

**HOMELESSNESS etc (SCOTLAND) ACT 2003 –
IMPLEMENTATION OF SECTION 11**

CONSULTATION RESPONSE

SOUTH AYRSHIRE COUNCIL

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 is quite clear however it will be important to monitor how the relevant landlords implement the requirements into their own management procedures. We would consider an explanatory note should be added to any standard form developed for this purpose.

In addition to this and for completeness the relevant Assured Tenancy form should be amended to reflect this new requirement. For RSLs it should be highlighted in their relevant paper work to tenants that this form has been intimated to the Local Authority in terms of the regulations.

With regards to other types of tenancy or licence agreements these should also require notice of service in the relevant documents or attached to the same, such as notice to quit common law tenancies.

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, it is important to recognise that premises can be occupied in different forms all are not protected by enactments. It is suggested that for clarity the list of enactments and other circumstances be expanded to include:

Mobile Homes Act 1983

Caravan Sites Act 1968

Ending of Common Law Tenancies

Ending of Licence to Occupy

Ending of Right to occupy a hostel or other temporary accommodation provided under homeless provisions of Part II of the Housing (Scotland) Act 1987, this would not apply to such accommodation directly provided by Local Authorities.

Additional information, which should be included to assist the local authorities' response, would be:

- **A landlord roll/ reference number if available this would assist contact with larger landlords/creditors.**
- **Name of the Landlord/Creditors' solicitor, if any**
- **The provision of the tenant/proprietor's telephone number or email address if known.**
- **Whether there are any children under 16 in the household, if known. This would assist in prioritising cases.**
- **Reason for eviction: arrears, anti-social behaviour etc. and amount of arrears.**

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 it is important to ensure that form 2 is cross referenced with other relevant notices in terms of this process and its relevance in terms of section 2 of the Mortgage Rights (Scotland) Act 2001. It may be useful that the 3 methods which can be used in terms of form 2 is briefly outlined, such as an action under section 24 Conveyancing and Feudal Reform (Scotland) Act 1970.

The issue of an order of ejection under section 5 of the Heritable Securities (Scotland) Act 1884 may also be relevant to these regulations.

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

A short explanation to each type of action and potential timescales may allow for more effective intervention and prioritisation of cases.

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?

NO

Section 2

A) STATUTORY GUIDANCE TO LOCAL AUTHORITIES

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

NO it is not made clear when notification should be sent. Clear timescales should be given to landlords and creditors on when notification should be issued and suggest that this should be at the same time as the action is raised or service of calling up notice. It would help if there were a requirement on landlords and creditors to provide a copy of the Section 11 notice to the Court with their Summons or Initial Writ.

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

YES as a local authority we will take all reasonable steps ensure that this information is published and widely available. However we feel that the guidance to landlords and creditors should be strengthened to put the onus on landlords and creditors to identify the relevant local authority.

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

YES however we would like to see the information received to be expanded to assist the local authority response (see Q2)

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

YES

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

YES the information received can only be shared with other local authority departments. We believe that it would assist the client if information could also be share with external agencies providing Type II and Type III housing advice and information and affiliated to the local authority though formal referral agreements.

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

YES paragraph 22 lists actions that the LA could consider. This list includes the provision of loans to help people in rent/mortgage arrears. We would welcome any additional guidance on under what legislation this action could be taken.

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 greater clarity is needed on when the requirement will be triggered with set timescales to be adhered to.

There are concerns that there is no legal penalty on landlords and creditors for non-compliance. It should be made clearer to landlords that non-compliance would be grounds to withdraw registration. There are no similar sanctions that can be applied to creditors who fail to comply unless Sheriffs in considering actions are required to be satisfied that section 11 notification has been issued.

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 there is emphasis on the duty of landlords and creditors and recommendation on good practice for landlords but insufficient emphasis on the benefits to landlords of compliance in terms of arrears recovery, avoidance of voids etc. The benefits for creditors of compliance are less apparent.

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

YES the guidance clearly lays out the actions which landlords and creditors should take. We would like the guidance strengthened to make it a requirement

for the landlord/ creditor to demonstrate that some of these procedures have been followed prior to seeking action for eviction. For, example evidence of contacts with the tenant/proprietor, evidence that the tenant/creditor has been given advice and notified about sources of independent advice

Q15. Do you have any general comments or suggestions you believe would strengthen the guidance to landlords and creditors?

YES it should be a requirement for landlords and creditors to inform their tenant/proprietor that a Section 11 notice has been sent together with information on local housing advice organisations.

Q16. Do you feel the proposal promotes equality? If not please give details of your concerns.

YES

MONITORING AND EVALUATION

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 being asked to monitor implementation in the first year and being asked to provide this information to the Scottish Executive?

YES

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

YES guidance to local authorities would be welcomed on the form and content of the information that will require to be provided to the Scottish Executive.