

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

Comment :

However, a clearer definition of time scales is required.

The 'reasonable period' referred to allows too much scope for variations in the length of time that landlords and creditors will take to send notifications.

This lack of definition will lead to variations in the responses that local authorities can make to prevent, or plan for, subsequent homelessness.

Given that it is proposed that notifications are sent at the same time as proceedings are raised, a process whereby Sheriff Courts notify local authorities directly may be more reliable. This, however has the disadvantage of not involving landlords in the process.

Additionally, it would be useful to have a clear statement of the reason for the proceedings. This would enable Local Authorities to plan interventions that are appropriate to particular cases.

Further, guidance on how the regulations can, or should be, aligned with the Housing (Scotland) 2001's stipulation that a household can be assessed as being 'threatened with homelessness' within 2 months of eviction would be useful.

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

Comment :

The Council will require further information about the composition of the household, particularly whether or not there are dependents and/or vulnerable individuals involved to be able to respond appropriately.

The guidance and forms should make it clear that the names of all joint tenants or owners should be included on the forms.

It would be useful to have a section outlining what, if any, measures had been taken by the landlord to avoid resorting to court proceedings.

Local Authorities would also need to know if there was a letting agent involved so that time is not wasted attempting to contact landlords who are abroad etc.

The Notice of Proceedings will have to be supplemented with guidance from local authority to landlords/lenders as well as tenants and creditors.

There may be difficulties for the Council in identifying cases where an intervention will be welcomed and/or needed by an individual/household.

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

Comment ;

The explanatory note on Form 2 appears to belong to Form 1.

Both forms would benefit from using more straightforward and less legalistic language. This would improve the extent to which landlords and creditors understand what is required of them. The Council is likely to receive a large number of notifications which will require a range of responses according to the circumstances of the tenant. The required response in relation to the various enactments would be enabled by clearer language.

It does not appear that creditors are required to complete a notification when the owner does not live in the property, thus meaning that a mortgage lender to a landlord does not have to be given notices.

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

YES

Comment :

As it currently stands, the form would be very difficult for landlords to understand. They need to be in plain English if they are to be user friendly.

Suggestions:

"Enactment under which proceedings are being notified" should be replaced by "Reason for this notice".

Options 1 to 7 on Form 1 should be written in plain English. e.g.

(1) The landlord has started eviction proceedings on the above regulated tenancy.

- (2) The landlord has started eviction proceedings on the above assured tenancy.
- (3) The landlord has started eviction proceedings on the above short assured tenancy.
- (4) The landlord has started eviction proceedings on the above Scottish secure tenancy.
- (5) The mortgage lender has started proceedings for the ejection of the household at the above property.
- (6) Other (please state).

What "other" (6) circumstances are there for this notice? Is it needed?

The tick on form 1 could lead to confusion. There should be a clear box or space to tick.

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?

YES

Comment:

See comments above.

Additionally, electronic versions of notifications of proceedings should be developed.

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 notification of proceedings?

NO

Comment :

Timing is paramount for effective implementation. The 'reasonable period' referred to allows a great deal of scope for variation in the length of time that landlords and creditors will take to send notifications. This lack of definition will lead to variations in the response that the Council can make to prevent, or plan for, subsequent homelessness.

The forms could include more information on timescales in relation to court proceedings which would facilitate an urgent response when this is required.

Further clarification on when the landlord should notify the Local Authority is needed. In the case of a private landlord would this be when they serve the

AT6 form or when they lodge the papers at the court? In Edinburgh, landlords are routinely advised to serve AT6 forms as a matter of course when ending a tenancy but this would not necessarily go through the courts. This means that hundreds of AT6 forms may be served every week.

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

YES

Comment :

Without a any legal sanction on landlords/creditors who fail to send notifications, the onus is entirely on local authorities to implement this regulation. There are a number of difficulties in ensuring that all landlords/creditors know where to send proceedings.

Landlords may let properties in the area but may not have applied for registration or be resident locally. Mortgage lenders similarly may initiate a repossession within a local area but be based elsewhere.

Ensuring that this information is available to landlords and creditors across all local authorities could be achieved by a web resource hosted by the Scottish Executive which would also have the respective contact details and addresses for notifications.

Each Council could also have this information on a web page. Without this, there is a risk of uneven and/or conflicting information from different authorities with the consequence that there will be delays in the receipt of notifications.

The receipt of notifications depends entirely on the cooperation of landlords/creditors. Landlords/creditors may choose not to send notifications deliberately in cases where an eviction/repossession is a desired outcome.

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

YES

Comment :

However, the information provided via notifications will require to be supplemented by local authorities with information in relation to the household composition, support needs and housing requirements.

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

YES

COMMENT

Although, there may be issues in different local authorities in relation to the availability of legal representation. In Edinburgh, for example, if a private tenant's case has already gone to court they will need legal representation (not provided through the LA). In Edinburgh there are a number of agencies in place such as Street Legal, Shelter and an in-court legal service providing this.

Guidance on best practice in relation to preventative measures such as the provision of debt counselling, for example, would be useful.

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

YES

Comment :

It is assumed that the retention of notices received by the Council will follow existing data protection guidelines.

There may be issues in relation to notification where a landlord creditor provides information on the household that is uninvited and beyond the requirements of the notification.

If information received by the Council is incorrect with respect to the household composition, there is a possibility that the Council writes to, or contacts the wrong person in its response.

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

YES

Comment:

The lack of legal sanctions in relation to landlords and creditors who do not send notifications potentially jeopardize the efficacy of the implementation of Section 11. Whilst the Council may fulfil its statutory duty as set out in Section 2, lack of compliance by landlords and creditors will in some cases, make a timely response to an eviction impossible.

Guidance for staff in relation to the range of responses required and data protection issues would be of great benefit.

B) GUIDANCE TO LANDLORDS AND CREDITORS

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

NO

Comment

See comments above about language.

The notifications received will require a response from the local authority in cases that are likely to be proceeding to court. However, this could be complemented by a stronger emphasis on the benefits for landlords on preventing homelessness, in relation to, for example, recovery of rent arrears, loss of income due to empty properties, costs of re-letting and support in relation to anti-social behaviour.

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?

NO

Comment :

The benefits should be clearer i.e. local authority will be notified that there is an issue and can help a landlord resolve anti-social behaviour or mediate to get arrears paid to landlord/creditor. This will avoid the expense of re-advertising the property and periods when the property is empty and no rent/mortgage is being paid.

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

YES

Comment :

Private landlords may not consider it their responsibility to make referrals to debt advice agencies. This is unlikely to be regarded as reasonable by landlords generally.

Private landlords may be less able to assess and assist with support needs within particular households as larger landlords, such as Housing Associations who may have experience in these areas. Private landlords may need further guidance in this respect.

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

YES

Comment:

A web based resource which would provide guidance to both local authorities and non-statutory guidance to landlords/creditors would be useful.

Whilst there are no sanctions for landlords who do not comply with the regulations, it could be made clear that Local Authorities can interpret a lack of compliance by landlords as being a reason to withhold registration/licensing on the private landlords register.

EQUALITIES

Q.16: Do you feel the proposals promote equality? If not, please give details of your concerns?

NO

Comment:

The benefits of Section 11 for individuals and households depends very much on the extent to which landlords adhere to this legislation.

A further factor is the efficacy and appropriateness of the means of communication employed by local authorities with the various equalities groups.

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.

Q.17: Do you agree with local authorities be asked to monitor implementation in the first year and being asked to provide this information to the Scottish Executive?

YES

Comment :

The Council can monitor outcomes for customers with respect to notifications that are received.

However monitoring non-compliance is clearly a difficulty if courts do not check for notices and report to the relevant local authority.

Q.18 Do you have any other comments or suggestions about the monitoring and evaluation of the implementation of section 11?

YES

Comment ;

It may be useful to introduce the possibility of independent agencies (such as Shelter and the CABs) to be able to send notification to local authorities.