

## **Item: 12**

**Education, Leisure and Housing Committee: 9 September 2020.**

**Modifying Local Connection Referrals in Scotland.**

**Consultation on Ministerial Statement.**

**Report by Executive Director of Education, Leisure and Housing.**

### **1. Purpose of Report**

To consider the Council's response to the consultation on a Ministerial Statement for modifying local connection referrals in Scotland.

### **2. Recommendations**

The Committee is invited to note:

#### **2.1.**

That the current homelessness legislation, including that covering local connection, has worked well for Orkney.

#### **2.2.**

That, in April 2019, the Council submitted a response to the previous consultation by the Scottish Government on Local Connection and Intentionality Provisions in the Homelessness Legislation.

#### **2.3.**

That, following consideration of the results of the consultation referred to at paragraph 2.2 above, the Scottish Government gave a commitment to prepare and publish a Ministerial Statement setting out the circumstances in which, and the general criteria by reference to which, the power to modify local connection is to be exercised.

#### **2.4.**

That the Scottish Government has issued a consultation on a Ministerial Statement for Modifying Local Connection Referrals in Scotland, for which responses are required by 23 October 2020.

#### **2.5.**

The Council's draft response to the consultation on a Ministerial Statement for Modifying Local Connection Referrals in Scotland, attached at Appendix 1 to this report.

**It is recommended:**

## **2.6.**

That the Council's response to the consultation by the Scottish Government on a Ministerial Statement for Modifying Local Connection Referrals in Scotland, attached as Appendix 1 to this report, be approved.

## **3. Current Position**

### **3.1.**

From 1 January 2013, the homelessness legislation has contained three hurdles, as follows:

- Is the household homeless?
- Has the household become homeless intentionally?
- Does the household have a local connection (for example have they lived in the area for six out of the last 12 months, three out of the last five years, have a connection as a result of employment or some other special reason)?

### **3.2.**

Local connection is currently defined as a connection which a household has with an area because:

- They are or were in the past normally resident in it, and this residence was of their own choice.
- They are employed in it.
- They have family associations.
- They have special circumstances.

### **3.3.**

Local authorities currently have the power to refer homeless households who do not have a local connection with their area to another local authority where they do have such a connection.

### **3.4.**

This power does not apply where the person has been assessed as intentionally homeless and this assessment cannot be revisited by the receiving authority. A referral on the grounds of local connection cannot be made where the applicant's household would face the risk of domestic abuse or harassment in the area where they have a local connection.

### **3.5.**

The level of households found to have no local connection to Orkney is outlined below.

Financial Year	Households with No Local Connection
2019 to 2020	8
2018 to 2019	5
2017 to 2018	3

### **3.6.**

The existing legislation surrounding local connection has worked well for Orkney. In each case the household has either been returned to the Local Authority area where they do have a local connection or were required to make their own housing arrangements within Orkney accordingly.

### **3.7.**

Scotland has the most progressive homelessness legislation in Europe. A significant piece of legislation introduced was the Homelessness etc (Scotland) Act 2003 which presented the intention of amending the then four hurdles within homelessness legislation, ultimately, to one.

### **3.8.**

This process will continue to change as a result of the Homelessness etc (Scotland) Act 2003 and ultimately consideration will only require to be given to whether the household is homeless.

## **4. Previous Consultation on Changes to Local Connection**

### **4.1.**

Members were previously advised of the establishment of the Scottish Government's Homelessness and Rough Sleeping Action Group and its commitment to eradicate rough sleeping, transform the use of temporary accommodation in Scotland and end homelessness.

### **4.2.**

The Homelessness and Rough Sleeping Action Group recommended that the provisions on local connection in the 2003 Act should be progressed in order to remove barriers to support for people who are homeless or rough sleeping or at risk of homelessness or rough sleeping.

### **4.3.**

The Council previously responded to the Scottish Government's consultation on local connection and intentionality provisions in homelessness legislation in April 2019.

### **4.4.**

The reported result of that consultation was that 51% of respondents were in support of suspending local connection referrals across all local authorities in Scotland.

#### 4.5.

The Scottish Government gave a commitment to prepare and publish a Ministerial Statement setting out the circumstances in which, and the general criteria by reference to which, the power to modify local connection is to be exercised.

#### 4.6.

The deadline for publication of the Ministerial Statement has been extended, as a result of COVID-19, and a further consultation has been released which focusses on specifics of implementation.

### 5. Current Consultation on a Ministerial Statement for Modifying Local Connection

#### 5.1.

The Scottish Government's consultation paper, which closes on 23 October 2020, is available from: <http://www.gov.scot/publications/consultation-ministerial-statement-modifying-local-connection-referrals-scotland/>

#### 5.2.

The proposed changes are that the Scottish Government proposes to suspend local connection referrals between local authorities within Scotland by means of a statutory instrument, which would, if approved, come into force in May 2021.

#### 5.3.

This suspension would take effect among Scottish local authorities only. Current arrangements which relate to referrals to and from authorities in other parts of the UK will continue to apply. Therefore, no Scottish local authority will be able to refer homeless applicants to other authorities within Scotland but could continue to refer them to other parts of the UK, if they were to have a local connection there, and also receive referrals accordingly.

#### 5.4.

Historical data would indicate that the power for local authorities to make local connection referrals is used infrequently. Data provided from the Scottish Government is to the effect that only 0.5% of homeless households are referred to another local authority area, where they have a local connection. For Orkney, the figures quoted by the Scottish Government for three financial years are as follows:

Financial Year	Local connection with another local authority
2018 to 2019	4%
2017 to 2018	8%
2016 to 2017	0%

## **5.5.**

Within the consultation paper there is a proposal for monitoring the impact should there be a significant impact on a particular local authority.

## **5.6.**

Generally, the consultation focuses on the specifics of the process.

## **5.7.**

The draft Council response is attached at Appendix 1 to this report.

## **6. Corporate Governance**

This report relates to governance and procedural issues and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

## **7. Financial Implications**

### **7.1.**

Expenditure on homelessness is charged to the Other Housing budget within the General Fund.

### **7.2.**

The net homelessness budget for 2019 to 2020 was £800,100 with an actual net spend of £639,100 which gives an underspend for the financial year of £161,000.

## **8. Legal Aspects**

### **8.1.**

There are no direct legal implications arising from this report. The statutory definition of homelessness is given below.

### **8.2.**

In terms of section 24 of the Housing (Scotland) Act 1987, a person is homeless or threatened with homelessness if there is no accommodation in the UK or elsewhere, which he, together with any other person who normally resides with him as a member of his family or in circumstances in which the local authority consider it reasonable for that person to reside with him:

- Is entitled to occupy by virtue of an interest in it or by virtue of an order of a court.
- Has a right or permission, or an implied right or permission to occupy, or in England and Wales has an express or implied licence to occupy.
- Occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession.

### **8.3.**

Further, a person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.

### **8.4.**

Regard may be had in determining whether it would be reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the area of the local authority to whom he has applied for accommodation or for assistance in obtaining accommodation.

### **8.5.**

In terms of Section 24(3), a person is also homeless if he has accommodation but:

- He cannot secure entry to it.
- It is probable that occupation of it will lead to abuse (within the meaning of the Protection from Abuse (Scotland) Act 2001 (asp 14)), or it is probable that occupation of it will lead to abuse (within the meaning of that Act) from some other person who previously resided with that person, whether in that accommodation or elsewhere.
- It consists of a movable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it.
- It is overcrowded within the meaning of section 135 and may endanger the health of the occupants.
- It is not permanent accommodation, in circumstances where, immediately before the commencement of his occupation of it, a local authority had a duty under section 31(2) in relation to him ie a local authority is satisfied that an applicant is homeless.

### **8.6.**

A person is threatened with homelessness if it is likely that he will become homeless within 2 months.

### **8.7.**

For the purposes of subsection (3)(e), “permanent accommodation” includes accommodation:

- Of which the person is the heritable proprietor.
- Secured by a Scottish secure tenancy.
- Secured by an assured tenancy or private residential tenancy that is not a short assured tenancy.
- Where paragraph 1 or 2 of schedule 6 to the Housing (Scotland) Act 2001 (asp 10) is satisfied in relation to the person, secured by a short Scottish secure tenancy, i.e. has been evicted previously and therefore tenancy has been granted as a short Scottish secure tenancy.

## **9. Contact Officers**

James Wylie, Executive Director of Education, Leisure and Housing, extension 2401,  
Email [james.wylie@orkney.gov.uk](mailto:james.wylie@orkney.gov.uk).

Frances Troup, Head of Housing, Homelessness and Schoolcare Accommodation  
Services, extension 2177, Email [frances.troup@orkney.gov.uk](mailto:frances.troup@orkney.gov.uk).

## **10. Appendix**

Appendix 1: Draft Council response to consultation questions.

## **Consultation on a Ministerial Statement for modifying local connection referrals in Scotland**

(The Scottish Government have advised in their consultation paper that we should not feel constrained by the questions set).

- 1. We are proposing to suspend local connection referrals between Scottish local authorities to remove barriers people face to accessing the support they need. The analysis of the 2019 consultation demonstrated that there is support for this position, although there are concerns about the potential for increases in homelessness applications and subsequent impact on statutory services.**

Please give us your current views about the proposed suspension of referrals.

The potential for the removal of local connection has been considered over a significant number of years. While we appreciate that nationally there would be a neutral position as a result of this change, this would be unlikely to be the case area by area. There remains a need to ensure that this is island proofed and that there is a means of ensuring that island communities will not be impacted in a manner that is unsustainable.

The current requirement for a homeless household to evidence a local connection serves as a barrier to them presenting in an alternative area. It cannot, therefore, be concluded that there is any appropriate determination as to the impact the removal of this barrier would have on a given community.

It is likely that some areas may attract people accordingly and rural areas may be particularly popular given the lifestyle they may seem to offer. While we agree that people should ideally have some choice around where they settle, there is also merit in the current local connection rules as these ensure there is some access to informal support in the form of family members – support that is often missing from many homeless people's lives.

Orkney has been voted the most popular place to live in the UK and already has a tendency to attract people from elsewhere seeking either a fresh start or a perceived different lifestyle. Its resources and location make it difficult to support people with significant particular needs.

Rural areas which are resourced to provide services to relatively low numbers cannot necessarily adapt swiftly to rapid changes in demand. While Orkney has good services, resources within Orkney are greatly restricted resulting in a limited ability to be appropriately flexible and instantly responsive to any disproportionate growth in needs.



Orkney, for instance, has no Housing First provision and no resource to allow this to be provided. Seeking support through the Rapid Rehousing Transition Plan resulted in a minimal financial provision preventing any ability to develop such a resource.

Alongside this there is a need to ensure resources are appropriately allocated. An island location means that there is a finite number of properties for housing the population and providing for the local economy. In general terms there is not the ability to live in a neighboring local authority area and commute on a daily basis. In addition, the distance between islands, can and, in many cases does, present similar challenges. There is, therefore, a need to ensure that migration flows can be managed appropriately.

Orkney offers good services. However, relatively limited numbers mean that support providers are generally generic in their provision, as opposed to specialist, and some types of needs would pose significant difficulties. In an island location, the logistics and travel costs and challenges mean these cannot be addressed by a neighbouring local authority. There is also a need to remember that Orkney is a diverse group of islands rather than simply one island.

It would be more appropriate for local authorities to be able to have some flexibility to determine whether they continue to look at local connection as opposed to removing it entirely. However, there would require to be clarity in respect of how that would work when considering referrals to other areas.

**2. Considering the core content proposed for the Ministerial Statement (see section 2 – paras 31 – 33), please give us any suggested amendments with regard to the:-**

**i. Circumstances for modifying local connection referrals (see para 31)**

The difference between a homeless household applying for assistance in one relatively sizeable central belt area, as opposed to another, may make relatively little difference to the local authorities concerned but could make a real difference to the household concerned. That situation is very different when considered in the context of a small island community with relatively low resources, based on the resources it has and is required to deliver under the legislation currently. A blanket policy is inappropriate.

Paragraph 31 refers to “taking account of available evidence on any detrimental effect which may result in terms of the capacity of particular local authorities to meet their homelessness duties, or outcomes for individual communities”.

While this may sound appropriate, there is no clarity surrounding what the process for this would be. How could numerical statistical information, provided to the Scottish Government through the HL1 return, convey the impact when comparing large urban areas and the sheer numbers involved in comparison to tiny vulnerable island communities which may be impacted on by relatively low numbers but which proportionately may have a more significant impact?

This is an area which requires to be island proofed so that an appropriate means of determining impact can be made.

In addition, there is a need for further guidance on what constitutes a “detrimental impact”. If detrimental impact can be proved across a relatively wide number of areas, this would raise issues as to why the legislation is being changed.

**ii. General criteria, by reference to which, the power to modify local connection is to be exercised (see para 32)**

Paragraph 32 states “...significant undue pressures related to an increased level of households being assessed as homeless, where this pressure is due in part to the pressure of applications from households with no local connection to the local authority area(s)”. This raises questions as to what constitutes “significant pressures” and how these would be assessed. As already outlined, sheer numbers are not an appropriate way to determine pressure as the level of demand would be relative. How would local authorities evidence pressure? Would it be the case that each authority would be responsible for that requirement to evidence thereby resulting in a potential additional pressure impacting on a relatively small staff complement?

Paragraphs 38 and 39 relate to a mechanism which would require a particular authority to make a case to Scottish Ministers if there was a belief that there was a need for further modification. This process would be time consuming and bureaucratic and would be likely to place councils in the position of having limited redress.

Please let us know about any suggested amendments you have to the factors proposed in paragraph 33 for assessing whether the capacity of a local authority to meet its homelessness and housing duties is being adversely affected by any modification to local connection.

The list of factors to be considered at paragraph 33 would illustrate a focus only on homelessness and no evidenced consideration that social housing providers also require to house households who have other forms of housing need. If there is no ability for those in housing need to be housed by any other means than through the homelessness legislation, this in itself will swell figures and distort the picture.

Again, this area is not island proofed and fails to take into account any local contextual issues.

In an island context, it is important for businesses to be sure that their workforce can be housed. In addition, it is important to ensure housing provision is available for young people who wish to settle where they have grown up and where they have family. If there is potentially greater demand on social housing provision as a result of the removal of local connection, this may place additional demands on the private sector. In some areas, private sector provision is extremely limited. It may also have the potential to limit the sustainability of individual islands over a period of time.

Paragraph 37 refers to staff being able to “focus decisions and effort on providing a prompt, person-centered approach to applicants, and help more people into a settled home more quickly”.

The current situation allows staff to deliver good quality, person-centered approaches. If there is a risk in approaches from people with a high level of support needs without any increase in staffing resources, there is a potential that this would reduce the quality of service provision.

**3. As set out in the 2019 consultation, we propose using HL1 data to monitor the impact of this change. Please let us know of any comments you have on this proposal.**

This area remains unclear. HL1 is statistical information and does not adequately reflect level of need when considering the need for support. This data would not allow consideration of the time absorbed by staff devoting their attention to supporting a given individual themselves or to developing support plans. It is important for each homeless household to receive the support that they need in order to seek to resolve their homelessness and avoid a cycle of repeat homelessness. This is not being taken into account in a practical sense.

Orkney has services in place to address the needs it currently faces. Its location also introduces certain challenges including that there is not a locally based psychologist for instance. A household moving into the area may assume that all types of support would be available at a local level.

A household may currently have the support they require in the area where they are currently resident but may choose to present to an area where that specific type of support is not readily available. In turn, the Council concerned would require to resource those needs. If the resources in place currently are limited, this will raise issues in respect of how those needs can be resourced.

A relatively minimal, from a central belt perspective, increase in complex presentations could swamp both homelessness and support services in an island community.

Resources are greatly restricted and services are not resourced to deal with pressure from a rising number of people with complex needs.

While the HL1 process would allow recording of numbers of people who would previously have had no local connection, this would purely be about sheer numbers. It would not allow an assessment of the impact on support services or the impact on other groups within society who may have more difficulty in being housed as a result.

While a statement has been made to the effect that there could be a swift response should a Council be disproportionately affected, there is no clarity surrounding what this would look like.

Pressure on existing systems is about relative demand and not necessarily about the largest number per se. In an island community there is a need for proportionality. Recording in the simple manner suggested would not result in an appropriate reflection of the actual position.