



## **NORTHAMPTON BOROUGH COUNCIL**

### **SCRUTINY PANEL 3**

### **HOMELESSNESS AND ROUGH SLEEPERS**

**8 NOVEMBER 2018**

#### **BRIEFING NOTE: RELEVANT LEGISLATION**

## **1 INTRODUCTION**

- 1.1 At its inaugural scoping meeting, Scrutiny Panel 3 (Homelessness and Rough Sleepers) agreed that it would receive details of relevant legislation to inform its evidence base.
- 1.2 In setting its scope (terms of reference), the Scrutiny Panel suggested that relevant legislation includes:
  - Homelessness Reduction Act 2017
  - The Health and Social Care Act 2012
- 1.3 In addition, a summary of the homelessness legislation and the duties, powers and obligations on housing authorities and others towards people who are homeless or threatened with homelessness as provided by Central Government is provided for the Scrutiny Panel.

## **2 RELEVANT LEGISLATION**

### **2.1 Homelessness Reduction Act 2017**

- 2.1.1 The Homelessness Reduction Act 2017 became an Act on 27 April 2017. It adds two new duties to the original statutory rehousing duty:

Duty to prevent homelessness

Duty to relieve homelessness (further explained in paragraph 2.1.2)

- 2.1.2 Homelesslink has summarised the key measures in the Act that include:

- *“An extension of the period during which an authority should treat someone as threatened with homelessness from 28 to 56 days, and clarification of the action an authority should take when someone applies for assistance having been served with a section 8 (1) or section 21 (2)*

*notice. These provisions represent a shift in focus to early intervention, and aim to encourage local housing authorities to act quickly and proactively, addressing some concerns that some previously only intervened at crisis point.*

- *A new duty to prevent homelessness for all eligible applicants threatened with homelessness, regardless of priority need. This extends the help available to people not in priority need, with local housing authorities supporting them to either stay in their accommodation or help them find somewhere to live and should mean fewer households reach a crisis situation.*
- *A new duty to relieve homelessness for all eligible homeless applicants, regardless of priority need. This help could be, for example, the provision of a rent deposit or debt advice. Those who have a priority need will be provided with interim accommodation whilst the Local Housing Authority carries out the reasonable steps.*
- *A new duty on public services to notify a local authority if they come into contact with someone they think may be homeless or at risk of becoming homeless. It is hoped that this measure will ensure that a person's housing situation is considered when they come into contact with wider public services, and encourage public services to build strong relationships based on local need and circumstances.”*

2.1.3 A copy of the Act can be [located](#).

## **2.2 The Health and Social Care Act 2012**

2.2.1 The LGA has summarised the Act:

*The Act is in 12 parts: Part 1 sets out a framework which confers NHS functions directly on the organisations responsible for exercising those functions, while retaining a general duty on the SoS for Health (SoS) to promote a comprehensive health service. It also gives local government a new set of duties to protect and improve public health. Part 1 also establishes a new non-departmental public body, the NHS Commissioning Board (NHSCB), makes provision for the establishment of Clinical Commissioning Groups (CCGs), contains measures relating to the abolition of Strategic Health Authorities (SHAs) and Primary Care Trusts (PCTs), and amends the Mental Health Act 1983 and provisions relating to emergency preparedness and pharmaceutical services expenditure.*

**Part 2** *contains provisions relating to the public health service, including the abolition of the Health Protection Agency (HPA), functions in relation to biological substances and radiation protection, the repeal of the AIDS (Control) Act 1987, and co-operation with bodies exercising functions in relation to public health.*

**Part 3** *sets out provisions for regulation of health and adult care services in England and defines the role of Monitor, the sector regulator.*

**Part 4** amends Chapter 5 of Part 2 of the NHS Act 2006, which makes provision for NHS foundation trusts, removing various restrictions on foundation trusts and their authorisation, removing NHS trusts as a provider model (ie preventing foundation trusts from being returned to NHS trust status) and setting out Monitor's role in relation to arrangements in respect of failing trusts. It also sets out new arrangements for the governance, financing and accounting of foundation trusts.

**Part 5** provides for the creation of a new national body, Healthwatch England (HWE), to be established as a statutory committee within the Care Quality Commission (CQC). It also makes provision about Local Healthwatch (LH) organisations in each local authority area. Part 5 also deals with the health scrutiny functions of local authorities and makes provision for the establishment of health and wellbeing boards (HWBs) in each upper tier local authority area, setting out their role. It also provides for foundation trusts and CCGs to be designated as Care Trusts and removes certain restrictions on those to whom the Health Service Ombudsman can report.

**Part 6** amends the NHS Act in relation to medical, dental, ophthalmic and pharmaceutical services following the creation of the NHSCB, CCGs and the public health service.

**Part 7** makes changes to the regulation of health and social care workers, abolishing the General Social Care Council (GSCC) and transferring some of its functions to the Health Professions Council (HPC). It also abolishes the Office of the Health Professions Adjudicator (OHPA).

**Part 8** re-establishes the National Institute for Health and Care Excellence (NICE) as a non-departmental public body and sets out aspects of its role.

**Part 9** relates to the publication of information standards and the collection of information from providers of health and social care services.

**Part 10** abolishes the Alcohol Education and Research Council, the Appointments Commission, the National Information Governance Board for Health and Social Care, the National Patient Safety Agency and the NHS Institute for Innovation and Improvement.

**Part 11** contains miscellaneous provisions, including duties for bodies to co-operate, arrangements with devolved authorities, supervised community treatment and transfer schemes.

**Part 12** covers technical matters, including regulatory powers and commencement matters.

2.2.2 A copy of the full Act can be [located](#).

### 2.3 Homelessness Code of Guidance for Local Authorities

2.3.1 Central Government has provided a summary of the homelessness legislation and the duties, powers and obligations on housing authorities and others towards people who are homeless or at risk of homelessness. It does not form part of the statutory code of guidance.

#### ***“The homelessness legislation***

*The primary homelessness legislation – that is, [Part 7 of the Housing Act 1996](#) – provides the statutory under-pinning for action to prevent homelessness and provide assistance to people threatened with or actually homeless.*

*In 2002, the government amended the homelessness legislation through the [Homelessness Act 2002](#) and the [Homelessness \(Priority Need for Accommodation\) \(England\) Order 2002](#) to:*

1. *(a) ensure a more strategic approach to tackling and preventing homelessness, in particular by requiring a homelessness strategy for every housing authority district; and*
2. *(b) strengthen the assistance available to people who are homeless or threatened with homelessness by extending the priority need categories to homeless 16 and 17 year olds; care leavers aged 18, 19 and 20; people who are vulnerable as a result of time spent in care, the armed forces, prison or custody, and people who are vulnerable because they have fled their home because of violence.*

*The [Homelessness Reduction Act 2017](#) significantly reformed England’s homelessness legislation by placing duties on local authorities to intervene at earlier stages to prevent homelessness in their areas. It also requires housing authorities to provide homelessness services to all those affected, not just those who have ‘priority need’. These include:*

- (a) an enhanced prevention duty extending the period a household is threatened with homelessness from 28 days to 56 days, meaning that housing authorities are required to work with people to prevent homelessness at an earlier stage; and*
- (b) a new duty for those who are already homeless so that housing authorities will support households for 56 days to relieve their homelessness by helping them to secure accommodation.*

#### **Homelessness review and strategy**

*Under the [Homelessness Act 2002](#), all housing authorities must have in place a homelessness strategy based on a review of all forms of homelessness in their*

*district. The strategy must be renewed at least every 5 years. The social services authority must provide reasonable assistance.*

*The strategy must set out the authority's plans for the prevention of homelessness and for securing that sufficient accommodation and support are or will be available for people who become homeless or who are at risk of becoming so.*

### ***Duty to refer***

*The [Homelessness Reduction Act 2017](#) introduced a duty on certain public authorities to refer service users who they think may be homeless or threatened with homelessness to a housing authority. The service user must give consent, and can choose which authority to be referred to. The housing authority should incorporate the duty to refer into their homelessness strategy and establish effective partnerships and working arrangements with agencies to facilitate appropriate referrals.*

### ***Duty to provide advisory services***

*The housing authority has a duty to provide advice and information about homelessness and the prevention of homelessness and the rights of homeless people or those at risk of homelessness, as well as the help that is available from the housing authority or others and how to access that help. The service should be designed with certain listed vulnerable groups in mind and authorities can provide it themselves or arrange for other agencies to do it on their behalf.*

### ***Applications and inquiries***

*Housing authorities must give proper consideration to all applications for housing assistance, and if they have reason to believe that an applicant may be homeless or threatened with homelessness, they must make inquiries to see whether they owe them any duty under [Part 7 of the 1996 Act](#). This assessment process is important in enabling housing authorities to identify the assistance which an applicant may need, either to prevent them from becoming homeless, or to help them to find another home. In each case, the authority will need to first decide whether the applicant is eligible for assistance and threatened with or actually homeless. Certain applicants who are 'persons from abroad' are not eligible for any assistance under Part 7 except free advice and information about homelessness and the prevention of homelessness.*

*Broadly speaking, a person is threatened with homelessness if they are likely to become homeless within 56 days. An applicant who has been served with valid notice under [section 21 of the Housing Act 1988](#) to end their assured shorthold tenancy is also threatened with homelessness, if the notice has expired or will expire within 56 days and is served in respect of the only accommodation that is available for them to occupy.*

*An applicant is to be considered homeless if they do not have accommodation that they have a legal right to occupy, which is accessible and physically available to them (and their household) and which it would be reasonable for them to continue to live in.*

### **Assessments and personalised housing plans**

*Housing authorities have a duty to carry out an assessment in all cases where an eligible applicant is homeless or threatened with homelessness. This will identify what has caused the homelessness or threat of homelessness, the housing needs of the applicant and any support they need in order to be able to secure and retain accommodation. Following this assessment, the housing authority must work with the person to develop a personalised housing plan which will include actions (or 'reasonable steps') to be taken by the authority and the applicant to try and prevent or relieve homelessness.*

### **Prevention duty**

*Housing authorities have a duty to take reasonable steps to help prevent any eligible person (regardless of priority need status, intentionality and whether they have a local connection) who is threatened with homelessness from becoming homeless. This means either helping them to stay in their current accommodation or helping them to find a new place to live before they become actually homeless. The prevention duty continues for 56 days unless it is brought to an end by an event such as accommodation being secured for the person, or by their becoming homeless.*

### **Relief duty**

*If the applicant is already homeless, or becomes homeless despite activity during the prevention stage, the reasonable steps will be focused on helping the applicant to secure accommodation. This relief duty lasts for 56 days unless ended in another way. If the housing authority has reason to believe a homeless applicant may be eligible for assistance and have a priority need they must be provided with interim accommodation.*

## **Main housing duty**

*If homelessness is not successfully prevented or relieved, a housing authority will owe the main housing duty to applicants who are eligible, have a priority need for accommodation and are not homeless intentionally. Certain categories of household, such as pregnant women, families with children, and households that are homeless due to an emergency such as a fire or flood, have priority need if homeless. Other groups may be assessed as having priority need because they are vulnerable as a result of old age, mental ill health, physical disability, having been in prison or care or as a result of becoming homeless due to domestic abuse.*

*Under the main housing duty, housing authorities must ensure that suitable accommodation is available for the applicant and their household until the duty is brought to an end, usually through the offer of a settled home. The duty can also be brought to an end for other reasons, such as the applicant turning down a suitable offer of temporary accommodation or because they are no longer eligible for assistance. A suitable offer of a settled home (whether accepted or refused by the applicant) which would bring the main housing duty to an end includes an offer of a suitable secure or introductory tenancy with a local authority, an offer of accommodation through a private registered provider (also known as a housing association) or the offer of a suitable tenancy for at least 12 months from a private landlord made by arrangement with the local authority.*

## **Suitable accommodation**

*Housing authorities have various powers and duties to secure accommodation for homeless applicants, either on an interim basis, to prevent or relieve homelessness, to meet the main housing duty or as a settled home. Accommodation must always be 'suitable' and there are particular standards set when private rented accommodation is secured for households which have priority need.*

*Under the [Homelessness \(Suitability of Accommodation\) \(England\) Order 2003](#), bed and breakfast accommodation is not considered suitable for families with children and households that include a pregnant woman, except where there is no other accommodation available, and then only for a maximum of 6 weeks. The Secretary of State considers that bed and breakfast accommodation is unsuitable for 16 and 17 year olds.*

## **Intentional homelessness**

*A person would be homeless intentionally where homelessness was the consequence of a deliberate action or omission by that person. A deliberate act might be a decision to leave the previous accommodation even though it would have been reasonable for the person (and everyone in the person's household) to continue to live there. A deliberate omission might be non-payment of rent that led to rent arrears and eviction despite the rent being affordable.*

*Where people have a priority need but are intentionally homeless the housing authority must provide advice and assistance to help them find accommodation for themselves and secure suitable accommodation for them for a period that will give them a reasonable chance of doing so.*

*If, despite this assistance, homelessness persists, any children in the household could be in need under the [Children Act 1989](#), and the family should be referred (with consent) to the children's social services authority.*

## **Local connection and referrals to another authority**

*Broadly speaking, for the purpose of the homelessness legislation, people may have a local connection with a district because of residence, employment or family associations in the district, or because of special circumstances. (There are exceptions, for example, residence in a district while serving a prison sentence there does not establish a local connection.) Where applicants meet the criteria for the relief duty or for the main housing duty, and the authority considers that the applicant does not have a local connection with the district but does have one somewhere else, the housing authority dealing with the application can ask the housing authority in that other district to take responsibility for the case. However, applicants cannot be referred to another housing authority if they, or any member of their household, would be at risk of violence in the district of the other authority.*

*The definition of a 'local connection' for young people leaving care was amended by the [Homelessness Reduction Act 2017](#) so that a young homeless care leaver has a local connection to the area of the local authority that looked after them. Additional provision is made for care leavers who have been placed in accommodation, under [section 22A of the Children Act 1989](#), in a different district to that of the children's services authority that owes them leaving care duties. If they have lived in the other district for at least 2 years, including some time before they turned 16, they will also have a local connection with that district until they are 21.*



## **Reviews and appeals**

*Housing authorities must provide written notifications to applicants when they reach certain decisions about their case, and the reasons behind any decisions that are against the applicant's interests. Applicants can ask the housing authority to review most aspects of their decisions, and, if still dissatisfied, can appeal to the county court on a point of law.*

*Housing authorities have the power to accommodate applicants pending a review or appeal to the county court. When an applicant who is being provided with interim accommodation requests a review of the suitability of accommodation offered to end the relief duty, the authority has a duty to continue to accommodate them pending a review."*

### **3 RECOMMENDATION**

- 3.1 That the information provided in this briefing note informs the evidence base of this Scrutiny Review.

Author: Tracy Tiff, Scrutiny Officer, on behalf of Councillor Cathrine Russell, Chair, Scrutiny Panel 3 – Homelessness and Rough Sleepers

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