

POLICY NOTE

THE HOMELESS PERSONS (SUSPENSION OF REFERRALS BETWEEN LOCAL AUTHORITIES) (SCOTLAND) ORDER 2022

SSI 2022/356

The above instrument was made in exercise of the powers conferred by section 33A(1) of the Housing (Scotland) Act 1987. The instrument is subject to affirmative procedure.

Purpose of the instrument.

The SSI will suspend the power of a Scottish local authority to refer a homelessness applicant to another Scottish local authority on the basis of the applicant's local connection status.

Policy Objectives

The rules on local connection are being modified so that people in housing crisis have the freedom to settle where they choose, with access to the support they need. This follows a recommendation in 2018 from the Homelessness and Rough Sleeping Action Group¹ to abolish the local connection test as it is a barrier that prevents people from being able to access support in an area of their choosing.

Currently local authorities have a power (but not a duty) to refer applicants to another local authority on the basis of their local connection status. Local connection is defined at section 27 of the 1987 Act 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.

This instrument will suspend the discretionary power of local authorities to refer people without a local connection to a local authority where they do have a local connection. The decision to introduce this instrument is based on the belief that people who are homeless or are at risk of homelessness generally have good reasons to present to a particular authority, and that these reasons should be acknowledged. Households are more likely to resettle successfully, and avoid repeat homelessness, if they are living in an area of their choosing where they can access the specific services and person-centred support they require and where they are able to integrate successfully into the local community. Additionally, for some households who are experiencing homelessness, the ability to have a fresh start in another area can be a vitally important factor in helping them to sustain a safe and settled home.

¹ Homelessness and Rough Sleeping Action Group: final recommendations report - gov.scot (www.gov.scot)

Consultation

The Scottish Government has held two consultations on modifying the operation of local connection referrals in Scotland². Scottish Government officials also undertook stakeholder engagement with local authorities, frontline services and the homelessness lived experience group, the Change Team.

In the consultation responses, there were concerns from some local authorities about the impact this would have on their ability to meet their statutory housing and homelessness duties due to an increase in applications. We know that the current pressure on temporary accommodation and service provision in some local authorities is challenging. However, while some areas may see an increase in homelessness applications, other areas will see a decrease.

Due to the current low numbers of both applications with no local connection and the low number of referrals, in addition to the lack of evidence as to the impact any suspension will have on particular local authorities, it is considered reasonable and proportionate to remove this power from local authorities. However, in accordance with the ministerial statement required under s33B of the Housing Scotland Act 1987 and published on 22 March 2021, the impact of the change of policy on local authorities by virtue of this instrument will be monitored.

SG officials have engaged with local authorities, the lived experience group, the Change Team, and key stakeholders to design a robust monitoring and evaluation framework. Existing quarterly data returns by local authorities will identify any migration trends and will be supported by gathering qualitative information from local authorities, frontline services and households. Quarterly engagement with all local authorities and more frequent meetings (initially on a monthly basis) for island authorities and those authorities experiencing the most pressure on their services will allow for early intervention should any issues arise.

A full list of those consulted and who agreed to the release of this information, including local authorities, third sector organisation, tenants' groups and individuals, is attached to the consultation report published on the Scottish Government website.

Impact Assessments

An Equality Impact Assessment, Business and Regulatory Impact Assessment, Children's Rights and Wellbeing Impact Assessment, Island Communities Impact Assessment and a Fairer Scotland Duty Assessment have been completed to support the draft instrument. In general, the assessment is that there is little direct or indirect detrimental impact from an equalities perspective.

Consideration has been given to the impact on individuals with a local connection to a part of the UK outside of Scotland, in relation to whom the discretionary ability of a local authority to refer that individual back to that area they have a local connection with still applies. The Scottish Government considers that this legislative change does not amount to discrimination under the ECHR or the Equality Act 2010.

The policy intent of allowing local authorities to retain the discretionary power to refer applicants to local authorities in the rest of the UK is to ensure scarce housing resources are

² Firstly: [A consultation on local connection and intentionality provisions in homelessness legislation - Scottish Government - Citizen Space](#) and, secondly: [Ministerial Statement for modifying local connection referrals: consultation - gov.scot \(www.gov.scot\)](#)

appropriately allocated within Scotland. Local authorities can still accept applications for homelessness assistance from persons with a local connection to another part of the UK, and it is only at that local authority's discretion that an individual would be referred back to another part of the UK. Finally, other areas of the UK have equivalent legislation in place to refer individuals with a local connection to Scotland back to that local authority in Scotland in which they have a local connection.

On this basis it is considered that, even if it could be demonstrated that this Order creates discrimination, any such discrimination would be proportionate on the grounds outlined above.

As outlined in the ministerial statement on Modifying Local Connection, the Scottish Government will monitor the impact of the changes provided for in this instrument on individuals experiencing homelessness, local authorities and third sector providers using evidence from stakeholders and current data collections, and will publish this data regularly.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and the financial effect of this change is expected to be cost neutral at national level in Scotland.

Scottish Government
Directorate for Housing and Social Justice

9 September 2022