

Ministerial Statement: Modifying Local Connection Referrals in Scotland

March 2021

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Ministerial Foreword



I am pleased to publish this statement, as required by section 33B of the Housing (Scotland) Act 1987, to set out the circumstances and the general criteria, by reference to which, Scottish Ministers would exercise the power, under section 33A of that Act, to modify the operation of local connection referrals in Scotland.

Scotland has some of the strongest rights in the world for anyone experiencing homelessness, but we know that too many people still struggle to access the accommodation and support they need. We need to continue to drive forward improvements to address this and deliver on our ambition of ending homelessness in Scotland.

Over the past decade, together with our partners we have brought about radical changes in homelessness and affordable housing. This has contributed to a significant reduction in homelessness applications. But we can and we will do more.

That is why, in 2018, we asked the Homelessness and Rough Sleeping Action Group (HARSAG) to recommend action to transform our systems and approach in order to realise our ambition to end homelessness. Last year, we also asked HARSAG to reconvene and provide recommendations on tackling homelessness during the coronavirus pandemic and in the longer term. Following this, in October 2020, we published, jointly with COSLA, an updated Ending Homelessness Together Action Plan that sets the direction for real and lasting change towards ending homelessness.

The pandemic has brought into sharp focus what more needs to happen to realise our ambition to end homelessness. The HARSAG recommendation on local connection can help us ensure that everyone who is at risk of homelessness, or is experiencing homelessness, has a safe, warm settled home of their own. Building on this, the Ministerial Statement will play a vitally important role in signposting when changes are required to modify the local connection referral process. This will be particularly helpful for those experiencing or threatened with homelessness, but also for monitoring the impact of any changes on the capacity of local authorities to deliver their duties.

I believe that the vast majority of people who are experiencing or threatened with homelessness are more likely to resettle successfully and avoid repeat homelessness if they live in an area of their choosing where they can access the specific services and support they require and where they are able to integrate successfully into the local community. Additionally, for some households, the ability to have a fresh start in another area can also be a key factor in helping to sustain a safe and settled home.

I am confident that, by using this statement as the reference point for modifying local connection, we can establish an effective and sustainable approach that helps reduce unnecessary barriers which can prevent people receiving the person-centred support they need, when and where they need it.

A handwritten signature in black ink, appearing to read 'Kevin Stewart', with a large, sweeping flourish extending to the right.

Kevin Stewart MSP
Minister for Local Government, Housing and Planning
March 2021

Section 1: Introduction

1.1 The Programme for Government announced by the First Minister on 5 September 2017 set out the Scottish Government's commitment to eradicate rough sleeping, transform the use of temporary accommodation in Scotland and end homelessness.

1.2 The [Homelessness and Rough Sleeping Action Group \(HARSAG\)](#) was subsequently established to consider the most appropriate actions to make the transformational changes required. The recommendations from HARSAG were incorporated into the Ending Homelessness Together Action Plan which was published jointly by the Scottish Government and COSLA in November 2018 and [updated](#) in October 2020 after HARSAG was reconvened to consider actions needed in response to the global coronavirus pandemic. The plan was backed with a £50 million Ending Homelessness Fund. Specifically, for local connection (and intentionality), HARSAG recommended that the Scottish Government should:

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."

1.3 The Scottish Government issued a [consultation paper](#) in January 2019 inviting views on HARSAG's recommendation to commence the provision in section 8 of the [Homelessness etc. \(Scotland\) Act 2003 \("the 2003 Act"\)](#). This provision would give Scottish Ministers the power to modify, by statutory order, referrals for local connection, and Ministers could use the new power to suspend referrals between local authorities in Scotland. The consultation also sought views on the HARSAG recommendation to commence the provision in section 4 of the 2003 Act to change the duty for local authorities to investigate for intentionality to a discretionary power.

1.4 The Scottish Government agreed with the majority of respondents that people who are 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.

1.5 For local connection, the provisions in section 8 of the 2003 Act 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 referral of a homeless applicant to another local authority in certain circumstances.

1.6 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.

1.7 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.

Ministerial Statement

1.8 As required by section 33B, the Scottish Government ran a consultation, between 3 August and 23 October 2020, to assist with the preparation of the ministerial statement. The consultation invited views on the core content of the draft ministerial statement. The **statement at section 2 of this paper** has been prepared in consideration of the comments received.

Housing (Scotland) Act 1987

1.9 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. Section 34 of the Act sets out the duties to persons who are referred.

1.10 The power does not apply where the person has been assessed as intentionally homeless as there is no duty to provide settled accommodation in these circumstances. 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.

1.11 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.

1.12 For those who have been serving in the armed forces, changes to the 1987 Act were introduced (through the 2010 Act¹), which enable members of the armed forces, and those who live with them, to establish a local connection with the area they have lived or worked in.

1.13 A household in accommodation provided in pursuance of section 95 of the Immigration and Asylum Act 1999² is not considered to have established a local connection with the area to which they are dispersed as it is not considered to be a “residence... of their own choice” under section 27 of the 1987 Act. This means that a refugee who is homeless or threatened with homelessness in Scotland can apply to any of the 32 Scottish local authority areas.

1.14 Where an applicant has no local connection with the authority to which they have applied, and no local connection with any other authority in England, Scotland or Wales, the responsibility for dealing with the application rests with the local authority the applicant applied to.

1.15 Further guidance on applying the current local connection provisions is available in [Chapter 7 of the Code of Guidance on Homelessness](#).

¹ [S. 27\(2\)\(a\)\(i\)](#) repealed (1.3.2011) by [Housing \(Scotland\) Act 2010 \(asp 17\)](#), **ss. 156(a), 166(2)**; [S.S.I. 2011/96, art. 2, sch.](#) and [S. 27\(3\)\(a\)](#) repealed (1.3.2011) by [Housing \(Scotland\) Act 2010 \(asp 17\)](#), **ss. 156(b), 166(2)**; [S.S.I. 2011/96, art. 2, sch.](#)

² [S. 27\(2\)\(a\)\(iii\)](#) and word inserted (30.1.2004) by [Homelessness etc. \(Scotland\) Act 2003 \(asp 10\)](#), **ss. 7, 14(1)**; [S.S.I. 2003/609, art. 2](#)

Section 2: Statement on Modifying Local Connection

2.1 As required under section 33B of the Housing (Scotland) Act 1987, this statement sets out the circumstances and the general criteria, by reference to which, Scottish Ministers would exercise the power, under section 33A of the Act, to modify the operation of section 33 of that Act. Local authorities currently have the power, in certain circumstances, under section 33, to refer households who are homeless or threatened with homelessness and who do not have a local connection with them to another local authority where they do have such a connection.

2.2 The statement is prepared in the expectation that those who are experiencing or threatened with homelessness 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 homeless or 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.

Circumstances for modifying local connection

2.3 The circumstances, by reference to which, Scottish Ministers would exercise the power to modify the operation of local connection referrals between local authorities within Scotland would be:

To increase the rights and ability of households who are experiencing or are threatened with homelessness to choose where to apply for assistance so that they may receive the level of person-centred support they require; taking account of available evidence on any detrimental effect which may result in terms of the capacity of particular local authorities to meet their homelessness duties, or outcomes for individuals or communities.

General criteria for modifying local connection

2.4 The general criteria, by reference to which, Scottish Ministers would exercise the power to modify the operation of local connection referrals between local authorities within Scotland would be:

- **To improve options for households experiencing or threatened with homelessness;**
- **To improve outcomes for households experiencing or threatened with homelessness;**
- **At the same time, to maintain the capacity for local authorities to fulfil their statutory homelessness duties and their duty to house people in housing need, and to respond to:**
 - **significant undue pressures related to an increased level of households being assessed as homeless, where this pressure is due in part to the pressure of applications from households**

- with no local connection to the local authority area(s);**
- **significant undue pressures resulting from increases to the scale/frequency of homelessness applications from households experiencing homelessness with no local connection to the local authority area(s).**
 - **significant issues identified in impact assessments, including an island communities assessment carried out under the terms of the Islands (Scotland) Act 2018**

Assessing and monitoring any impacts

2.5 The Scottish Government acknowledges, however, that it is important to balance the desire to reduce burdens and increase options for people or households who are homeless or threatened with homelessness, with the need to ensure that these are sustainable in terms of accommodation and support capacity within local authorities. We have noted the apprehension of some local authorities with regard to the potential impact should the power to modify local connection referrals be exercised, particularly those in rural and island communities and city areas.

2.6 While existing data shows that local connection referrals are used very infrequently, the Scottish Government will, prior to introducing any legislation to modify local connection referrals, carry out a full range of impact assessments, including an island communities assessment under the terms of the Islands (Scotland) Act 2018. The Scottish Government will also monitor the impact of any changes on an ongoing basis and in close consultation with representatives of the relevant local authorities and other partners.

2.7 The Scottish Government would look to determine 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, of any modification to local connection and 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 or some other form of intervention or support is needed. The factors to consider, in consultation with local authorities and others, as part of the arrangements to assess and monitor this would include:

- **number of applications/assessments and number with no connection to the local area**
- **number of social lets required to house statutory homeless people and associated impact on waiting lists**
- **number of households experiencing homelessness in temporary accommodation and time spent there**
- **number of breaches of temporary accommodation duties**
- **sustainability of solutions for households experiencing homelessness**
- **ability to meet support needs**
- **ability to prevent homelessness**
- **capacity of local health and social care services to meet the needs of**

homeless applicants with particular health care or support needs

- **the tenancy sustainment rates and repeat homelessness of those moving into an area as compared with established residents and the reasons for any disparity**
- **impact on wider services such as education, health and social care, drug and alcohol services and social work**
- **achieving effective housing and support outcomes for those discharged from prison**
- **ability to maintain effective processes for public protection arrangements and the management and supervision of high risk offenders**

2.8 The Scottish Government will use existing homelessness statistical data collections, such as HL1 and Prevent 1 data, to monitor the impact of changes, as well as from collecting information and evidence from local authorities, housing options hubs and households who choose to settle in a new area. From August 2020 onwards, local connection data is now published as part of the Homelessness in Scotland Statistics. This will provide important up to date evidence and help ensure a timely and appropriate response is undertaken should any local authorities experience significant and undue pressure.



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