

FINANCE AND HOUSING DEPARTMENT  
HOUSING DIVISION

**Director of Finance and Housing:** Albert Tait, OBE, CPFA, FCCA  
Council Offices, Kirkwall, Orkney, KW15 1NY

Tel: (01856) 873535

Fax: (01856) 886530

Email: - housing@orkney.gov.uk



**ORKNEY**  
ISLANDS COUNCIL

(If telephoning or calling please ask for: **Frances Troup** Ext: **2177** )

---

OUR REF: AT/JTR/FT

YOUR REF:

26 March 2007

FAO Pippa Goldschmidt  
Homelessness Division  
Scottish Executive Development Department  
Area 1H (South)  
Victoria Quay  
EDINBURGH  
EH6 6QQ

Dear Pippa

**Homelessness etc (Scotland) Act 2003 - Implementation of Section 11**

I refer to the letter from Robin Bate dated 20 December 2006 enclosing a consultation paper in connection with the above.

The consultation response has been developed by members of our Homelessness Strategic Group, that is the multi-agency group which delivers our Homelessness Strategy. Membership includes representatives of Orkney Islands Council, Orkney Housing Association Ltd, Orkney Islands Property Developments Ltd, Orkney Citizen's Advice Bureau and a wide range of other voluntary sector organisations. I also enclose a completed respondent information form.

Yours sincerely

**Frances Troup**  
**Acting Principal Housing Officer**



## SECTION 11 –CONSULTATION RESPONSE

Name of individual/organisation: Orkney's Homelessness Strategic Group

Views are sought in relation to:

- the regulations on the form and manner of notifications to local authorities set out in Section 1 of this paper
- the statutory guidance to local authorities and the guidance to landlords and creditors set out in Section 2
- whether the paper addresses equalities issues
- the proposals for monitoring and evaluation of implementation of section 11.

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/NO Yes

**Comment:** The information is clear enough for those who are familiar with housing law such as Local Authorities and Registered Social Landlords (RSLs). The same is probably not true for a large number of private sector landlords who may own one or two properties and therefore have a very limited understanding of the relevant law.

The information is intended for Housing Officers rather than for Solicitors so there is no need for it to be in such legalistic language.

The form itself is quite complex and it is likely that many landlords may not understand the "enactment" section. It should be written in plain language with clear explanatory notes taking account of accessibility issues.

**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?**

YES/NO No

**Comment:** Form 1 does provide some good basic information which would be useful to Local Authorities in the prevention of homelessness. However, it would be considerably more helpful if it was issued at NOP stage and there was some detail on the ground used for eviction. For instance if rent arrears were the issue it would be useful to know from the outset so that money advice could be promoted. This is also true of issues such as anti-social behaviour in RSL stock where the Local Authority could act to tackle the anti-social behaviour and sustain the tenancy. In addition some detail on household composition would be helpful to allow Local Authorities to know whether there are any children in the household and whether there would be any requirement for Social Services to be involved.

Often RSLs and Local Authorities have entered into voluntary arrangements so that the Local Authority is notified if an RSL is taking action to recover a property. Unless form 1 is to be issued at NOP stage, there will be a two tier system with RSLs acting

much faster than private sector landlords. This would mean that there would also be a lower chance of Local Authorities preventing homelessness as a result of the loss of a private sector tenancy.

The form itself needs to be more straight-forward. There should be a tick box beside section 11 **and** another one. This needs to be really clear. Perhaps the type of tenancy could also be included and some sort of leaflet to provide clarity.

**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?**

**YES/NO** No

**Comment:** Again form 2 does provide some good basic information which would be useful to Local Authorities in the prevention of homelessness.

It could be assumed that repossession of a property would be due to non payment of mortgage. However, if there was information in this form covering the valuation of the property, household composition and house size this would enable the local authority to identify whether use of the mortgage to rent scheme may be appropriate. In addition some detail on household composition would be helpful to allow Local Authorities to know whether there were any children in the household and whether there would be any requirement for Social Services to be involved, though it is unlikely that a mortgage lender would hold this information.

One of the issues raised in relation to money advice was that banks differ greatly in the extent to which they are prepared to work jointly with other agencies. This needs to be taken into account in relation to Section 11. Will banks need to be able to prove that they have sent form 2 to the Local Authority? Concerns were raised regarding the use of e-mail for this purpose as a slightly incorrect e-mail address could result in the form not arriving with the Local Authority and then no preventative action could be taken.

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

**YES/NO** Yes

**Comment:** It would be better to move away from using legalistic language and instead for the document to be written in plain language with detailed explanatory notes. Without this it may confuse any private landlords who are unfamiliar with housing law which is likely to make the process less effective and may result in breaches unnecessarily.

A leaflet covering the main issues may be beneficial, this could also cover local agencies which would be involved.

**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/NO** Yes

**Comment:** The timescale for advising Local Authorities is too late if the intention is to prevent homelessness. If Local Authorities were notified when notice was served this would allow a much better chance of them becoming involved in a proactive sense and doing something effective to prevent homelessness.

Many Local Authorities have entered into voluntary arrangements with RSLs in their area to ensure that RSLs notify them prior to a household being evicted. In Orkney this has been the case and the RSL is required to notify the Local Authority at the point where notice is served and a referral can be made to the Council's Housing Advice Service accordingly. This has proved to be effective.

Once a case has reached court stage the options for preventing homelessness are more limited and may serve to slow down the court system. If action was taken at notice stage a reduced number of cases would reach court and thus serve to free up the court system for more relevant cases.

Ideally the court should be required to notify the Local Authority as soon as a case is lodged, or landlords should be required to do this at NOP stage. Otherwise there will be a large number of cases effectively 'slipping through the net'. There should also be a penalty imposed for breaching this requirement. Local Authorities could penalise landlords through the private sector landlord registration system provided they are aware that this has happened. The same does not apply to mortgage lenders. The inference is that they will behave in a responsible manner and this is not necessarily the case. A penalty needs to be imposed and in the interests of equality should affect all involved in Section 11.

The court should be required to check that the landlord or creditor has followed the procedure under Section 11 before awarding a decree. It would seem sensible for a decree to be withheld until this process had been adhered to.

There needs to be clarity re how voluntary bankruptcy/sequestration etc are affected by this and how the debt repayment scheme will link in.

## **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?**

**YES/NO** Yes

**Comment:** Please see comments at question 5 above. This is much too late.

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

**YES/NO** Yes

**Comment:** This would need to be made clear and linked closely with the Local Authority's housing advice and homelessness prevention service. In Orkney we have a specific e-mail address for this purpose. However, the key issue is whether Local Authorities will advertise this and reach the target audience given that many private landlords may pay little attention if they have only one or two properties. Unless they are fully aware of where to send the information, delays will be encountered or possible breaches which will again affect the Local Authority's ability to effectively prevent homelessness.

This information needs to be made available in the form of leaflets, posters, website links from private sector landlord registration site or Better Renting website and links to Local Authorities' websites etc. In addition this information needs to be widely available in courts, Solicitors offices and Law Centres etc. As a result there will be resource implications for Local Authorities unless there is to be a national campaign.

The Scottish Executive should assist by launching some type of national advertising. The introduction of the requirement for all private sector landlords to become registered with their Local Authority highlighted the fact that national advertising was not sufficient and this would need to be addressed effectively in relation to Section 11. Without this landlords will simply fail to notify the Local Authority, there is no penalty for such a breach and so Local Authorities will be unable to prevent homelessness in such cases.

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

**YES/NO** Yes

**Comments:** Again more information would be preferable as covered previously.

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

**YES/NO** Yes

**Comment:** Writing to tenants/mortgagees would be the simplest and most cost effective option. However the guidance is suggesting that this may not be the best route forward and instead focuses on visiting households to obtain further information and signposting them to other organisations for advice.

Home visits may be advantageous but also have major resource implications. The information obtained on each household will be insufficient for Local Authorities to assess whether staff may be at risk in the household and therefore they may need to err on the side of caution and opt for a two person visit in each case. This has implications for officer time and costs incurred. Joint working with another agency is a possibility but again this would require more time to organise given that most voluntary sector agencies in this area have a very small staff.

If Local Authorities signpost cases to another organisation, how can they be sure they have effectively met the requirements of Section 11? How are they to know whether the organisation managed to make contact and obtain an effective result? Protocols could be developed to cover this process and to ensure there are no issues

surrounding data sharing. However, time would be so limited that this option may be unviable and yet joint working to prevent homelessness is a key aspect of homelessness strategies.

In addition some of the households may be found to be intentionally homeless if they fail to engage with the Local Authority's attempts to prevent them from becoming homeless. This should be outlined in the guidance to make this clear. The household threatened with homelessness does not simply have a passive role.

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

**YES/NO** Yes

**Comment:** Notices etc can be kept alongside landlord registration information for the standard period of 3 years and be destroyed thereafter. Protocols will need to be developed in respect of question 9 if there are to be signposting arrangements or more in-depth arrangements with other organisations so that Local Authorities can ensure they have met the requirements of ensuring the household is happy for information to be passed to another organisation.

Care will need to be taken in a small place that reporting against this information will not allow a household to be identified.

**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/NO** Yes

**Comments:** Clearer guidance needs to be provided as to how to respond to a notice and in what circumstances Local Authorities could involve other agencies. How will Local Authorities be assessed against their response to Section 11? Will a central leaflet be developed or will each Authority be expected to provide its own? There are certain omissions from the guidance including participation in the mortgage to rent scheme.

The lack of any penalty makes the whole scheme unviable as there is nothing to stop a landlord or mortgage lender from deliberately failing to notify the Local Authority. If they believe the Authority may act against them, as is likely to try and prevent homelessness, they would have a clear motive for failing to notify the Local Authority.

A different situation would apply to RSLs who are involved in addressing homelessness as a result of the Section 5 Referral process etc. It would not be in their best interests to fail to notify the Local Authority and Section 11 is likely to encourage much closer joint working amongst Local Authorities and RSLs who have not entered into voluntary arrangements prior to this, which is positive.

## **B) GUIDANCE TO LANDLORDS AND CREDITORS**

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

**YES/NO** Yes

**Comment:** There is no point in there being a duty to do something without a penalty to be imposed if they do not.

**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/NO** Yes

**Comment:** It is clear what the purpose of Section 11 is and the basic idea behind it is very good. If action was required at the stage when notice was served the result could be a robust scheme to prevent homelessness.

It is unlikely that landlords and creditors will feel any responsibility towards preventing homelessness with the exception of RSLs who already play a valuable role in assisting Local Authorities with housing homeless households. From awareness raising sessions etc we have run in the past it has usually been seen by private sector landlords and Solicitors as something which is the duty of the Local Authority and it remains to be seen whether Section 11 will be effective in changing this.

It would be unlikely that private sector landlords would contact homelessness services in order to ensure they are aware of a household they are about to evict. Current preventative work including local policy decisions to ensure that landlords obtain a court order before a household will be recognised as being threatened with homelessness, has met with mixed responses and it is likely therefore that some landlords will view the Local Authority as seeking to stop them from doing what they wish with their property. This may undermine the process.

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

**YES/NO** Yes

**Comment:** See comments at question 13.

**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/NO** Yes

**Comment:** One of the issues which comes out of Section 11, in keeping with various other changes to the homelessness legislation, is that there will be resource implications for Local Authorities.

Although this was mentioned in the Ministerial Statement on the Removal of Priority Need, this has not been addressed appropriately. Homelessness Strategy funding was increased by only 1.18% for financial year 2007/08 which is significantly below the rate of inflation and therefore represents a cut in funding. Unless resource issues are addressed it is difficult to see how Local Authorities can be expected to deliver all the additional duties being placed on them.

## **EQUALITIES**

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

**YES/NO** No

**Comment:** At a very general level equality may not be an issue, that is if considering the equality issues of those who are threatened with homelessness. However it is not equal to have only a penalty of sorts for private sector landlords and RSLs for failing to notify the Local Authority of pending evictions and not having any penalty for mortgage lenders in a comparable sense. RSLs also have a key role to play in addressing homelessness which is not true of private sector landlords or mortgage lenders. It is therefore even more important that some attempt is made to reduce the unequal effect of this.

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

**YES/NO** Yes

**Comment:** This would seem sensible so that the level of effectiveness can be assessed.

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

**YES/NO** No

**Comment:**

