

## Partial Business and Regulatory Impact Assessment

### Title of Proposal

The Homeless Persons (Suspension of Referrals Between Local Authorities) (Scotland) Order 2022

### Purpose and intended effect

1. The Homeless Persons (Suspension of Referrals Between Local Authorities) (Scotland) Order 2022 will be laid on 13 September 2022 and comes into force on 22 November 2022. It exercises the power of Scottish Ministers, under section 33A of the Housing (Scotland) Act 1987 (the 1987 Act), to modify the operation of local connection referrals in Scotland. It suspends, for all Scottish local authorities, their power to refer a person/household who is homeless or threatened with homelessness to another local authority in Scotland on the grounds of their local connection.
2. The suspension applies only to the power of local authorities in Scotland to make referrals to other Scottish local authorities. The current legislative position with regard to arrangements with other countries in the UK will remain unaffected.

### Background

3. On 5 September 2017, the First Minister announced a new Programme for Government commitment to eradicate rough sleeping, transform the use of temporary accommodation and end homelessness in Scotland. Scottish Ministers subsequently established the Homelessness and Rough Sleeping Action Group (HARSAG)<sup>1</sup> to make recommendations on how these transformational changes could be achieved.
4. HARSAG published recommendations in June 2018 aimed at securing strategic changes at both national and local level to help support delivery on the frontline. In November 2018, the Scottish Government and COSLA published Ending Homelessness Together<sup>2</sup> a strategic plan which sets out the actions to be taken, in partnership with others, to act on the HARSAG recommendations and realise our shared ambitions to end rough sleeping and homelessness. HARSAG was reconvened in 2020 to provide recommendations on tackling homelessness during the coronavirus pandemic and in the longer term. Following this, in October 2020, an updated version of Ending Homelessness Together<sup>3</sup> was published jointly with COSLA that sets the direction for real and lasting change towards ending homelessness.
5. Amongst its proposals, HARSAG recommended that the Scottish Government should suspend local connection referrals between all local authorities in Scotland,

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

<sup>2</sup> [Ending Homelessness Together: High Level Action Plan \(www.gov.scot\)](https://www.gov.scot/publications/ending-homelessness-together-high-level-action-plan/pages/11.aspx)

<sup>3</sup> [Ending homelessness together: updated action plan - October 2020 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/ending-homelessness-together-updated-action-plan-october-2020/pages/11.aspx)

removing what it viewed as barrier to support for vulnerable people that could hinder homelessness prevention.

6. Local authorities in Scotland currently have the power, but not a duty, under section 33 of the 1987 Act to refer homeless applicants who do not have a local connection with them to another local authority in Scotland, England or Wales where they do have such a connection. Section 34 of the 1987 Act sets out duties to persons who are referred.

7. A referral on the grounds of local connection cannot be made where the applicant would face the risk of domestic abuse in the area where they have a local connection.

8. 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.

### **Scottish Ministers power to modify local connection**

9. On 7 November 2019, the Homelessness etc. (Scotland) Act 2003 (Commencement No. 4) Order 2019 commenced the local connection provisions in section 8 of the 2003 Act. The provisions inserted new sections 33A and 33B into the 1987 Act, giving the Scottish Ministers the power to modify the operation of section 33 of that Act, which allows a local authority to refer a homeless applicant to another local authority on the basis of their local connection.

10. Section 33A allows ministers to prescribe, by statutory order, that the power of a local authority to refer an applicant, who is homeless or threatened with homelessness, to another authority is not to be exercisable by, or in relation to, such local authorities as are specified in the order.

11. Section 33B requires that Scottish Ministers must, before the expiry of the 18 month period from section 8 of the 2003 Act coming into force (i.e. by 7 May 2021), prepare and publish a ministerial statement setting out the circumstances in which, and the general criteria by reference to which, the power under section 33A is to be exercised. It also requires that the statement must be consulted on before being prepared or modified. Following consultation, the Scottish Government published a statement on modifying local connection<sup>4</sup> on 22 March 2021.

### **Objective**

12. The Homeless Persons (Suspension of Referrals Between Local Authorities) (Scotland) Order 2022 seeks to exercise the new power, under Section 33A of the 1987 Act, for Scottish Ministers to modify local connection, by suspending the

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<sup>4</sup> [Modifying local connection referrals: ministerial statement - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/ministerial-statements/2021/03/22-modifying-local-connection-referrals/ministerial-statement-2021-03-22-modifying-local-connection-referrals.pdf)

power of all Scottish local authorities to refer a homelessness person/household to another local authority within Scotland on the grounds of the applicant's local connection. The change would apply to referrals to and from Scottish local authorities only and arrangements with England and Wales would continue to operate as they do now.

### **Rationale for Government intervention**

13. The change in legislation will affect local authorities and all people experiencing homelessness. It contributes to the following outcomes within the National Performance Framework, which are fundamental to the ambition to end homelessness in Scotland:

- We respect, protect and fulfil human rights and live free from discrimination.
- We tackle poverty by sharing opportunities, wealth and power more equality.
- We live in communities that are inclusive, empowered, resilient and safe.
- We grow up loved, safe and respected so we can realise our full potential.
- We are well educated, skilled and able to contribute to society.

14. The decision to suspend local connection referrals is based on the belief that people who are homeless or threatened with homelessness generally have good reasons to present to a particular local authority, and that these reasons should be acknowledged. We take the view that 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 an important factor in helping them to sustain a safe and settled home.

15. In 2021/22<sup>5</sup> most homeless households applied to a local authority where they had an established local connection:

- 95% of homeless households had a connection to the local authority to which they made their application
- 3% of homeless households only had a connection to another local authority in Scotland
- 2% had no known local connection to any local authority in Scotland
- the majority of applications with no local connection were in major cities, with Glasgow and Edinburgh accounting for over 75% of these applications.

(Note: The Covid pandemic response limited movement of people during some of this period however the figures reflect long-term trends in local connection status of applicants.)

16. Local authorities have low referral rates and the long-term trend shows a decreasing number of referrals. In 2020-21, 195 homeless households were referred to another local authority. This number has fallen from 240 in 2020/21 and most local authorities either decreased their number of referrals or stayed the

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<sup>5</sup> The most recent stats release has information from 2021/22 in table 24.

same from the previous year, only five local authorities had an increase in the number of referrals.

- 11 local authorities made no referrals
- 13 local authorities made 5 or fewer referrals
- 8 local authorities made between 5 and 25 referrals.

## **Consultation**

### **Within Government**

17. In developing this BRIA, we have consulted with colleagues across housing and justice directorates as well as analytical colleagues. These discussions helped us to understand potential impacts as well as concerns raised by stakeholders. We have worked closely with colleagues in the Scottish Government Legal Directorate to draft the instrument.

### **Public Consultation**

18. In January 2019, we invited views on HARSAG's recommendation to commence the local connection provisions in the 2003 Act and to suspend referrals for local connection in Scotland. Responses were received from a range of individuals, including those with lived experience, local authorities, housing associations, tenants' groups, third sector organisations, legal groups and other stakeholders. The view of the majority of respondents was that people who are experiencing homelessness or threatened with homelessness are best placed to decide the geographical area which best meets their needs. Therefore, following on from the consultation and further engagement with stakeholders, the Homelessness etc. (Scotland) Act 2003 (Commencement No. 4) Order 2019 was commenced. The local connection (and intentionality) provisions in the 2003 Act were brought into force on 7 November 2019.

19. A further consultation<sup>6</sup> on the Ministerial Statement in 2020 showed general support for the content of the statement and support for the general principles to remove a barrier to homelessness. Some local authorities noted concerns that the suspension of referrals could increase the number of homelessness presentations they receive and put pressure on the supply of accommodation and support services. The Ministerial statement committed Scottish Government to take remedial action where there is evidence of any adverse impact on the capacity to meet their statutory duty.

20. Scottish Government officials also undertook stakeholder engagement with local authorities, COSLA, the Association of Local Authority Chief Housing Officers and key stakeholders including Scottish Prison Service, Shelter Scotland and LGBT Youth Scotland. There was also opportunity for stakeholders to contribute to the development of the monitoring and evaluation framework including the

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<sup>6</sup> [Consultation on a Ministerial Statement for modifying local connection referrals in Scotland - Scottish Government - Citizen Space](#)

Change Team<sup>7</sup> (our homelessness lived experience group) and Housing Options Hubs.

## **Options**

**Option 1** – Introduce The Homeless Persons (Suspension of Referrals Between Local Authorities) (Scotland) Order 2022 to suspend the power for all local authorities in Scotland to refer a homelessness applicant to another local authority in Scotland on the grounds of local connection.

**Option 2** – Do not introduce The Homeless Persons (Suspension of Referrals Between Local Authorities) (Scotland) Order 2022 which would mean Scottish local authorities would continue to have the power to make referrals for local connection to other authorities in Scotland.

**Option 3** – Introduce The Homeless Persons (Suspension of Referrals Between Local Authorities) (Scotland) Order 2022 with exceptions or exemptions for those local authorities which are considered to be particularly vulnerable to the impact from a suspension of referrals.

### **Sectors and groups affected by all three options**

- Households who are homeless or threatened with homelessness
- Local authorities who have a statutory duty to delivery homelessness services
- Frontline services, third sector organisations and support services including health and social care which are partner organisations or linked to homelessness.

### **Option 1 - Benefits**

21. A suspension of the power of all local authorities to make referrals would mean that any person/household who is homeless or threatened with homelessness would be able to choose the best place for them to settle and access the specific services, community and support they require to resolve their homelessness. As a result, an individual experiencing homelessness can be housed in the area best suited to their capacity to sustain a tenancy which, in turn, can help to prevent repeat homelessness.

22. A suspension can also help ensure that local authorities act quickly and apply a person-centred approach when considering all homeless applicants seeking their advice and support. This would reduce the impact on energy and resources required to establishing local connection or defending legal challenges.

23. There are many reasons why a person/household could benefit from a move to a new local authority area. For example, they could be fleeing abuse or

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<sup>7</sup> [Change Team - Homeless Network Scotland: we are all in](#)

harassment and in need of a move to a different area where they can be safe. Or there may be an opportunity for people from minority/at risk groups to migrate to larger towns and cities where their community is more visible, and where they can access targeted support services. People experiencing difficult needs or situations may welcome the opportunity to make a fresh start away from threats, pressures or negative influences.

24. It has also been suggested in some consultation responses that a suspension of referrals could help prevent the local connection test being used as an informal means of gatekeeping. This would remove any delays in progressing applications as a result of local authorities negotiating over local connection referrals.

### **Option 1 - Costs**

25. While existing data shows that the power of local authorities to make referrals is rarely used and has been decreasing over time, we acknowledge the concerns a number of local authorities have about a potential increase in homeless applications. Some local authorities argue that they will receive additional homeless presentations which will increase demand and create additional pressure on the supply of accommodation and support services.

26. We also noted concerns from local authorities that it could become difficult to plan for service delivery and assess likely demand for services due to a lack of certainty in the number of presentations when a household no longer has to demonstrate local connection to the area. A potential increase in applications could impact on the short-term availability of temporary accommodation and emergency supported accommodation. There was also a concern that an increase in homeless applications could have an adverse impact on other (non-homeless) applicants who are in housing need. It was felt that non-homeless households could spend more time on housing waiting lists as their need would be viewed as a lesser priority to a homeless application.

### **Option 2 - Benefits**

27. There has been general agreement that the principles behind the local connection legislative changes are sound. However, there is concern about the timing of laying this SSI given there are already pressures on local authorities to deliver their homelessness and housing duties from the effects of the Covid pandemic, Brexit, the Ukraine resettlement programme and the cost of living crisis. Not progressing with the order would allay the concerns expressed by some local authorities that suspending referrals would potentially lead to an increase in applications to areas where there are insufficient resources to meet a rise in demand. Remote, rural and island areas as well as cities, such as Glasgow and Edinburgh, are particularly vulnerable to an adverse impact of unanticipated increases in demand.

### **Option 2 - Costs**

28. Not progressing with the order to suspend referrals would mean that people who are homeless or threatened with homelessness will be prevented from having

the right to choose the best place for them to settle and access the specific services, community and support they require to resolve their homelessness. It would mean also that the local connection test can continue to be a barrier that can restrict access to temporary/emergency accommodation for people in need.

### **Option 3 - Benefits**

29. This option would create an exception or exemption for local authorities where there are disproportionately affected by an increase in homeless applicants with no local connection to the area. Glasgow and Edinburgh as well as island authorities are seen as being most vulnerable to the legislative change and the impact on temporary accommodation in particular.

### **Option 3 - Costs**

30. Excluding certain local authority areas would limit the options available for people and their ability to choose the best place for them to settle and access the specific services, community and support they require to resolve their homelessness. There would also be difficulties in communicating to applicants when and where exemptions applied and could lead to a 'postcode lottery' with different rules applicable to different parts of the country.

31. An inconsistent approach could lead to a fractured system of homelessness support which is unfair to both homelessness applicants and local authorities. It could create bottlenecks in areas where referrals are suspended and complicate collaboration between neighbouring local authorities.

### **Scottish Firms Impact Test**

32. There is no impact anticipated on small firms or international trade and investment.

**Competition Assessment**

33. We have applied the Competition and Markets Authority (CMA) Competition Filter questions and find there will be no impact on competition. Using the CMA Competition Filter questions we have concluded that the proposals will neither directly or indirectly limit the number or range of suppliers, limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

**Will the measure directly or indirectly limit the number or range of suppliers?**

No.

**Will the measure limit the ability of suppliers to compete?**

No.

**Will the measure limit suppliers' incentives to compete vigorously?**

No.

**Will the measure limit the choices and information available to consumers?**

No.

**Consumer Assessment**

34. This policy and its impact will mean that all homeless households will have equal rights and can choose to settle in an area that best supports their needs.

**Test run of business forms**

35. No new business forms are expected to be introduced as a result of the instrument.

**Digital Impact Test**

36. This instrument will not have an impact on advances in digital technology or its future delivery.

**Legal Aid Impact Test**

37. This instrument will not have an impact on the legal aid fund. At present, an individual may be able to challenge a local authority's decision to make a local connection referral. This legislation will suspend referrals therefore there will no decisions to challenge and no need for an individual to access legal aid funding.

**Enforcement, sanctions and monitoring**



38. Existing data collections will be used to monitor the changes to homelessness applications as a result of the suspension of local connection referrals. In addition to this quantitative data, the monitoring and evaluation framework will gather qualitative information to measure impact. Regular engagement with local authorities, particular those most vulnerable to an increase in presentations including Glasgow, Edinburgh and the island authorities, will give local government officials an opportunity to raise concerns at an early stage. Where evidence demonstrates that mitigation is necessary, this will be explored with local authorities and other key stakeholders. We do not anticipate a need for sanctions.

### **Implementation and delivery plan**

39. We intend to lay the legislation in Parliament on 13 September and it will come into force on 22 November 2022. A monitoring and evaluation framework will allow for analysis of trends and measure the impact on local authorities, people and support services to enable swift mitigation action to be taken if necessary. We will use HL1 data to monitor trends in data and will gather qualitative information through a programme of regular engagement with local authorities, frontline services and households.

### **Post-implementation review**

40. The ministerial statement on modifying local connection sets out our commitment to review the impact of this legislative change in consultation with local authorities on an ongoing basis. Initially this will be a quarterly review.

### **Summary and recommendation**

41. Option 1 is recommended to ensure that all homeless households have the right to choose the best local authority area in which to settle and resolve their homelessness.

42. We have noted the concerns raised by some local authorities with regard to the potential impact should their power to make local connection referrals be suspended, particularly those in remote, rural and island communities and city areas.

43. However, it also noted that the existing statistical data shows that the current power for local authorities to make local connection referrals is used rarely, and has decreased over time. It is difficult to predict whether people will choose to move to other areas in significant numbers but note the views expressed in consultation responses that, in most circumstances, people are likely to choose to settle in their local area where they have an existing connection, and want to remain close to family or remain in an area where existing support measures are in place.

44. In our statement on modifying local connection we have set out our commitment to monitoring any adverse impacts on the capacity of a local authority to meet its homelessness and housing duties, as well as the impact on wider services, and to take swift remedial action, where appropriate. This would be

undertaken in full consultation with local authorities and COSLA to consider all available options and whether legislative action is required or if some other form of intervention or support is needed.

45. We have also committed in the statement to use existing homelessness statistical data collections, such as HL1 and PREVENT 1 data, to monitor the impact of this legislative change, as well as information and evidence collected from local authorities, housing options hubs and persons/households who choose to settle in a new area. From August 2020, local connection data has been published as part of the Homelessness in Scotland Statistics. This will provide important up to date evidence to assist with assessing the impact of suspending referrals for local connection.

**Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	All homeless households would benefit from the option to choose the best place for them to settle and access the specific services, community and support they require to resolve their homelessness. This instrument will ensure that local authorities consider and support the needs of all those who are homeless or threatened with homelessness regardless of their local connection.	It is anticipated that the change would be cost neutral at a national level in Scotland although some local authority areas will see an increase in homeless households and some will see a corresponding decrease.
2	This option would allay the concerns expressed by a number of local authorities that suspending referrals would potentially lead to an increase in applications to areas where there are insufficient resources to meet a rise in demand.	This option would prevent homelessness households from having the right to choose the best place for them to settle and access the specific services, community and support they require to resolve their homelessness.
3	Exemptions or exceptions could be applied for local authorities where it is considered they would be disproportionately affected and unequipped to deal with unplanned increases in applicants with no local connection with the area.	This would limit the options available to homeless households and their ability to choose the best place for them to settle and access the specific services, community and support they require to resolve their homelessness.

## **Declaration and publication**

### **Sign-off for Partial BRIAs:**

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed: S Robison**

**Date: 07/09/2022**

**Minister's Shona Robison**

**Minister's title Cabinet Secretary for Social Justice, Housing and Local Government**

### **Scottish Government Contact point:**

Louise Thompson

[louise.thompson@gov.scot](mailto:louise.thompson@gov.scot)