

Social Justice and Social Security Committee

Subordinate Legislation Cover Note

28th Meeting, (Session 6), Thursday 03 November 2022

Title of Instrument: [The Homeless Persons \(Suspension of Referrals between Local Authorities\) \(Scotland\) Order 2022](#)

Laid Date: 21 September 2022

Reporting deadline: 14 November 2022

Type of instrument: Affirmative

Motion to approve: [S6M-05955](#)

Parliamentary procedure

1. The affirmative procedure means that an instrument cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).
2. Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee (usually the committee which examined the Bill for the Act that the SSI is made under or whose remit is most aligned).
3. It is usual practice for the lead committee to take evidence from the relevant Scottish Minister in advance of considering the instrument. The committee can ask the Minister and any officials questions about the SSI.
4. During its formal consideration, a member of the Scottish Government proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The committee has up to 90 minutes to debate the motion.
5. The lead committee must report its recommendation to Parliament within 40 days of the SSI being laid. If the committee agrees the SSI should be approved, the whole of the Parliament then gets a chance to vote on it in the Chamber. If the lead committee decides the SSI should not be approved, the Parliamentary Bureau decides whether MSPs should vote on it in the Chamber.

Background

6. According to the the Scottish Government's [Explanatory and Policy Notes](#) (Annexe A), this Order would suspend the discretionary power of all local authorities to refer a homelessness applicant (person or household) without a local connection to another local authority on the basis of the applicant's local connection status to that area.
7. The Scottish Government says that the rules on local connection are changing to allow individuals and households in housing crisis to settle where they choose and with the support they need. This instrument would uphold the belief that people who are homeless or are at risk of homelessness generally have good reasons to present to a particular local authority and that these reasons should be acknowledged.
8. The Scottish Government found in its [Equality Impact Assessment](#) (EIA) that the order would remove a barrier to accessing specific services and person-centered support for persons and households who are homeless or threatened with homelessness.
9. The EIA has also shown that people are more likely to resettle successfully when they have choice and control over where they live, and avoid repeat homelessness where they can access the services and support networks appropriate to their needs and lifestyles and are able to integrate successfully into the local community. It has also shown that it can allow vulnerable people to move somewhere they can feel safe away from potential harassment, abuse or negative influences.
10. Following two public consultations, engagement with key stakeholders and quarterly data collection, the Scottish Government has developed a [monitoring and reporting framework](#) to analyse the impact of the legislation for homeless households, frontline services and local authorities. It aims to review data regularly to inform any future improvements required to services and policy.

Written submissions

11. On 27 October 2022, Shelter Scotland sent a briefing on the instrument. The briefing is available in Annexe B.

Delegated Powers and Law Reform Committee consideration

12. The DPLR Committee considered the instrument at its [meeting on 27 September 2022](#) and raised no points. [Read the Official report for the meeting.](#)

For decision

- 13. The Committee must decide whether or not to agree the motion, and then report to Parliament accordingly, by 14 November 2022.**
- 14. The Committee is also invited to delegate responsibility for the drafting and publication of a short, factual report to the Convener and Clerk.**

Annexe A

POLICY NOTE

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

SSI 2022/XXX

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 Group ([Homelessness and Rough Sleeping Action Group: final recommendations report](#)) 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.

Consultation

The Scottish Government has held two consultations on modifying the operation of local connection referrals in Scotland (firstly [A consultation on local connection and intentionality provisions in homelessness legislation](#) and secondly [a Ministerial Statement for modifying local connection referrals: consultation](#)). 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 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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the suspension of the power of a Scottish local authority under section 33(1) of the Housing (Scotland) Act 1987 to notify another Scottish local authority of certain matters.

Section 33(1) of the 1987 Act enables a local authority to notify another local authority that (1) they have received an application for accommodation, or for assistance in obtaining accommodation, (2) they are satisfied that the applicant is homeless and hasn't become homeless intentionally; and (3) they are of the opinion that the conditions for referral to that other local authority are satisfied.

The conditions for referral to another local authority are that the applicant (or person residing with them) (1) has no local connection to the local authority to which the application was made; (2) has a local connection to the local authority to which the application is being referred; and (3) is not at risk of domestic abuse in that other local authority's area. This power in section 33(1) is being suspended (as described in Article 2) as it is no longer exercisable for so long as this Order is in force. Article 2 of the Order provides that, from the date that the Order comes into force, a relevant local authority (as defined in the Order as a council constituted in accordance with section 2 of the Local Government etc. (Scotland) Act 1994) will be unable to exercise the power under section 33 in relation to another relevant local authority. Article 3 provides that the suspension under section 33 does not affect applications that were submitted to a relevant local authority under section 28(1) of the Housing (Scotland) Act 1987 before the date on which the Order comes into force.

Annexe B

Shelter Scotland – Written submission

SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE BRIEFING: SSI ON LOCAL CONNECTION, NOVEMBER 2022

Shelter Scotland exists to defend the right to a safe home and fight the devastating impact the housing emergency has on people and society. We work in communities to understand the problem and change the system. We run national campaigns to fight for home.

Local authorities currently have the power, but not a duty, under section 33 of the 1987 Act to refer homeless households, who do not have a local connection with them, to another local authority in England, Scotland or Wales where they do have such a connection. We warmly welcome the proposals contained within the SSI and urge both Committee members and MSPs to vote to make the SSI law. This would act to suspend these referrals between local authorities, enabling individuals to seek and receive homelessness assistance from any local authority of their choosing.

Whilst we recognise that current local connection guidance allows for households to move local authority in certain situations, Shelter Scotland has worked with many people fleeing other types of threat or trauma, which are not recognised by the guidance, or that the household may not feel able to share. In our experience, when someone chooses to apply as homeless in another local authority, there is very good reason for doing so. Shelter Scotland have also supported many individuals who have approached a local authority and been unlawfully turned away without a homeless application being taken or temporary accommodation provided because they are perceived to not have a local connection to the area. This means current local connection rules can present barriers to people receiving the timely and person-centred support they need and are entitled to by law; a change will help embed the 'no wrong door' approach committed to in the Ending Homelessness Together plan.

Underpinning this change to local connection is the right to live in a decent, affordable home in the best place for the household, which could include living in an area to gain employment, be close to family for support, or getting away from a violent or damaging environment. Taking a person-centred approach and ensuring people experiencing homelessness have options and choice and control over their housing leads to improved housing outcomes in the long run.

We must ensure that local authorities are financially resourced and supported to deliver on this important policy. Further, people experiencing homelessness must be supported to fully understand their rights, what housing options they have and be supported to make the right housing choice for them. They should be given full information about local housing options and, for example, whether there will be long temporary

accommodation stays in a given local authority. But most importantly people should have choice over where they wish to live.

Passing the SSI will be another step towards progressively realising the UN right to adequate housing: embedding dignity in the system and making sure that people both have the right and are empowered to make informed decisions on where they would like to apply as homeless, and we encourage the Committee to recommend approval of the SSI.