010 applies to the duties under Part II of the Housing (Scotland) Act 1987. With regard to homeless assessments, the PSED seeks to ensure that there is a proper and conscientious focus on equality issues in the decision making process and that each case is assessed on its own merits.
- 4.12 At each stage of the decision-making process, Officers are required to have the equality duty in mind and focus very sharply on whether an applicant has an actual or probable disability, or other protected characteristic (as defined by the Equality Act 2010), which need enhanced consideration. Where an applicant has a protected characteristic, inquiries must be even more careful, and fuller reasons must be given for a negative decision.
- 4.13 The revised draft Homelessness Policy has been amended with the insertion of Section 4.7 to reaffirm the PSED requirements.

#### Unsuitable Accommodation

- 4.14 Previously, the definition of what constitutes unsuitable accommodation only applied when the household includes dependent children or when someone within the household is pregnant. This means that anyone staying in accommodation deemed as ‘unsuitable’ for more than seven days will constitute a breach of the Unsuitable Accommodation Order (UAO). 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 (B&B) type accommodation.
- 4.15 Section 21.3 of the revised draft Homelessness Policy has been updated to reflect the Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2020 which extends the Order to all homeless households. However, due to ongoing COVID-19 restrictions there are exceptions to the Order at this point in time, which will be removed when restrictions are sufficiently eased.
- 4.16 All changes made to the revised draft Homelessness Policy have been noted in italics and highlighted.

- 4.17 There is no requirement to consult with stakeholders, given that the changes to the revised draft Homelessness Policy are primarily legislative, which the Council must adhere to.

## **5. FUTURE LEGISLATIVE CHANGES**

- 5.1 The Scottish Government confirmed in its Programme for Scotland 2019 – 2020 that in an attempt to eradicate homelessness in Scotland, it intended to make legislative changes. Several of the identified legislative changes were impacted by the coronavirus pandemic.

### Removal of Local Connection

- 5.2 Currently local authorities have the power under Section 33 of the Housing (Scotland) Act 1987 (as amended) to refer homeless households who do not have a local connection to their authority area to another local authority where they do have a connection. This does not apply where there is a risk of domestic abuse.

- 5.3 The Homelessness etc (Scotland) Act 2003 (Commencement No.4) Order 2019 commenced on 7 November 2019, allowing Scottish Ministers to modify the operation of Section 33 of the 1987 Act. The suspension of referrals between Scottish local authorities will remove the local connection part of the homeless assessment and will mean 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 It was expected that this change would commence in May 2021, however this has been delayed due to ongoing COVID-19 restrictions. Although a new commencement date has yet to be confirmed, the Scottish Government has advised that this will be progressed in Session 6 of Parliament (2021 – 2026).

### Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2020

- 5.5 As detailed in paragraphs 4.14 and 4.15 above, this legislation extends the UAO to include all homeless households. However, in response to COVID-19, there currently are temporary exceptions to allow for the use of hotel and B&B accommodation where that would be the best option for people to self-isolate and adhere to social distancing guidelines.
- 5.6 The Scottish Government have advised that from 30 September 2021 the temporary exceptions will lapse and local authorities will need to comply with the UAO from 1 October 2021. This means that any homeless household placed in unsuitable temporary accommodation for more than seven days will need to be recorded as a breach of the UAO.
- 5.7 Moray Council has not breached the unsuitable accommodation order since 2010. The provision of temporary accommodation is subject to ongoing monitoring, assessment and reconfiguration to ensure that the supply of suitable accommodation meets demand and the use of bed and breakfast

accommodation is minimised. Any breach of the UAO will be reported in our Performance Report.

## **6. FUTURE ACTIONS**

- 6.1 Subject to Council's approval of the revised Homelessness Policy, Officers will undertake a review of operational procedures and will review information resources to reflect the changes. This will include updating templates used for correspondence with homeless applicants, ensuring fuller reasons are set out in any decision letter, information on the Council's website and guidance provided to applicants to ensure compliance with homelessness legislative changes and the PSED. Since the introduction of the new legislation in 2019, this is the first challenge to the operational application of these requirements. This challenge was a unique case. Therefore, there is no requirement to undertake retrospective reviews of previous decisions made.
- 6.2 Staff have already undertaken Equality and Diversity Awareness training. Additional training will be provided to staff on PSED and the implications it has on the homeless assessment process.
- 6.3 The Homelessness Policy will be subject to further review and amendment in accordance with the commencement of legislative changes summarised in Section 5. These will be reported to Council/the appropriate committee as required.

## **7. SUMMARY OF IMPLICATIONS**

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

Moray 2027 and the Service Plan identify the need to address the shortage of affordable housing and tackle homelessness. The Local Housing Strategy details 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 and has due regard for the Code of Guidance on Homelessness (Interim Update) 2019, the Prevention of Homelessness Guidance (2009), the Housing Support Duty to Homeless Households - Guidance for Local Authorities, Housing Options Guidance 2016. The policy changes also reflect advice from Legal Services.

### **(c) Financial implications**

There are no 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 reaffirming the requirement of the Public Sector Equality Duty.

**(h) Consultations**

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

**8. CONCLUSION**

- 8.1 This report provides the Council with an update on requirement to amend the Homelessness Policy and seeks the Council's approval of the revised draft Homelessness Policy. It informs Council of future legislative changes, which will require further review of the Homelessness Policy.**

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