



Glasgow Homelessness Network works to end homelessness in Glasgow, and ensure that outcomes for people affected by homelessness meet their needs, interests and aspirations.

Glasgow Homelessness Network (GHN) brings together a wide range of service users, voluntary organisations and others with an interest in homelessness. GHN is pleased to offer this response to:

**HOMELESSNESS ETC (SCOTLAND) ACT 2003:
IMPLEMENTATION OF SECTION 11**

MARCH 2007
SCOTTISH EXECUTIVE

1 Executive Summary

GHN and members of the network welcome the move towards the implementation of Section 11 of the Homelessness etc. (Scotland) Act 2003 and the impact that this will have on homelessness prevention. This is of vital importance in the work towards the abolition of priority need by 2012 and the rights of all unintentionally homeless households to permanent accommodation. In order to achieve this, homelessness prevention must move to the forefront and we must collectively work towards ensuring a shared commitment to, and ownership of, the implementation of section 11 and the wider homelessness prevention agenda across all relevant sectors and organisations.

This response to the consultation paper brings forward a number of issues for consideration and discussion through the implementation of the legislation.

2 General Comments

If you would like to discuss this response further, please contact Claire Frew at GHN on 0141 276 4825 or email info@ghn.org.uk

Consultation amongst the homelessness network in Glasgow has highlighted the need for some clarity as to exactly what types of organisations fall under the scope of section 11. For example, many supported accommodation projects, while not identifying themselves explicitly as a landlord, do recognise that they are providing a home to an individual that they are legally entitled to stay in (for varying degrees of time with various degrees of tenure) and that in terms of the spirit of the legislation section 11 should apply to all people who are at risk of homelessness as a result of eviction (or other legal processes). While it is recognised here that the duties of temporary supported accommodation will come under the scope of the yet unpublished regulations bringing into force section 7 of the Housing (Scotland) Act 2001, it is also worth raising that until these regulations come into force it is important that a clear statement is made on this issue in relation to the duties of supported accommodation projects carrying out evictions that may leave vulnerable people at risk of homelessness.

As such, what needs to be avoided is a lack of clarity over the definition of a landlord, and the impending decisions of section 7, leading to people becoming homeless as a result of eviction from their accommodation and the local authority not being in a position to respond because the organisation carrying out the eviction was not subject to any legislation regarding prevention and no notification was made. Until all elements of the legislation are in force it is essential that any identified gaps that vulnerable people could fall through which can directly lead to homelessness are minimised.

3 Specific Consultation Questions/Sections

SECTION 1: FORM AND MANNER

Q1 The form and manner of notifications of proceedings to local authorities contained within these regulations seems both clear and straightforward.

Q2/3 Members of the homelessness network in Glasgow would suggest that, in terms of the information being sufficient to ensure effective implementation of section 11, it would also be useful to include the details of the solicitors acting on behalf of the landlord or lender (if any). Most proceedings raised on behalf of private landlords or creditors are raised by a firm of solicitors and the response by the local authority to the subsequent risk of homelessness will be aided by having the contact details of the solicitors involved in order to quickly begin negotiations aimed at preventing homelessness. The need for this additional information is also relevant to question 3 referring to the information outlined in the Calling-up Notice.

Q4 Feedback from GHN members working closely with section 11 has suggested that to make the form 1 more user friendly it would be useful to group

the enactment under which proceedings are being notified under the headings of: 'For private sector landlords', 'For social landlords' and 'For secured lenders'. Doing this would help to avoid confusion for landlords who may be filling in the form without legal representation in order to ensure that the notification to the local authority contains all correct and relevant information without having to be returned for clarification, which could avoid the notification and response process for preventing homelessness being slowed down.

Q5 In terms of general comments on the form and manner of notification to local authorities, GHN and members of the network believe that the success of section 11 is dependent on the process of notifications being sent to local authorities, i.e. should notifications be sent to a central office or can they be sent to any office of the local authority? The most practical option to aid the implementation of section 11 is to ensure that notifications are sent to a central location within the local authority where clear guidelines and procedures are in place to make appropriate contact and referrals in order to work to prevent homelessness.

SECTION 2: STATUTORY GUIDANCE TO LOCAL AUTHORITIES

Q6. It is not clear from the guidance which stage local authorities should expect to receive the notifications of proceedings as paragraph 7 of the consultation paper states that notification should be made at the stage of the Notice of Proceedings being raised and paragraph 13 refers to the stage when the court form or initial writ is lodged. Clarity is required on this issue to ensure that it is fully understood at which point the local authority should be receiving notification.

In clarifying this issue it is noted that there is a balance to be struck between providing early intervention by giving local authorities as much time as possible to respond to the individual case and not overwhelming the local authority with notifications. In Glasgow at present, the process of serving Notice of Proceedings for rent arrears means that a substantial number are generated that don't actually lead to court proceedings and are resolved between the tenant and the landlord without any real risk of homelessness. Having notification sent to the local authority at this stage would likely lead to very large numbers being received, making it incredibly difficult to respond effectively to the notification, in turn possibly working to undermine the effectiveness of Section 11.

Following on from this, the issue of Notice of Proceedings being raised by RSLs on a regular basis, members of the homelessness network in Glasgow feel that this could have a significant impact on refugees. It is felt that in the initial tenancy sign-up procedures interpreters are not always available and that refugees often fall into rent arrears because they did not understand the process.

and have not applied for housing benefit. With this in mind, the section 11 process will have to take account of the specific needs of refugees who may form a relatively significant proportion of the households covered by section 11 notifications.

Q7 As mentioned previously, having a central office within each local authority being responsible for receiving section 11 notifications will make it easier for landlords or creditors to know where to send proceedings. As for the issue of some landlords or creditors being unsure as to what local authority area the property is in, we would suggest that the organisations in question should be able to find out relatively easily, possibly through the internet, what the relevant local authority is.

Q8 Other than including the additional information as noted previously in this response, regarding the contact details of solicitors acting on behalf of landlords or creditors, it is clear from the guidance which information local authorities should expect to receive.

Q9. GHN and members of the homelessness network in Glasgow are clear that that the action to be taken by a local authority when they receive a notification from a landlord or creditor, in terms of achieving the full impact of Section 11, is to both respond to the individual case **AND** use the information to inform future prevention work. It is not an either/or situation.

However, the language throughout the consultation paper is not consistent and, while the draft guidance for local authorities states the above position other references throughout the paper suggest that it could still be an either/or scenario. For purposes of clarity that will ensure that local authorities are clear on what action they should take, there needs to be a consistency of language.

Q10 The homelessness network in Glasgow is clear that information received through the section 11 notification should only be stored for as long as it is necessary in terms of the purpose for which it was collected.

In terms of storing information in order to build up a strategic overview of possession actions and evictions to inform future prevention work, GHN would back the view of member organisations that, in order to do this, local authorities may need to develop information systems that can store the statistical information on action taken without storing the personal information on the household involved.

SECTION 3: GUIDANCE TO LANDLORDS/CREDITORS

Q12 As noted earlier in the consultation paper, it is not clear from the guidance what the duty of the landlords and creditors is and how it should be discharged as there is no clear definition of when a notification should be made to a local authority.

Q13/14/15 GHN welcomes the guidance offered to landlords and creditors for the awareness raising role that it will play in terms of homelessness prevention and the roles that different sectors and agencies can play in this. However, the lack of sanctions attached to the process if there is non-compliance calls into question how effective the legislation may be in practice. The difficulty of imposing sanctions is recognised, however, and GHN would like to offer support to the Govan Law Centre suggestion that the non-sanction based solution of bringing into force an Act of Sederunt that would require

'a pursuer in an eviction or repossession action (excepting local authorities) to provide a copy of the section 11 notice with their Summons or Initial Writ at the time of seeking a warrant for service. If a pursuer fails to provide a copy of the section 11 notice ... the Sheriff Clerk could be empowered to return the Summons or Writ in order for a copy of the notice to be provided.' (GLC, Section 11 Consultation Response, March 2007)

GHN backs Govan Law Centre in the belief that this would significantly increase the likelihood that pursuers gave section 11 notices in all cases. In addition to concerns about creditors carrying out the notification, it is also important to note that there is no attempt within the consultation paper to lay out how UK based creditors will be kept up-to-date about changes to legislation in Scotland that does not apply in England and Wales. The difficulties this may cause need to be borne in mind.

EQUALITIES

Q16 In terms of promoting equality, the whole section 11 process needs to take full account of language and literacy issues and ensure that translators are made available throughout the whole process.

MONITORING AND EVALUATION OF IMPLEMENTATION

Q17 GHN and members of the network fully agree with monitoring the implementation of section 11 but do not feel that it should only be limited to the first year of implementation but be ongoing.

4 Additional Concerns

Glasgow Homelessness Network, in consultation with member organisations, feel it is important to raise the issue of the future possibility of local authorities interpreting a lack of response from a household to contact from the local authority in response to a Section 11 notification, who later make a homelessness application, as being grounds for an intentionality decision. Due to the many reasons, including literacy or language, that make the response of the household difficult, it is important that Scottish Executive guidance is explicit that this lack of response should not be seen as a basis for an intentionality decision if a homelessness application is made.

5 Conclusion

GHN and the homelessness network in Glasgow welcome the importance placed upon homelessness prevention in the road towards 2012 and recognise the impact that the implementation of section 11 will have here. A number of issues have been raised throughout this paper that we feel will help to ensure that the practice of section 11 lives up to the potential it has for preventing homelessness in Scotland. These issues include:

- the need for clarity on the definition of a landlord for the purposes of the implementation of Section 11;
- the importance of the consistency of language to ensure that local authorities are aware that they would have a duty to both respond to individual notifications under Section 11 **AND** monitor the process to inform future strategic decisions;
- the significance of balancing ensuring local authorities have enough time to respond meaningfully to Section 11 notifications in order to prevent homelessness with the risk of overwhelming local authorities, and other organisations being referred to, which could undermine the success of the whole process;
- the concern at the lack of options identified to ensure that private landlords and creditors, in particular, actually comply with Section 11 and don't undermine the process, and back the proposal of the Govan Law Centre to bring into force an Act of Sederunt that would help to make compliance more likely.