

RENFREWSHIRE COUNCIL

TO: Housing Environment and Community Safety Policy Board

ON: 20 March 2007

**Report
by
Director of Housing and Property Services
Consultation on Implementation of Section 11
of the Homelessness etc. (Scotland) Act 2003**

1. Summary

- 1.1 This report summarises and seeks approval for the proposed response to the Scottish Executive consultation on Section 11 of Homelessness etc (Scotland) Act 2003, (attached as Appendix 1).
- 1.2 Section 11 of the Act requires all landlords (other than local authorities) and creditors to notify the relevant local authority when they raise repossession proceedings or serve certain other notices.

2. Recommendation

It is recommended that the Board:

- 2.1 Notes the possible implications of Section 11 for Renfrewshire Council as summarised in section 5 of this report
- 2.2 Approves the proposed response to the Scottish Executive consultation on Section 11 of the Homelessness etc (Scotland) Act 2003

3. Background

- 3.1 The Ministerial Statement on the Abolition of Priority Need, reported to the Housing Environment and Community Safety Policy Board on 14th February 2006 gave a commitment to bring into force Section 11 of the Homelessness etc (Scotland) Act 2003 and the associated statutory guidance. Consultation with local authorities is part of the process of the implementation of Section 11 and is intended to ensure that interested parties can express their views on the implementation and the associated regulations and guidance.
- 3.2 Section 11 of the Homelessness etc. Act requires all landlords (other than local authorities) and creditors to notify the relevant local authority when they raise repossession proceedings or serve certain other notices. This requirement means that local authorities will be alerted to households at risk of homelessness at an earlier stage and may be able to respond either on an individual basis or by reassessing their strategic approach.

3.3 The Scottish Executive has placed an increased emphasis on the prevention of homelessness in order to meet the target to abolish priority need by 2012 and it is intended that Section 11 is an important part of prevention activities.

4. Summary of draft regulations

4.1 The Scottish Executive's consultation paper sets out the draft regulations on 'the form and manner' of notification to local authorities and the draft statutory guidance to local authorities. As well as explaining the draft regulations, the consultation also sets out the content of the draft guidance which is designed to assist local authorities in carrying out the duties under Section 11. The specific questions asked within the consultation paper relate to both the regulations and the content of the guidance.

4.2 Section 11 of the 2003 Act requires all landlords (other than local authorities) and creditors to notify the relevant local authority when they raise repossession proceedings or serve certain other notices, and the draft regulations prescribe the form of notice and manner in meeting this requirement. Landlords and creditors will be required to send documentation and information to local authorities.

4.3 Under the proposed Section 11, the local authority will need to ascertain whether the potentially homeless household contains dependent children or vulnerable people and take account of these factors in the subsequent action that follows. This action might include:

- Contacts with appropriate agencies who could act on behalf of the household
- Mediation with landlord or creditor to try and prevent eviction
- Support to help people facing eviction as a result of antisocial behaviour
- More general support to help sustain a tenancy. For example if money management is a problem, then support should be offered to help this
- Any prevention activity that the local authority considers will help
- Provisions of loans to help people in rent/mortgage arrears
- Investigation of rent arrears caused by delays to payment of housing benefit and informing the landlord that it is doing so

4.4 Local authorities need to be mindful that failure of households to respond to any contact from the local authority is not in itself an indication that they are making themselves intentionally homeless. Therefore, any subsequent homelessness presentation should be considered in the same way as any other homelessness presentation.

4.5 Section 11 regulations do not apply to local authorities, but it is clearly good practice that within local authorities, and particularly homelessness services, there is a good exchange of information about potential evictions in order to take the necessary steps to prevent homelessness.

- 4.6 Section 5 of the Homelessness (2001) Act requires registered social landlords (RSLs) to provide permanent accommodation to homeless households if requested to do so by local authorities (unless the RSL has a good reason not to comply). Situations may arise where an RSL evicts a household that then presents as homeless to the local authority, who in turn request the same RSL to provide accommodation. This will mean that local authorities and RSLs will need to work closely to prevent future or repeat homelessness for individuals facing evictions.
- 4.7 Local authorities should give consideration as to how they will monitor both the process and the outcomes arising from the implementation of Section 11 and at a strategic level how Section 11 has helped them to prevent homelessness.
- 4.8 Copies of the consultation paper on Section 11 which includes the draft regulation and guidance can be obtained from Donna Fraser, Policy Officer (0141 840 3532).

5. Implications for Renfrewshire

- 5.1 In general, the implementation of Section 11 and the draft regulations and guidance will provide a positive step in the prevention of homelessness and should be welcomed. However, as outlined in the proposed response in Appendix 1, there are a number of areas that it would be helpful to have clearer guidance and consideration. These include:
 - How local authorities will identify and engage with landlord/creditors, particularly those who do not operate in their area
 - When notices should be served and at what stage the local authority should be notified particularly an indication on how long before the household may lose their home and the length of time any action may take. It is vital to ensure that local authorities are given sufficient notice when a household may become homeless to ensure appropriate interventions are in place.
 - More information on the type of household affected by the notice and the measures landlords or creditors have taken to prevent the situation deteriorating to the notice stage
 - Cases where the eviction has been cancelled and notifying the local authority that there has been a change in circumstances.
 - Private landlords and creditors are governed by different regulations and priorities than social landlords and it would be helpful in the guidance to make more of a distinction between the two sectors
- 5.2 The monitoring and evaluation of the implementation of Section 11 will have implications for homelessness services in local authorities in relation to developing procedures and training for staff and ensuring good communication and better co-ordination between internal departments and agencies in relation to eviction.

IMPLICATIONS OF THIS REPORT

1. FINANCIAL IMPLICATIONS

None.

2. PERSONNEL IMPLICATIONS

None.

3. COMMUNITY PLAN IMPLICATIONS

1. Social Inclusion

- Implementation of the provisions in the Homelessness etc (Scotland) Act 2003 seeks to improve access to housing for homeless households

2. Sustainable Development

- Implementation of the Council's Homelessness Strategy seeks to help prevent people from becoming homeless as well as addressing the needs of those who are homeless.

3. Modernising Government

- Partnership working is key to addressing the needs of those who are homeless

4. LEGAL IMPLICATIONS

None.

5. PROPERTY IMPLICATIONS

None.

6. INFORMATION TECHNOLOGY IMPLICATIONS

None.

7. EQUAL OPPORTUNITY IMPLICATIONS

None.

Director of Housing & Property Services

Ref: DF/Homelessness Act 2003 -Section 11 Consultation.lwp

Date: 13 March 2007

Response to Consultation on Section 11 from Renfrewshire Council

Copies of the full Consultation Paper on Section 11 of the Homelessness etc. (Scotland) Act 2003 can be obtained from Donna Fraser, Policy Officer (0141 840 3532).

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, in some parts

Comment:

The stage at which local authorities are given notice needs to be clearer, so that trigger points for intervention can be identified. Clearer guidance on how local authorities will identify and engage with landlord and creditors, particularly those who do not operate in their area would be helpful.

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:

It would be helpful if the form included information on the type of household to identify families or any other vulnerable groups affected by the notice and any measures that landlord/creditors have taken to prevent matters reaching the notice stage. Information on any other agencies involved would also be useful.

It would be helpful in the guidance to make more of a distinction between private landlords/creditors and social landlords as they are governed by different regulations and priorities. It is likely that private landlord/creditors will not have the same level of information on households as social landlords. Not having more detailed information at an early stage, for example on household type may lead to a longer length of time for the local authority to investigate the circumstances

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: See comments on Q2 above.

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

YES

Comment:

The proposed forms use legal terms and language and it would be helpful to local authorities, in particular staff in homelessness services, if the language used reflected plain English.

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:

Renfrewshire Council would reiterate the need to be clear on the stage of the notice to ensure that intervention is at an appropriate time. It may be helpful to have two separate notices; one for notice of proceedings and one for eviction.

Guidance for landlords/creditors on notifying the local authority of any changes during the recovery process would be helpful. For example proceedings could be cancelled or sisted, but there is no 'form' or procedure within the regulations to notify the local authority of any change.

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:

Please see comments in Q1 and Q5 above. It would be helpful to have some agreed trigger points which would assist local authorities in assessing when preventative measures need to be put in place.

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

YES

Comment:

Identifying and engaging with landlords/creditors, particularly those that do not operate in the area will be a difficult task for local authorities. Having a national website with local authority contact details would assist.

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

YES

Comment:

As commented in Q2, additional information on household type would be helpful.

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 the action that local authorities should take is clear, there will be implications in relation to procedures, staff training and improving communication and co-ordination between departments and agencies.

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

YES

Comment:

Procedures and staff training will require to be put in place to cover these requirements. The regulations state "if a local authority wishes to share information on the affected tenant with other departments within the local authority permission to do so is not required from the tenant". Do the regulations cover the sharing of information on local authority tenants between departments that have not been referred through section 11?

Q11: Do you have any general comments or suggestions you believe would strengthen the statutory guidance to local authorities set out in section 22?

YES

Comment:

Links should be made with the HL1 process.

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 on Q1,Q2,Q5 and Q6. It would be helpful if there was a duty on landlords/creditors to obtain information on household type if they are to help prevent homelessness

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?

YES

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

YES, in parts

Comment:

There are concerns that individuals in similar circumstances could be treated differently by different landlords and creditors. Clearer guidance on how to prevent eviction should be provided to landlords and creditors if they are to have a role in the prevention of homelessness.

Further clarification would be helpful on the 'reasonable steps' that have been taken by the landlord/creditor to prevent eviction which are taken into consideration by the decision made by the court. Does the same 'reasonable test' apply to landlords/creditors that is applied to local authorities?

Some advice on how local authorities should deal with situations whereby someone presents as homeless but no notification has been received from the landlord/creditor.

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:

Some advice on how to deal with landlord/creditors that do not comply with the regulations would be helpful. How will the court deal with this type of situation?

EQUALITIES

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

Yes in principle

Comment:

The proposals require landlords/creditors and local authorities to recognise that they have an important role to play in the prevention of homelessness.

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 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:

Renfrewshire Council is supportive of the implementation of Section 11 in preventing homelessness. It may be helpful to set up a working group with representation from the Scottish Executive and local authorities which develops a framework to ensure some consistency across local authorities.

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

NO