

A consultation on local connection and intentionality provisions in homelessness legislation

A consultation by the Scottish Government

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Riaghaltas na h-Alba
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Glossary

“the 1987 Act” is the Housing (Scotland) Act 1987

Section 26 - intentionality definition

Section 27 - local connection definition

Section 28(2) – sets out what the local authority ‘shall’ do to satisfy themselves whether a person has become homeless or threatened with homelessness intentionally

Section 33 – referral of application to another local authority – sets out the requirements for being able to take this action

“the 2003 Act” is the Homelessness etc. (Scotland) Act 2003

Section 4 – Intentionality (power to modify section 28(2) of 1987 Housing Act)

Section 8 – Local Connection (power to modify section 33 of 1987 Housing Act)

Introduction

Having somewhere to call home is a basic human right and housing is one of the most important factors in any person's quality of life. Scotland has some of the strongest homelessness rights in the world, but we know that not everyone is able to access those rights and that there are some who still face barriers to support when faced with homelessness. The Scottish Government is committed to ensuring everyone has a safe, warm settled home of their own by building on our strong foundations to go further to prevent, tackle and ultimately end homelessness for good.

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. Ministers subsequently established the Homelessness and Rough Sleeping Action Group (HARSAG) to make recommendations on how these transformational changes can be achieved.

In June 2018, the HARSAG completed their work, producing a comprehensive set of 70 recommendations aiming to secure strategic changes at both the national and local level which would help support delivery on the front-line. All 70 recommendations have been translated into the [Ending Homelessness Together High Level Action Plan](#) which was published by the Scottish Government and COSLA on 27 November 2018. This plan sets out the actions we will take in partnership with others to realise our shared ambitions to end rough sleeping and homelessness.

This Scottish Government consultation paper invites your views on taking forward our joint commitment to address barriers for people facing homelessness by implementing the HARSAG recommendation to commence the Local Connection and Intentionality provisions in the Homelessness etc. (Scotland) Act 2003. We have also committed in our Action Plan to narrowing the definition of intentionality to focus on 'deliberate manipulation' of the homelessness system, as recommended by the HARSAG. The Scottish Government are currently considering the options regarding this element of the recommendation and are asking for your initial views in section 3 to inform our further work.

The proposed changes are set out in the next chapter and the full recommendation set out by the HARSAG is on page 10.

The consultation paper sets out the current position and proposals to commence the current local connection and intentionality provisions within homelessness legislation. People working in local authorities and with delivery partners across Scotland will be at the heart of making this change and ensuring barriers to support are addressed; and people facing homelessness are at the heart of our commitment to making these changes. We want as many people as possible to share their views on commencing Local Connection and Intentionality provisions in the Homelessness etc. (Scotland) Act 2003. We would encourage you to respond to any or all of the

questions in Section 3 where you feel you have a contribution to make. However, in responding to this consultation, please do not feel constrained by the questions set.

The consultation paper contains 4 sections:

- Section 1: Background – sets out the background to the provisions contained in the Housing (Scotland) Act 1987 as they currently apply; to the powers contained within the Homelessness (Scotland) Act 2003 and further information on the HARSAG and the recommendations proposed.
- Section 2: Proposed Changes – sets out the proposed changes to the current provisions and monitoring arrangements.
- Section 3: Consultation Questions and How to Respond – contains the consultation questions; information on how to respond to the consultation and a copy of the respondent information form.
- Section 4: Annexes – contains Annexes referred to throughout the consultation paper.

Section 1: Background

In April 2003, the Homelessness etc. (Scotland) Act 2003 (“the 2003 Act”) received Royal Assent and legislation was introduced to radically overhaul Scotland’s existing homelessness laws by, in the main, amending the Housing (Scotland) Act 1987 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. The 2003 Act also improved the housing rights of people experiencing domestic abuse and provided a mechanism for the abolition of priority need.

While the majority of provisions in the 2003 Act have been implemented, this consultation deals with proposals to implement provisions relating to Local Connection and Intentionality which have still to be commenced.

These provisions were in the 2003 Act following the recommendations made in the early 2000s from the previous Homelessness Task Force, appointed by the Scottish Executive in 1999, with the aims of:

- helping households settle where they choose to live, recognising that there is usually a very good reason for their choice, and
- ensuring people found intentionally homeless would receive the support they needed to address the actions that led to the intentionality decision being made.

Initial discussions in 2005 about commencing these provisions were delayed due to concerns about how we would be able to measure impact. Our national data collection was improved and updates to HL1 introduced in 2007. Following subsequent discussions in 2009, we decided to fully implement the abolition of priority need before revisiting the provisions.

Our Ending Homelessness Together: High Level Action Plan sets out our commitment to a person-centered approach. Commencing these provisions now is fundamental to delivering this commitment, enabling people to access the support they need when and where they need it.

Current legislative position on Local connection

Local connection is defined in the Housing (Scotland) Act 1987 as a connection which a person has with an area because:

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

1987 Act

Local authorities currently have the power under section 33 of the 1987 Act to refer homeless households who do not have a local connection with them to another local authority where they do have such a connection¹.

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 household would face the risk of domestic abuse in the area where they have a local connection.

Local connection is defined at section 27 of the 1987 Act, as amended by the Homelessness etc. (Scotland) Act 2003². A local connection 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.

Chapter 8 of the Code of Guidance on Homelessness contains further guidance on implementing the provisions which are currently in force³.

2003 Act

Section 8 of the 2003 Act gives Scottish Ministers the power to issue a statutory instrument restricting the operation of the local connection referral rules. This power may be applied to all local authorities or to selected local authorities and can include making referrals, receiving referrals or both making and receiving referrals. Section 8 makes provision to insert new sections 33A and 33B into the Housing (Scotland) Act 1987. These additional sections have the following effects⁴:

- Scottish Ministers can modify local authorities' powers to refer an applicant to another local authority on local connection grounds. This allows for national modification to suspend all referrals; for suspension of referrals between particular local authorities or suspension of referrals for particular groups of people who are homeless. It also allows for the subsequent reversal of any changes made.
- Within 12 months of issuing the Scottish Statutory Instrument (SSI) to commence the Section 8 provisions, Scottish Ministers must publish a statement setting out the general criteria by reference to which modifications will take place.
- Scottish Ministers are obliged to consult before preparing or amending this statement.

¹ See Annex A for section 33 of the 1987 Act in full

² See Annex C for section 27 of the 1987 Act in full

³ The Code of Guidance is currently under review and will be updated in due course

⁴ See Annex B for amendments to section 33 in full should section 8 of the 2003 Act be commenced

Current legislative position on Intentionality

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 continue to occupy.

1987 Act

The Housing (Scotland) Act 1987 currently places a duty on local authorities to investigate whether a person they have found to be homeless or threatened with homelessness became homeless or threatened with homelessness intentionally.

While most homelessness applicants are found to be unintentionally homeless, the intentionality criteria allows local authorities 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. However, if found to be intentionally homeless local authorities are not obliged to provide the person with settled housing.

Local authorities should consider all of the circumstances relating to an applicant before reaching a decision on intentionality, and each case should be decided on its merits. Even if the local authority is satisfied that the homelessness was intentional, the applicant is still entitled to receive temporary accommodation, and advice and assistance from the local authority. The local authority may also have continuing duties to children and young people under the terms of the Children (Scotland) Act 1995.

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 1987 Act⁵. There are three requirements - all of which must be satisfied:

- the applicant, if homeless, must deliberately have done, or failed to do, something in consequence of which the individual 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 (section 26(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 (section 26 (4)).
- 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 on the part of a person unaware of any relevant fact is not to be regarded as deliberate.

⁵ See Annex D for section 26 of the 1987 Act in full

Chapter 7 of the Code of Guidance on Homelessness contains further guidance on implementing the provisions which are currently in force⁶.

2003 Act

The Homelessness etc. (Scotland) Act 2003 makes provision to change the operation of the intentionally homeless test which, if commenced, would give local authorities discretion, rather than the current duty, to investigate intentionality.

When commenced, Section 4 of the 2003 Act would remove the duty on local authorities to assess households for intentionality. It inserts a new section 28(2)(b) and a change to section 30 (3)(a) of the 1987 Act. These sections are replicated in full in Annex B and would have the following effects:

- Discretion is given to local authorities as to whether to investigate intentionality, in place of the current duty under section 28(2)(b).
- Local authorities are not under a duty to notify the applicant of their findings as to intentionality where they have not carried out an investigation.

Renewed commitments on preventing, tackling and ending homelessness

The Scottish Government established the HARSAG 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.

The work of the HARSAG was complemented and informed by the work by the Local Government and Communities Committee of the Scottish Parliament. The HARSAG's reports⁷ highlight the challenges we face and set out 70 recommendations for action needed across national and local government in conjunction with other partners, to eradicate rough sleeping, transform the use of temporary accommodation and end homelessness.

The recommendations were firmly rooted in the views of people with experience of homelessness and rough sleeping. The [Aye We Can](#) report prioritised the views of people with lived experience and ensured that the HARSAG's recommendations were based directly on people's experiences and priorities.

The Scottish Government accepted all 70 of the recommendations, in principle, and they have now been translated into the [Ending Homelessness Together High Level Action Plan](#) which was published by Scottish Government and COSLA on 27 November 2018. The Action Plan sets out a five year programme, to be delivered in partnership with local authorities and others, to transform temporary accommodation and end homelessness.

⁶ The Code of Guidance is currently under review and will be updated in due course

⁷ <https://www.gov.scot/groups/homelessness-and-rough-sleeping-action-group/>

Local Connection and Intentionality

Specifically for local connection and intentionality, the HARSAG made the following recommendation aimed at reducing barriers to people getting the support they need so that they can be helped at the earliest opportunity:

The HARSAG's recommendation 2.15 ([Interim Report](#))

“Revise legislative arrangements that can result in difficulties with people being able to access their rights Scottish Government should revise the legislative arrangements on local connection and intentionality. Specifically, they should commence the current provisions on intentionality in the Homelessness etc. (Scotland) Act 2003 and narrow the definition to focus on instances of ‘deliberate manipulation’ of the homelessness system. In addition, they should commence the provisions on local connection in the 2003 Act and Ministers should exercise powers they would then have under S8 to suspend referrals between local authorities to remove barriers to support for people who are homeless or rough sleeping or at risk of homelessness or rough sleeping. Scottish Government should monitor the impact of these changes on local authorities to respond to any local authorities coming under undue pressure as a result of disproportionate net inflows.”

Next Steps

The delivery of the commitments in the joint Scottish Government/COSLA Action Plan is being overseen by the Homelessness Prevention and Strategy Group, jointly chaired by Kevin Stewart MSP, Minister for Local Government, Housing and Planning and Cllr Elena Whitham, COSLA Spokesperson for Community Wellbeing.

The collaborative and inclusive nature of the work of the HARSAG is something we will ensure continues going forward.

This consultation provides you with an opportunity to share your views on commencing the Local Connection and Intentionality provisions in the Homelessness etc. (Scotland) Act 2003, as recommended by the HARSAG. The proposed changes are set out in the next chapter.

Section 2: Proposed Changes

Local Connection

The HARSAG recommended the following actions on local connection:

1. Commence the provisions on local connection in the 2003 Act.
2. Suspend referrals between local authorities to remove barriers to support for people who are homeless or rough sleeping or at risk of homelessness or rough sleeping.
3. Scottish Government should monitor the impact of these changes on local authorities to respond to any local authorities coming under undue pressure as a result of disproportionate net inflows.

In line with the HARSAG recommendation it is now proposed to bring forward secondary legislation under section 33A of the 1987 Act which will then allow us to suspend the local connection referral provision which is currently in place.

We agree with the HARSAG that referrals between local authorities should be suspended to remove barriers to support people who are homeless or rough sleeping or at risk of homelessness or rough sleeping.

It is our expectation that those who are homeless or rough sleeping are more likely to resettle successfully, and avoid repeat homelessness, if they are living in an area of their choosing and which supports other elements of their lives (family, social networks, employment, education etc.), including their future aspirations and whether they are integrated into the local community. People experiencing homelessness are best placed to make the judgement as to the geographical area which best meets these needs. Choice may lead to better outcomes than a strict interpretation of the legislative test. However, we agree with the HARSAG that it is necessary to balance this desire with the need to ensure that these choices are realistic in terms of accommodation and support capacity within local authorities.

We are in a position to commence these provisions in 2019 and we are seeking your views on the timing in Section 3. As mentioned in the introduction to this paper, Ministers are obliged to make a statement within 12 months of section 8 of the 2003 Act coming into force setting out the circumstances in which, and the general criteria by reference to which, the power to modify the local connection provisions is to be exercised. Following this statement, any suspension of local connection referrals would then be introduced by statutory order.

Intentionality

The HARSAG recommended actions on intentionality:

1. Commence the current provisions on intentionality in the Homelessness etc. (Scotland) Act 2003.
2. Narrow the definition to focus on instances of 'deliberate manipulation' of the homelessness system.

Current provisions in the 1987 Act give local authorities a duty to investigate whether the individual became homeless or threatened with homelessness intentionally⁸.

In line with the HARSAG recommendation it is now proposed to change the wording of intentionality provisions under section 28 of the 1987 Act in order to give local authorities a discretion, rather than a duty, as to whether to investigate whether or not a household is intentionally homeless.

We agree with the HARSAG that there is a need for intentionality provisions to mitigate against perverse incentives. Provisions need to be in place to ensure that people don't take advantage of the system. However, we must ensure that this does not increase the disadvantages faced by any groups, such as those with protected characteristics and/or multiple, complex needs, by restricting support available in cases where people are e.g. fleeing their home due to threats of violence or moving out of unaffordable accommodation, in an attempt to avoid increasing rent arrears debt.

It is proposed that changes would be made to the intentionality provisions by commencing provisions in the 2003 Act. The changes made would mean that the authority **may, if they think fit**, make any further inquiries necessary to satisfy themselves as to whether a household has become homeless or threatened with homelessness intentionally⁹.

We are in a position to commence these provisions in 2019 and we are seeking your views on the timing in Section 3.

The HARSAG also recommended narrowing 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 (in the Housing (Scotland) Act 1987) to be changed. We are carefully considering the options regarding this element of the recommendation and plan to take forward separately (timing to be confirmed).

Monitoring

Scottish Government plan to monitor the impact of these changes on local authorities by continuing with our current HL1 data collection. This will mean that we will be aware of any local authorities coming under undue pressure as a result of disproportionate net inflows and will be able to take appropriate action should it be proved necessary.

The current HL1 National Statistics data collection in Scotland collects data at the point people make a homelessness application to the local authority on a quarterly basis. It allows local authorities to record whether or not the applicant household has a local connection with the area to which they have applied, regardless of the impact on the decision making. It also allows local authorities to record whether or not an

⁸ See Annex A for section 28 in the 1987 Act in full

⁹ See Annex B for amendments to section 28 in full should section 4 of the 2003 Act be commenced

applicant is assessed as intentionally homeless, regardless of the impact on the decision making. This allows us and local authorities to monitor applications.

National data on local connection and intentionality

During 2017/18, 28,792 households were assessed as homeless or threatened with homelessness¹⁰.

The national data regarding local connection show that there have been decreases over time in both the number of applicants assessed as having a local connection with a local authority and in the number of applicants referred to another local authority under the 1987 Act. Single people were more likely to be referred than single parents and males were slightly more likely to be referred than females¹¹.

Across Scotland, relatively few applicants are found to be intentionally homeless or threatened with homelessness, although the overall numbers have increased slightly over time. As with local connection, a slightly higher proportion of males are found intentionally homeless than might be expected. A higher proportion of people aged 35-49 are likely to be found intentionally homeless than might be expected from the data on overall assessments, and fewer single parents and people between 16 and 24. The most common reason for those found intentionally homeless to be applying to their local authority for support relates to default on rent or mortgage payments¹².

10 Source: Homelessness in Scotland: 2017 to 2018 – Scottish Government: <https://www.gov.scot/publications/homelessness-scotland-2017-18/pages/1/>

11 Relevant data are presented in Annex E.

12 Relevant data are presented in Annex F.

Section 3: Consultation Questions and How to Respond

1. Commencing the local connection provisions in the Homelessness etc. (Scotland) Act allows Scottish Ministers to modify referrals relating to local connection. The HARSAG has recommended that referrals should be suspended between all local authorities for all groups. Do you think we should:

- Suspend all local connection referrals
- Modify local connection referrals in another way (please give details)
- Not commence these provisions i.e. do nothing

Please explain your answer.

2. Please tell us about any potential impacts of suspending referrals relating to local connection for people who are homeless or at risk of homelessness. Please include any positive or negative impacts.

We are particularly interested in your views on the potential impacts for the following:

- (i) People with multiple and complex needs....
- (ii) Families with children....
- (iii) Other disadvantaged households/groups, including those experiencing poverty and/or material deprivation....
- (iv) Local authorities and partner organisations....
- (v) Business or third sector organisations...
- (vi) People experiencing domestic abuse...
- (vii) Others....

3. We propose monitoring the impact of any changes to the local connection legislation through continued collection and analysis of HL1 data. Please give us your views on this.

4. Commencing the intentionality provisions in the Homelessness etc. (Scotland) Act 2003 leads to giving authorities a discretion, rather than a duty, as to whether to investigate whether or not a household is intentionally homeless. Do you think we should:

- Remove the duty on local authorities to assess households for intentionality
- Not remove the duty on local authorities to assess households for intentionality

Please explain your answer.

5. Please tell us about any potential impacts for people who are homeless or at risk of homelessness, of commencing the intentionality provisions in the Homelessness etc. (Scotland) Act 2003. Please include any positive or negative impacts.

We are particularly interested in your views on the potential impacts for the following:

- (i) People with multiple and complex needs....
- (ii) Families with children....
- (iii) Other disadvantaged households/groups, including those experiencing poverty and/or material deprivation....
- (iv) Local authorities and partner organisations....

- (v) Business or third sector organisations...
- (vi) People experiencing domestic abuse...
- (vii) Others....

6. Please detail any potential costs that maybe incurred should the local connection and intentionality provisions be commenced.

7. HARSAG recommended narrowing the definition of intentionality to focus only on instances of deliberate manipulation. Please provide your initial views on the advantages and disadvantages of amending the definition. As noted in section 2 we intend to carry out further work on this at a later date and your initial thoughts will help inform this.

8. While we are in a position to commence these provisions in 2019 we would welcome your views about the most effective timing, including reasons for your response.

9. Please give us your views on the impact of these proposed changes on people with protected characteristics (see Annexes E and F for currently available national statistics):

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

10. In relation to local connection and intentionality provisions in homelessness legislation, please outline any other comments you wish to make, including whether you think there may be unintended consequences (you have not mentioned elsewhere) related to commencing these provisions.

Responding to this Consultation

We are inviting responses to this consultation by Thursday 25 April 2019.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at [<https://consult.gov.scot/housing-regeneration-and-welfare/local-connection-and-intentionality>]. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of Thursday 25 April 2019.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Marion Morris

Scottish Government
Homelessness Team – Legislation and Measurement
2H North
Victoria Quay
EH6 6QQ

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at Homelessness_External_Mail@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



Consultation on local connection and intentionality provisions in homelessness legislation

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

Individual

Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

Publish response only (without name)

Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No

Sections 28, 30 and 33 in the Housing (Scotland) Act 1987

28.— Inquiry into cases of possible homelessness or threatened homelessness.

(1) If a person (“an applicant”) applies to a local authority for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves as to whether he is homeless or threatened with homelessness.

(2) If the authority are so satisfied, they shall make any further inquiries necessary to satisfy themselves as to—

[...] ¹

(b) whether he became homeless or threatened with homelessness intentionally; and if the authority think fit, they may also make inquiries as to whether he has a local connection with the district of another local authority in Scotland, England or Wales.

30.— Notification of decision and reasons.

(1) On completing their inquiries under section 28, the local authority shall notify the applicant of their decision on the question whether he is homeless or threatened with homelessness.

[...] ¹

(3) If they notify him that their decision is that he [is homeless or threatened with homelessness] ², they shall at the same time notify him—

(a) of their decision on the question whether he became homeless or threatened with homelessness intentionally, and

(b) whether they have notified or propose to notify any other local authority under [section 33](#) that his application has been made.

[

(3A) If they decide that he is homeless [or threatened with homelessness,] ⁴ but would not have done so without having had regard to a restricted person, they shall also notify him of—

(a) the fact that their decision was reached on that basis,

(b) the name of the restricted person,

(c) the reason why the person is a restricted person, and

(d) the effect of section 31(2G) or (as the case may be) [32\(2A\) and \(2B\)](#).

] ³

(4) If they notify him—

(a) that they are not satisfied—

(i) that he is homeless or threatened with homelessness, [...] ⁵

[...] ⁵

(b) that they are satisfied that he became homeless or threatened with homelessness intentionally, or

(c) that they have notified or propose to notify another local authority under [section 33](#) that his application has been made,

they shall at the same time notify him of their reasons.

[

(4A) They shall also notify him—

- (a) that he may request a review of the decision and of the time within which such a request must be made, and
- (b) of the advice and assistance that is available to him in connection with any such review.

] ⁶

(5) The notice required to be given to a person under this section shall be given in writing and shall, if not received by him, be treated as having been given to him only if it is made available at the authority's office for a reasonable period for collection by him or on his behalf.

[

(6) In this Part "*a restricted person*" means a person—

- (a) who is not eligible for assistance under this Part,
- (b) who is subject to immigration control within the meaning of the [Asylum and Immigration Act 1996](#), and
- (c) either—
 - (i) who does not have leave to enter or remain in the United Kingdom, or
 - (ii) whose leave to enter or remain in the United Kingdom is subject to a condition to maintain and accommodate himself, and any dependants, without recourse to public funds.

33.— Referral of application to another local authority.

(1) If a local authority—

(a) are satisfied that an applicant is homeless [...] ¹ and are not satisfied that he became homeless intentionally, but

(b) are of opinion that the conditions are satisfied for referral of his application to another local authority,

they may notify that other local authority in Scotland, England or Wales of the fact that his application has been made and that they are of that opinion.

(2) The conditions of referral of an application to another local authority are—

(a) that neither the applicant nor any person who might reasonably be expected to reside with him has a local connection with the district of the authority to whom his application was made,

(b) that the applicant or a person who might reasonably be expected to reside with him has a local connection with that other local authority's district, and

(c) that neither that applicant nor any person who might reasonably be expected to reside with him will run the risk of domestic [abuse] ² in that other local authority's district.

(3) For the purposes of this section a person runs the risk of domestic [abuse] ³ —

(a) if he runs the risk of [abuse (within the meaning of the [Protection from Abuse \(Scotland\) Act 2001 \(asp 14\)](#))] ⁴ from a person with whom, but for the risk of [abuse] ³, he might reasonably be expected to reside, or from a person with whom he formerly resided [...] ⁵

[...] ⁵

(4) The question whether the conditions for referral of an application are satisfied shall be determined by agreement between the notifying authority and the notified authority, or in default of agreement, in accordance with such arrangements as the Secretary of State may direct by order made by statutory instrument.

(5) An order may direct that the arrangements shall be—

(a) those agreed by any relevant authorities or association of relevant authorities, or

(b) in default of such agreement, such arrangements as appear to the Secretary of State to be suitable, after consultation with such associations representing relevant authorities, and such other persons, as he thinks appropriate.

(6) No order shall be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament.

**Amendments to Sections 28, 30 and 33 of the Housing (Scotland) Act 1987
should sections 4 and 8 of the Homeless etc. (Scotland) Act 2003 be
commenced**

28.— Inquiry into cases of possible homelessness or threatened homelessness.

(1) If a person (“an applicant”) applies to a local authority for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves as to whether he is homeless or threatened with homelessness.

(2) If the authority are so satisfied, they ~~shall make any further inquiries necessary to satisfy themselves as to—~~

~~[...]~~¹

(b) may, if they think fit, make any further inquiries necessary to satisfy themselves as to whether the individual became homeless or threatened with homelessness intentionally; and if the authority think fit, they may also make inquiries as to whether the individual has a local connection with the district of another local authority in Scotland, England or Wales.

30.— Notification of decision and reasons.

(1) On completing their inquiries under section 28, the local authority shall notify the applicant of their decision on the question whether he is homeless or threatened with homelessness.

~~[...]~~¹

(3) If they notify him that their decision is that he [is homeless or threatened with homelessness]², they shall at the same time notify him—

(a) **where they have made inquiries under section 28(2)(b)**, of their decision on the question whether he became homeless or threatened with homelessness intentionally, and

(b) whether they have notified or propose to notify any other local authority under [section 33](#) that his application has been made.

[

(3A) If they decide that he is homeless [or threatened with homelessness,]⁴ but would not have done so without having had regard to a restricted person, they shall also notify him of—

(a) the fact that their decision was reached on that basis,

(b) the name of the restricted person,

(c) the reason why the person is a restricted person, and

(d) the effect of section 31(2G) or (as the case may be) [32\(2A\) and \(2B\)](#).

]³

(4) If they notify him—

(a) that they are not satisfied—

(i) that he is homeless or threatened with homelessness, [...]⁵

~~[...]~~⁵

(b) that they are satisfied that he became homeless or threatened with homelessness intentionally, or

(c) that they have notified or propose to notify another local authority under [section 33](#) that his application has been made,

they shall at the same time notify him of their reasons.

[

(4A) They shall also notify him—

(a) that he may request a review of the decision and of the time within which such a request must be made, and

(b) of the advice and assistance that is available to him in connection with any such review.

] ⁶

(5) The notice required to be given to a person under this section shall be given in writing and shall, if not received by him, be treated as having been given to him only if it is made available at the authority's office for a reasonable period for collection by him or on his behalf.

[

(6) In this Part “*a restricted person*” means a person—

(a) who is not eligible for assistance under this Part,

(b) who is subject to immigration control within the meaning of the [Asylum and Immigration Act 1996](#), and

(c) either—

(i) who does not have leave to enter or remain in the United Kingdom, or

(ii) whose leave to enter or remain in the United Kingdom is subject to a condition to maintain and accommodate himself, and any dependants, without recourse to public funds.

] ⁷

33.— Referral of application to another local authority.

(1) If a local authority—

(a) are satisfied that an applicant is homeless [...] ¹ and are not satisfied that he became homeless intentionally, but

(b) are of opinion that the conditions are satisfied for referral of his application to another local authority,

they may notify that other local authority in Scotland, England or Wales of the fact that his application has been made and that they are of that opinion.

(2) The conditions of referral of an application to another local authority are—

(a) that neither the applicant nor any person who might reasonably be expected to reside with him has a local connection with the district of the authority to whom his application was made,

(b) that the applicant or a person who might reasonably be expected to reside with him has a local connection with that other local authority's district, and

(c) that neither that applicant nor any person who might reasonably be expected to reside with him will run the risk of domestic [abuse] ² in that other local authority's district.

(3) For the purposes of this section a person runs the risk of domestic [abuse] ³ —

(a) if he runs the risk of [abuse (within the meaning of the [Protection from Abuse \(Scotland\) Act 2001 \(asp 14\)](#))] ⁴ from a person with whom, but for the risk of [abuse] ³, he might reasonably be expected to reside, or from a person with whom he formerly resided [...] ⁵

[...] ⁵

(4) The question whether the conditions for referral of an application are satisfied shall be determined by agreement between the notifying authority and the notified

authority, or in default of agreement, in accordance with such arrangements as the Secretary of State may direct by order made by statutory instrument.

(5) An order may direct that the arrangements shall be—

(a) those agreed by any relevant authorities or association of relevant authorities, or
(b) in default of such agreement, such arrangements as appear to the Secretary of State to be suitable, after consultation with such associations representing relevant authorities, and such other persons, as he thinks appropriate.

(6) No order shall be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament.

33A Power to modify section 33

(1) The Scottish Ministers may by order made by statutory instrument provide that, for so long as the order is in force, the power of a local authority under subsection (1) of section 33 to notify another local authority of the matters referred to in that subsection—

(a) shall not be exercisable by such local authorities or such descriptions of local authority as are specified in the order, or shall be exercisable by such local authorities or descriptions of local authority as are specified in the order only in such circumstances, or with such modifications, as are specified in the order;

(b) shall not be exercisable in relation to such local authorities or such descriptions of local authority as are specified in the order, or shall be exercisable in relation to such local authorities or descriptions of local authority as are specified in the order only in such circumstances, or with such modifications, as are specified in the order.

(2) An order under this section may—

(a) provide for this Part to apply with such modifications, and

(b) make such transitional, transitory or saving provision, as the Scottish Ministers think necessary or expedient in consequence of the order.

(3) A statutory instrument containing an order under this section is, if made without a draft having been laid before, and approved by a resolution of, the Scottish Parliament, subject to annulment in pursuance of a resolution of the Scottish Parliament.

33B Statement on exercise of power to modify section 33

(1) The Scottish Ministers must, before the expiry of the period of 12 months beginning with the coming into force of this section, prepare and publish a statement setting out the circumstances in which, and the general criteria by reference to which, the power under section 33A is to be exercised.

(2) The Scottish Ministers—

(a) must keep the statement under review;

(b) may from time to time modify the statement; and

(c) must publish any modified statement.

(3) Before preparing or modifying the statement, the Scottish Ministers must consult—

(a) such associations representing local authorities; and

(b) such other persons, as they think fit.

Meaning of Local Connection in the Housing (Scotland) Act 1987

27.— Meaning of “local connection”.

(1) Any reference in this Part to a person having a local connection with a district is a reference to

his having a connection with that district—

(a) because he is, or in the past was, normally resident in it and his residence in it is or was

of his own choice; or

(b) because he is employed in it, or

(c) because of family associations, or

(d) because of any special circumstances.

(2) Residence in a district is not of a person's own choice for the purposes of subsection (1) if he

became resident in it—

(a) because he or any person who might reasonably be expected to reside with him—

(i) [...]**1**

(ii) was detained under the authority of any Act of Parliament, or

[(iii) was resident in accommodation provided in pursuance of section 95 (provision of support for asylum-seekers and dependants) of the Immigration and Asylum Act 1999 (c.33), or] **2**

(b) in such other circumstances as the Secretary of State may by order specify.

(3) A person is not employed in a district for the purposes of subsection (1)—

Housing (Scotland) Act 1987 Page 26

(a) [...]**3**

(b) in such [...]**4** circumstances as the Secretary of State may by order specify.

(4) An order under subsections (2) or (3) shall be made by statutory instrument which shall be

subject to annulment in pursuance of a resolution of either House of Parliament.

Definition of Intentionality in the House (Scotland) Act 1987

26.— Becoming homeless intentionally.

(1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(2) A person becomes threatened with homelessness intentionally if he deliberately does or fails to do anything the likely result of which is that he will be forced to leave accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(3) For the purposes of subsection (1) or (2) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.

(4) Regard may be had, in determining for the purpose of subsections (1) and (2) whether it would have been reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the district of the local

Local connection data¹³**Table 1 - Applicants referred to another local authority under the 1987 Act**

	Applicant referred to other LA (under 87 Act)			
	2014/2015	2015/2016	2016/2017	2017/18
All cases assessed as unintentionally or intentionally homeless or threatened with homelessness	201	166	152	117
Cases assessed as unintentionally homeless only	180	154	139	106

Table 2 – Applicants assessed as having a local connection with another local authority

	2014/15	2015/16	2016/17	2017/18
Cases assessed as having a local connection with another local authority (total of all local authority areas in Scotland)	835	655	535	495

Table 3 – Applicants referred to another local authority under the 1987 Act, by gender

	Proportion assessed as homeless or threatened with homelessness	Proportion referred to another local authority under 1987 Act
Male	54%	58%
Female	46%	42%
Total (number)	28,792	117

Table 4 – Applicants referred to another local authority under the 1987 Act by household type

	Proportion assessed as homeless or threatened with homelessness	Proportion referred to another local authority under 1987 Act
Single person	65%	83%
Single parent	23%	9%
Couple	3%	4%
Couple with children	5%	4%
Other	2%	0%
Other with children	2%	0%

¹³ Source: Homelessness in Scotland: 2017 to 2018 – Scottish Government: <https://www.gov.scot/publications/homelessness-scotland-2017-18/pages/1/>

Total (number)	28,792	117
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ANNEX F

Intentionality data¹⁴

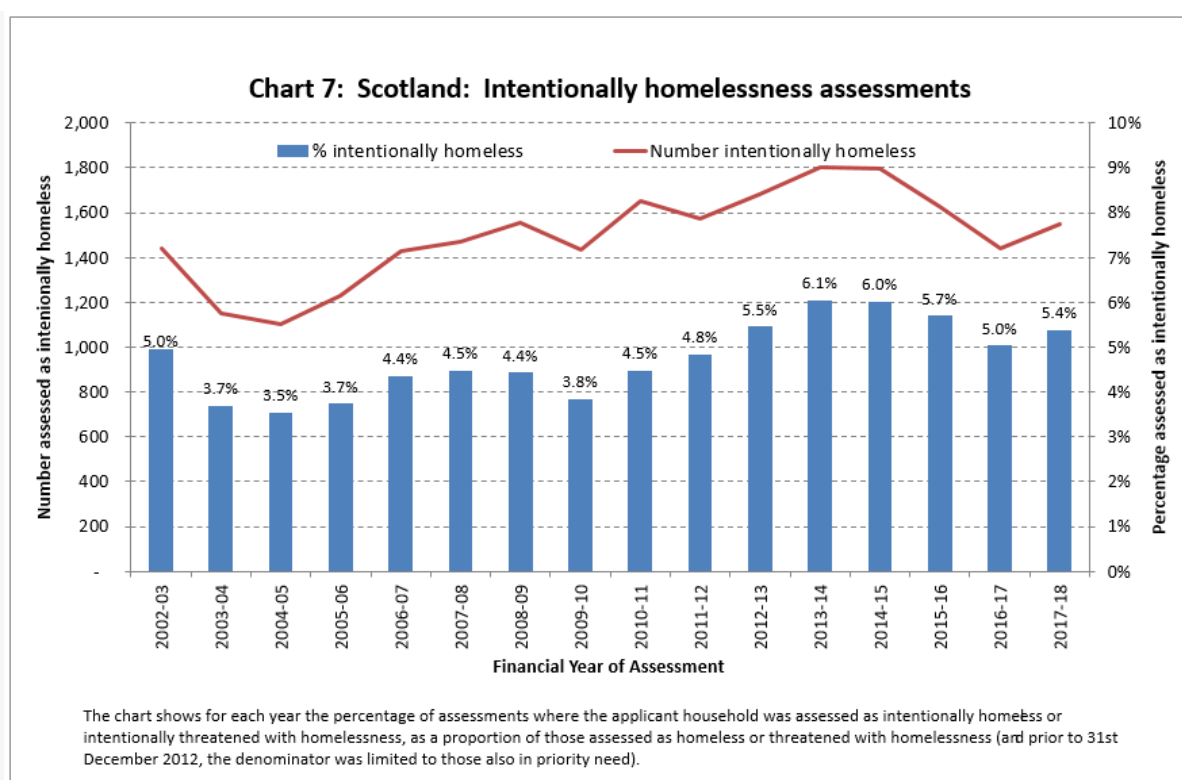


Table 5 – Applicants assessed as intentionally homeless, by gender

Gender	Proportion assessed as homeless or threatened with homeless	Proportion assessed as intentionally homeless
Male	54%	60%
Female	46%	40%
Total (number)	28,792	1,551

Table 6 – Applicants assessed as intentionally homeless, by household type

Household type	Proportion assessed as homeless or threatened with homelessness	Proportion assessed as intentionally homeless
Single person	65%	68%
Single parent	23%	18%
Couple	3%	4%
Couple with children	5%	5%
Other	2%	2%
Other with children	2%	3%
Total (number)	28,792	1,551

¹⁴ Source: Homelessness in Scotland: 2017 to 2018 – Scottish Government: <https://www.gov.scot/publications/homelessness-scotland-2017-18/pages/1/>

Table 7 – Applicants assessed as intentionally homeless, by age

Age	Proportion assessed as homeless or threatened with homelessness	Proportion assessed as intentionally homeless
16-17	4%	1%
18-24	21%	17%
25-34	33%	34%
35-49	29%	35%
50-64	11%	12%
65+	2%	1%
Total (number)	28,792	1,551

 SCOTTISH STATUTORY INSTRUMENTS

2019 No. (C.)

HOUSING

**The Homelessness etc. (Scotland) Act 2003 (Commencement No. 4)
Order 2019**

<i>Made</i> - - - -	2019
<i>Laid before the Scottish Parliament</i>	2019
<i>Coming into force</i> - -	2019

The Scottish Ministers make the following Order in exercise of the powers conferred by section 14(1) of the Homelessness etc. (Scotland) Act 2003 (a).

Citation and commencement

1. This Order may be cited as the Homelessness etc. (Scotland) Act 2003 (Commencement No. 4) Order 2019 and comes into force on [2019].

Appointed day

2. The day appointed for the coming into force of sections 4 (b) (inquiries as to intentional homelessness) and 8 (power to modify section 33 of the 1987 Act) of the Homelessness etc. (Scotland) Act 2003 is [2019].

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh

2018

(a) 2003 asp 10.

(b) Section 4 is amended by S.S.I. 2012/330.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force sections 4 and 8 of the Homelessness etc. (Scotland) Act 2003. The Bill for that Act received Royal Assent on 9 April 2003 and sections 13 and 14 came into force on that day.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
Sections 1-3, 7, 9 and 10	30 January 2004	2003/609
Section 12	2 July 2004	2004/288
Section 11	2 October 2008 for the purpose of making regulations; and 1 April 2009 for all purposes	2008/313



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