

Section 1

Q1: Is the form and manner of notifications of proceedings to local authorities clear to you from the information contained in these regulations?

YES the form of notice itself is quite clear. The notice period proposed is rather short if court action is to be avoided. It would be preferable if the landlord notified the local authority 14 days before they raise proceedings.

If the local authority notification is to be at the time the proceedings are raised we would suggest that the statutory guidance required the Notice to be sent to local authorities by Sheriff Courts, or other appropriate formal agency. This would ensure a more robust process, which would be much more effective and more easily monitored.

Asking landlords to provide notices directly to LAs may not be reliable and therefore unlikely to lead to homelessness prevention.

Q2: Do you believe that the information outlined in the Notice of Proceedings in Form 1 is sufficient to ensure effective implementation of section 11?

NO. The information to be provided is limited and insufficient if the primary reason for the notification is to prompt an intervention, which will prevent homelessness.

It would be better if the notice included NINO to prevent mistaken identity. Also details of the debt; household composition and length of tenancy would assist local authorities to prioritise their interventions.

It would assist if a named contact were given for each organisation.

A record of any previous action taken would be of invaluable assistance.

A landlord comments box for additional information would enhance information flow and capture.

Details of reason for serving of the notice would also assist.

Q3: Do you believe that the information outlined in the Calling-up Notice etc, in Form 2 is sufficient to ensure effective implementation of section 11?

NO for the same reasons as stated at Q2.

Q4: Do you have any suggestions to make Forms 1 and 2 in the regulations more "user friendly"?

Both forms are acceptable but would be more useful if the following information was included and captured:

Situation leading up to this point

Actions already taken to alleviate the problem

Remedial course of action required, e.g. minimum payment

Q5: Do you have any general comments or suggestions on the form and manner of the notification to local authorities from landlords and creditors as outlined in the regulations set out in section 1?

As set out at Q1, the system would be more effective if Sheriff Courts had formal responsibility to inform local authorities, rather than the onus being placed on landlords.

The method of communication between landlords and the local authority should be electronic. In the case of Registered Social landlords it is likely that there will be significant numbers of notifications on a weekly basis.

Expediting forms after notice served, would allow maximum time for local authorities to respond.

Procedure for follow-up from the Notice being served needs to flow from regulations. Landlord's creditors at present have no obligation to inform Local

Authorities of updates or changes to the situation. The scenario of:

If a case is taken to the next level

When the eviction is to proceed

If a case has been cancelled

If an agreement has been established

Needs to be ascertained by the Local Authority necessitating resources, which could be better targeted at the on-going caseload.

Section 2

A) STATUTORY GUIDANCE TO LOCAL AUTHORITIES

Q6: Are you clear from the guidance at which stage local authorities should expect to receive the proceedings?

YES. Although it would be more robust if notification were provided to local authorities within a specified time from the date proceedings are raised. Preferably before, but if not, then at the same time as they raise proceedings.

Q7: Do you have any comments/suggestions in relation to local authorities ensuring landlords or creditors know where to send proceedings?

This will be a time consuming and costly process for local authorities.

While it would be possible to mail-shot all landlords who have applied for registration within the area, and all landlords who are known to the Housing and Council Tax Benefits teams, this would only inform those landlords who let property in the local authority area.

Contacting all mortgage lenders is considerably more problematic as the mortgage company could be situated anywhere

Telling landlords and lenders where to send Notices does not ensure that they will comply with the process, particularly as there are no meaningful penalties imposed if they fail to comply

A suggestion that landlords might be refused future registration with a local authority if they fail to comply with the non-statutory guidance is not likely to be a sufficient sanction to force landlords to comply. Realistically landlords who have particular issues with a tenant are less likely to notify the Council of their intention to raise proceedings as they will not want the Council to intervene and prevent them gaining repossession.

Good quality accommodation is a scarce resource in many rural local authority areas and refusal to re-register landlords would further reduce the supply of housing.

Q8: Is it clear from the guidance, which information local authorities should expect to receive from landlords and creditors?

Yes – as outlined in draft Forms 1 and 2

Q9: Is the guidance clear on what actions should be taken by local authorities when notification is received from landlords and creditors?

Yes.

We would question the value of written contact with the tenant. If people have poor literacy skills they may have difficulty dealing with official correspondence. Also people in debt often do not open mail. Improved guidance taking into account best practice for interventions in debt recovery should be included in the guidance. The suggestions made seem to be tempered with caution for each type of approach.

Q10. Do you have any comments about the data protection issues raised in the guidance?

Yes.

At item 25 (Data Protection Issues), the Guidance for Local Authorities says *"the landlord or creditor has a statutory duty to pass information to the local authority on the proceedings or service of a notice. Therefore the affected tenant or mortgagor does not have to give permission."*

It is not clear how this legislation does not conflict with data protection legislation.

Q11 Do you have any general comments or suggestions you believe that would strengthen the statutory guidance to local authorities set out in section 2?

The new processes set out in the guidance lack sufficient weight to make a meaningful contribution to the prevention of homelessness. The sanctions against landlords who do not comply are too weak and are unlikely to encourage private landlords to comply. Suggested interventions by local authorities are limited in terms of what they may achieve for tenants. Improvements to the guidance should be considered in this context.

B) GUIDANCE TO LANDLORDS AND CREDITORS

Q12: Is it clear from this guidance what the duty of landlords and creditors under the section 11 is and how it should be discharged?

Yes.

Q13: Is it clear from the guidance what the purpose of section 11 is and how landlords and creditors can contribute to and benefit from this?

The purpose is clear but the benefit to landlords is not clear.

Q14. Is it clear from the guidance what actions landlords and creditors can take to help prevent homelessness?

Early interventions by all landlords and mortgage companies when problems are identified, such as referrals to advice and support agencies, would be welcome.

However it seems optimistic to expect small scale private landlords to adopt the approach outlined for RSLs – for example, involving Social Work departments if there are children or other vulnerable people in the affected household, or that landlords should ensure that there is a full assessment of support needs for every tenant threatened with eviction before a notice is issued.

Q15: Do you have any general comments or suggestions you believe would strengthen the guidance to landlords and creditors set out in section 2?

The guidance should be statutory for all parties and the Sheriff Courts and/or legal agencies would be better placed

EQUALITIES

Q16: Do you feel the proposals promote equality? If not, please give details of your concerns?

No.

There is no evidence that this process would impact significantly on equalities, as there is no penalty for non-compliance for landlords and mortgagors. The intervention of local authorities with minority groups requires specialist guidance, as there may be language or communication issues, which are not apparent.

There may also be a concern that tenants do not receive sufficient guidance on the new role, which local authorities will be undertaking. Local authorities have strong associations with other enforcement legislation and consequently there may be significant barriers to their engagement with tenants.

MONITORING AND EVALUATION OF IMPLEMENTATION

The Scottish Executive will consider carrying out a study on responses of local authorities, landlords and creditors to implementation of section 11. This will require local authorities to monitor implementation during the first year and provide this information to the Scottish Executive.

Q17: Do you agree that the local authorities should be asked to monitor implementation in the first year and are asked to provide this information to the Scottish Executive?

Yes.

As with all new processes and systems, rigorous monitoring is required to determine effectiveness. Argyll and Bute Council will provide information to the Scottish Executive as required.

Q18: Do you have any other comments or suggestions about the monitoring and evaluation of the implementation of section 11?

The new procedures represent a significant amount of additional administration for local authorities. Information currently available on the numbers of actions being raised in the courts would provide helpful data for local authorities as they set up the processes to deal with these new duties.

