

POLICY NOTE

THE HOMELESSNESS ETC. (SCOTLAND) ACT 2003 (COMMENCEMENT NO. 4) ORDER 2019

SSI 2019/316 (C. 16)

The above instrument was made in exercise of the powers conferred by section 14(1) of the Homelessness etc. (Scotland) Act 2003.

Purpose

Following recommendations from the Homelessness and Rough Sleeping Action Group (HARSAG)¹, this instrument provides for the commencement of sections 4 (inquiries as to intentional homelessness) and 8 (power to modify section 33 of the 1987 Act) of the Homelessness etc. (Scotland) Act 2003.

Background

The Homelessness etc. (Scotland) Act 2003 (“the 2003 Act”) received Royal Assent in April 2003 and introduced legislation to radically overhaul Scotland’s existing homelessness legislation by, in the main, amending the Housing (Scotland) Act 1987 (“the 1987 Act”) and the Housing (Scotland) Act 2001. The 2003 Act primarily affects how local authorities carry out their homelessness functions, strengthening people’s rights to support when they are facing homelessness. It also improved the housing rights of people experiencing domestic abuse and provided a mechanism for the abolition of priority need.

Policy Objectives

While the majority of provisions in the 2003 Act have been implemented, this instrument provides for the commencement of the outstanding provisions relating to Intentional homelessness and Local Connection referrals. The over-arching policy objective is to remove barriers to support which can hinder the prevention of homelessness.

Intentional homelessness

Where an applicant is assessed as being homeless or threatened with homelessness, Section 28(2) of the 1987 Act currently requires local authorities to make a further distinction between intentional and unintentional homelessness. The Housing (Scotland) Act 1987 states that a person is intentionally homeless if they deliberately did or failed to do anything which led to the loss of accommodation which it was reasonable for them to occupy. Applicants assessed as being intentionally homeless are entitled to the minimum package of temporary accommodation, and advice and assistance towards them finding their own accommodation.

Commencing the provisions in Section 4(1) of the 2003 Act to amend Section 28(2) of the 1987 Act has the policy objective of removing the duty for local authorities to investigate intentionality and replacing it with a power to investigate. It is recognised that, under current

¹ <https://www.gov.scot/groups/homelessness-and-rough-sleeping-action-group/>

rules, many of those assessed as intentionally homeless have difficulties in their lives which are out of their control, for example paying their rent or experiencing mental health issues. Allowing local authorities greater choice about whether to investigate this will mean that people get the support they need when they need it. It is also acknowledged, however, that it will be necessary to investigate intentionality in some circumstances, to aid housing management and to increase the likelihood of establishing a sustainable solution to homelessness for the household involved. By replacing the duty to investigate with a power to do so, if they think fit, local authorities will be given discretion in considering an application and will be better able to focus administrative effort on those, expected to be few, cases where there is a real concern.

Subsection (2) makes a consequential change to section 30(3)(a) of the 1987 Act, in order to ensure that the local authority is not under a duty to notify the applicant of their findings as to intentionality where they have not carried out an investigation.

Local Connection

Currently, local authorities have the power under section 33 of the 1987 Act to refer an applicant to another authority if they are of the opinion that the applicant has a local connection with that other authority and not with them. Local connection is defined at section 27 of the 1987 Act, and is currently formed on the basis of residence of the applicant's own choice, employment, family associations or any special circumstance. Residence or employment whilst serving in the armed forces is exempt, as is residence due to detention or under section 95 of the Immigration and Asylum Act 1999.

Commencing the provisions in section 8 of the 2003 Act inserts sections 33A and 33B into the 1987 Act, giving the Scottish Ministers the power to restrict the operation of section 33 of the that Act, which allows referral of a homeless applicant to another local authority in certain circumstances. Within 12 months of this instrument commencing the Section 8 provisions, Scottish Ministers must publish a statement setting out the general criteria by reference to which modifications to local connection referrals between Scottish local authorities will take place.

This provision contributes to the policy objective of enabling choice in the one area of housing provision where choice has in the past been very limited. It is predicated on the belief that homeless people generally have good reasons to present to a particular authority and that people facing homelessness should have the freedom to settle where they choose and access the support they need, wherever they find themselves in housing crisis. However it is acknowledged that there must be a mechanism for dealing with a situation where a particular authority cannot cope with an increased flow of applicants and the legislation allows for action to be taken in these circumstances.

Consultation

The Scottish Government issued a public consultation on 31 January 2019, inviting views on implementing the recommendation from HARSAG to commence the Local Connection and Intentionality provisions in the Homelessness etc. (Scotland) Act 2003.

Views were also sought on HARSAG's recommendation to narrow the definition of intentionality to focus on instances of applicants 'deliberately manipulating' the

homelessness system. Currently, there are no provisions in the legislation for the definition of intentionality to be changed and the Scottish Government is carefully considering the options regarding this element of the recommendation and plans to take this forward separately.

The consultation received 72 responses from a range of individuals, local authorities, housing associations, tenants groups, third sector organisations, legal groups and others. A full list of those consulted, their responses, where they agreed to the release of this information, and the consultation analysis can be viewed on the Scottish Government website at: <https://consult.gov.scot/housing-regeneration-and-welfare/local-connection-and-intentionality/>. The following key themes emerged in response to the consultation:

Intentional homelessness

The highest level of support (around half of those responding to the consultation) was for removing the duty and giving local authorities the discretion to assess households for intentionality. Around one third (mainly local authorities) supported not removing the duty.

The main theme cited in support of removing the duty was that being labelled as intentionally homeless is often unfair and does not reflect the true picture of individuals' circumstances. The most common view expressed was that the removal of the duty in favour of discretion would benefit vulnerable people in particular so that they can get the help and support they need.

A number of potential issues were cited by those who did not wish to see the duty removed. These included: the potential for a lack of consistency of approach if the duty was reduced to a power, both at local authority level and between local authorities; concerns that people could manipulate the system; an adverse impact on non-homeless applicants; and the potential that individuals might no longer see the need to take personal responsibility to retain their accommodation.

Local Connection

The highest level of support (just under half of those responding to the consultation) was for suspending local connection referrals across all local authorities in Scotland. Just over a quarter supported modifying local connection referrals in another way and just under a fifth did not support commencing the provisions.

The main theme from respondents who wished to see local connection referrals suspended was an expression of support for people experiencing homelessness to be able to choose where they wish to settle. This was viewed as offering choice to people experiencing homelessness, removing unnecessary barriers to finding permanent accommodation and ensuring that homelessness services can be delivered at the point of need.

The main theme from those not wishing to see local connection referrals suspended, was concern over the potential increase to the numbers of referrals in areas that do not have the resources to meet needs. Various different types of local authority were cited, including major cities such as Glasgow or Edinburgh, urban areas or rural and island and highland areas.

Impact Assessments

An Equality Impact Assessment has been completed on the draft instrument and it is viewed as neutral in relation to the protected characteristics. While, at commencement of this instrument, there is no immediate impact on local authorities in respect of the local connection provisions, the Scottish Government will undertake an impact assessment as part of the process to develop and consult on the Ministerial Statement which is to be published within 12 months of commencing this instrument (see details above).

The Scottish Government will monitor the impact of the changes provided for in this instrument on individuals experiencing homelessness, local authorities and third sector providers using evidence from current data collections, and will publish this data regularly.

Financial Effects

The Minister for Local Government, Housing and Planning confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business. As above, for local connection, the Scottish Government will undertake an assessment of the impact as part of the process to develop and consult on the Ministerial Statement which is to be published within 12 months of commencement.

Scottish Government
Housing and Social Services Directorate

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