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Date of Document	23/10/20
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Document Title	Scottish Government Consultation on Modification of Local Connection Referrals in Scotland

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Date	03/11/20

For Office Use Only:	
Library Reference	117/20
Date Received	03/11/20
Bulletin	Nov20

REPORT TO: Members' Library Service

MEETING DATE: November 2020

BY: Head of Service (Development)

SUBJECT: Scottish Government Consultation on Modification of Local Connection Referrals in Scotland

1 PURPOSE

- 1.1 To note the submission of a response to the Scottish Government's consultation on a Ministerial Statement for modifying local connection referrals in Scotland.

2 RECOMMENDATIONS

- 2.1 Members are asked to note the contents of this report and the council's response to the proposals set out in the consultation paper. The response can be found in the background papers attached to this report.

3 BACKGROUND

- 3.1 [The consultation](#) invites views on a statement for exercising the power of Scottish Ministers, under Section 33(B) of the Housing (Scotland) Act 1987, to modify the operation of local connection referrals between local authorities in Scotland.
- 3.2 Last year, the Scottish Government issued a [consultation paper](#) inviting views on a recommendation from the original sitting of the Homelessness and Rough Sleeping Action Group (HARSAG) 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. HARSAG also recommended that Ministers use the new power to suspend referrals between local authorities in Scotland.
- 3.3 Following the consultation, the Homelessness etc. (Scotland) Act 2003 (Commencement No.4) Order 2019 commenced the local connection provisions, giving Scottish Ministers the power to modify the operation of referrals between local authorities within Scotland.

- 3.4 The provisions also required that Scottish Ministers must publish a statement setting out the circumstances and general criteria by reference to which modifications will take place.
- 3.5 The purpose of the current consultation is to:
- seek views about the proposed suspension of referrals,
 - seek views on the core content proposed for the Ministerial Statement, specifically referencing the circumstances for modifying local connection referrals, and the general criteria, by reference to which, the power to modify local connection is to be exercised,
 - suggest any amendments to factors proposed 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; and
 - seek views on the intention to use HL1 data to monitor the impact of this change.
- 3.6 The Council's response sets out that it is not in agreement with the Scottish Government's proposal to suspend all local connection referrals or modify local connection referrals. Since the initial consultation in 2019, the following three areas have only sought to strengthen East Lothian Council's stance that it cannot support the proposed suspension of local connection referrals; the impact of COVID 19, inadequate funding of RRTPs, and wide ranging legislative change.
- 3.7 The extended Unsuitable Accommodation Order brought forward during a global pandemic, the additional 105 HARSAG recommendations agreed in June, a new Prevention Duty, proposals to suspend intentionality, and new Standards for Temporary Accommodation, in an already challenging housing market, fragile economy and pressure on public services, all in addition to the suspension of local connection, risks being counteractive to progress made towards rapid rehousing throughout Scotland.
- 3.8 The council's response recommends that the Scottish Government provides clear guidelines and evidence requirements for local authorities to be able to evidence fully where local connection is having a detrimental effect. The response suggests a further eight factors which the Scottish Government should consider. The response also suggests that local authorities should be able to delay the onset of the suspension to ensure no household seeking accommodation outwith their current local authority areas would be unnecessarily disadvantaged where it was not possible to meet demand.
- 3.9 The Council suggests that the Scottish Government must give due consideration to the potential impact on Health and Social Care Partnerships as a result of the modification to local connection. East Lothian Council also considers it vital for the Scottish Government to publish a clear statement of support and joint working between itself and Health and Social Care. To bring in such significant changes without

agreement from H&SCP throughout Scotland is a considerable risk, and it should not be left to individual local authorities to negotiate with local H&SCP through contribution statements.

- 3.10 The council's response states that central to the Scottish Government's considerations on local authorities' capacity should be to assess the ability to comply with the extended Unsuitable Accommodation Order. This is a clear priority for the Scottish Government and East Lothian. However, the additional burden of suspension of local connection will have a further negative impact on the ability of the council to meet the extended order. The negative impact will also be felt by vulnerable households in East Lothian who may have to endure longer stays in temporary accommodation than previously necessary due to increased demand.

4 POLICY IMPLICATIONS

- 4.1 There are no implications on council policies arising from this consultation.
- 4.2 The Council will publish an annual review of the Local Housing Strategy 2018-23 early 2021. This will take account of any new duties arising from the consultation.

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 The Scottish Government considered the impact on equality groups in the [consultation](#) published in 2019.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – none.
- 6.2 Personnel – none.
- 6.3 Other – none.

7 BACKGROUND PAPERS

- 7.1 The East Lothian Council response can be found in the attached papers below.
- 7.2 East Lothian Council's response to 2019 [Consultation on Local Connection](#).

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Background Paper 7.1: East Lothian Council's response to consultation on a Ministerial Statement for modifying local connection referrals in Scotland.

- 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.**

East Lothian Council provided a strong response to the previous Scottish Government consultation in April 2019. The response set out that the Council was not in agreement with the Scottish Government's proposal to suspend all local connection referrals or modify local connection referrals. The Council's response was clear, that notwithstanding the benefits to individuals in respect of choice, until the Council was able to meet wider Scottish Government aims such as Rapid Rehousing and Unsuitable Accommodations Order, the Council was not in a position to contemplate commencing any modification to local connection.

Since this response, the following three areas have only sought to strengthen East Lothian Council's stance that it cannot support the proposed suspension of local connection referrals; the impact of covid-19, inadequate funding of RRTPs, and wide ranging legislative change.

East Lothian, like other local authorities, has been strongly focused on crisis management and continued service delivery in revised form since the covid-19 pandemic. The Consultation states at paragraph 26 "the Scottish Government therefore decided to postpone the Consultation until a time when capacity to deliver was restored". Since this was published a second wave of covid-19 has been confirmed in Scotland, resulting in local restriction across Central Scotland. With an expected third wave of covid-19 predicted towards the end of January, peaking at the end of March, East Lothian Council believes that capacity has not been restored, and is unlikely to be restored in 2021 for local authorities to deliver modifications to local connection. The covid-19 pandemic has only sought to heighten existing pressures in both the housing market and in the economy, with the UK facing a major recession. All of which will put additional pressure on local authorities to deliver housing and support, proposed suspension of referrals will heighten the pressure further.

During April 2019, discussion was ongoing between Scottish Government and Local Authorities with regard to the allocation of RRTP monies. It is now clear that the allocation to East Lothian is significantly lower than monies initially identified as being required, with the full amount being inadequate to meet both the policy intent of the Scottish Government and the aspirations of East Lothian Council and key partners. Covid-19 has also hampered the ability to spend the existing allocation and progress with plans. While East Lothian Council understands that the proposed suspension of local connection referrals is part of a whole-systems change promoted under the banner

of Rapid Rehousing, the Council strongly urges the Scottish Government to prioritise necessary changes in light of the pandemic.

Finally, the extension of the Unsuitable Accommodation Order is a clear priority for the Scottish Government, alongside new standards for temporary accommodation and East Lothian Council is focused on this accordingly. Meeting the new Order will be a challenge and East Lothian Council anticipates being in breach from the outset. East Lothian Council continues to deliver an extensive affordable housing program, including MMR, LCHO as well as properties for social rent to meet the demands of the county's growing population. The suspension of local connection will put additional pressure on affordable housing stock, and will have a further negative impact on the ability of the Council to meet the Unsuitable Accommodation Order.

In summary, the Council agrees with the principle around individual choice in relation to local connection. However, due to the volume and fast pace of wide ranging legislative change (namely, the extended Unsuitable Accommodation Order brought forward during a global pandemic, the additional 105 HARSAG recommendations agreed in June, a new Prevention Duty and new Standards for Temporary Accommodation) in an already challenging housing market, fragile economy and pressure on public services, any suspension to local connection risks being counteractive to the core principles of the Scottish Government, and East Lothian Council aspirations in homelessness. That is to provide individuals at risk or experiencing homelessness secure and stable housing where any support needs in health, social care and housing is met.

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:

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

While East Lothian Council does not support the proposal to suspend local connection referrals at this time, as clearly stated in response to question 1, it agrees in principle with the text in paragraph 31.

It is vital that the Scottish Government provide clear guidelines and evidence requirements for local authorities to be able to evidence fully where local connection is having a detrimental effect. This is covered in more detail in response to question 3.

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

East Lothian Council recommends that the following criteria is added to paragraph 32.

At the same time, to maintain the capacity for local authorities to fulfil existing or future public protection arrangements for children or adults, including safety concerns in relation to Registered Sex Offenders.

At the same time, to maintain the capacity for local authorities and Health and Social Care Partnerships to fulfil their statutory homelessness duties and their duty to house people in housing need, and respond to: significant undue pressure on care and support services resulting from increases to the scale/frequency of homelessness applications

from households experiencing homelessness with no local connection to the local authority area(s).

It is widely evidenced that long term support must go hand in hand with stable housing for individuals with complex needs including those with addictions and mental health. The Scottish Government must give due consideration to the potential impact on Health and Social Care Partnerships as a result of the modification to local connection. Where H&SCP are unable to respond to the demand caused by the modification, this must be enough for a local authority area to propose a suspension of referrals. Otherwise, the Scottish Government risks all households in the local authority area being unable to access sufficient support for health and/or social care, potentially resulting further trauma, disadvantage and ultimately, affecting their ability to maintain a tenancy.

East Lothian Council also considers it vital for the Scottish Government to publish a clear statement of support and joint working between itself and H&SCP. To bring in such significant changes without due consultation and agreement from H&SCPs is a considerable risk, and it should not be left to individual local authorities to negotiate with local H&SCP through contribution statements. The Scottish Government, NHS Scotland and Social Care must share a joint vision for the modification of local connection to be successful.

3. Please let us know about any suggested amendments you have to the factors proposed in para 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.

East Lothian Council believes that prior to any legislation coming into force, the Scottish Government must set out;

- How it will assess whether each local authority has the ‘capacity’ to meet its duties taking into account the differing contexts of local authorities in Scotland. This must go further than simply stating “proposed factors that will be considered”. The Scottish Government must set out their definition of ‘capacity’ and ‘adversely affected’.
- The evidence required to be supplied by a local authority to put a case forward for a modification to local connection. This must be proportionate and reasonable. The time in which the Scottish Government then make a decision must be swift to ensure that any delays in decision making from Scottish Government does not adversely affect individuals seeking a homelessness response in the Local Authority.
- The length of time in which modification to local connection can take place for, and the process for renewing, reapplying or challenging a decision.

East Lothian Council welcomes the Scottish Government acknowledging that the suspension of local connection may impact on the capacity of a local authority to meet its homelessness and housing duties. And that “we agree also that it is necessary to balance this desire (of choice) with the need to ensure that these choices are realistic in

terms of accommodation and support capacity within local authorities". Meeting the new order will be a challenge. It is therefore recommended that the Scottish Government introduce a mechanism by which local authorities can delay the onset of the suspension within the authority for a set amount of time, rather than having to apply retrospectively for a modification. This would ensure no household seeking accommodation out with their current local authority area would be unnecessarily disadvantaged where it was not possible to meet demand.

In addition to the factors set out within paragraph 33, East Lothian Council considers that the following factors should also be considered;

- The proposed factors in paragraph 33 must differentiate between individuals with a local connection to the presenting LA and those without a local connection to the presenting LA.
- The LA which the household does have a local connection and the reason for applying as homeless elsewhere – with recognition that the given reason will not impact on the household's ability to receive support or submit a homeless application.
- Number of applications / assessments with no connection to any local authority
- Applicants previously registered with another local authority as homeless and transferring local authority area.
- Number of households seeking to apply as homeless across local authorities.
- Financial implications of accommodation
- Support services supporting additional households
- Case studies and anecdotal evidence

East Lothian Council believes that central to the Scottish Government's considerations of the LAs capacity will be to assess the LAs ability to comply with the extended Unsuitable Accommodation Order. The extension of the Unsuitable Accommodation Order is a clear priority for the Scottish Government, alongside new standards for temporary accommodation. Meeting the new order will be a challenge and as stated previously East Lothian Council anticipates being in breach from the outset. The additional burden of suspensions of local connection will have a further negative impact on the ability of the Council to meet the extended Order. The negative impact will also be felt by vulnerable households in East Lothian who may have to endure longer stays in temporary accommodation than necessary due increased demand. With the negative effects of living in temporary accommodation and B&B widely evidenced, it seems counterintuitive for the Scottish Government to proceed with the suspension of local connection at a time where local authorities are not adequately resourced to meet the needs of additional households.

- 4. 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.**

East Lothian Council agrees with the Scottish Government's decision to use HL1 data to monitor the impact of changes to local connection provisions. It will be important for all homelessness staff to be trained and adequately resourced to understand any systems updates.

While HL1 captures some of the intelligence around local connection, the system does not currently record referrals undertaken from one local authority to another which do not result in transfer cases. The number of applicants assessed as having no local connection to East Lothian have significantly increased over the last three years compared with previous years, approximately 35 per annum. East Lothian Council also deals with high numbers of referrals from other local authority areas, in particular City of Edinburgh. HL1 does not currently capture this data, and it would be helpful to adopt a consistent approach across Scotland to this.

It will also be important for HL1 system to capture where an individual might have submitted multiple homeless applications across different local authorities. This has the potential to unintentionally impact upon the numbers of homeless applications as recorded via HL1. It is recommended that Scottish Government provide guidance on how this should be dealt with.

While HL1 recording is a helpful starting point in order to monitor fluctuations in number of households seeking homelessness support as a response to local connection, the data alone will not actually monitor the *impact* of the changes. The impact of changes will be found in analysis of pressures on accommodation, finances and changes to support and care for households. East Lothian Council has provided full details of how the impact should be monitored in response to question 3.