

GMAC RFC

**RESPONSE BY GMAC-RFC LIMITED TO THE
SCOTTISH EXECUTIVE'S CONSULTATION PAPER ON THE
HOMELESSNESS ETC (SCOTLAND) ACT 2003:
IMPLEMENTATION OF SECTION 11**

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Introduction

GMAC-RFC Limited ('GMAC-RFC') was founded in the UK in 1998 and is a wholly owned subsidiary of General Motors Acceptance Corporation Residential Capital Corporation ('GMAC ResCap'), which is itself a subsidiary of General Motors Acceptance Corporation ('GMAC'). GMAC is owned by a consortium of investors led by Cerberus Capital Management, and General Motors ('GM').

In the UK, GMAC-RFC is an all-status lender. The Council of Mortgage Lender's latest league table ranked GMAC-RFC as the 10th largest lender in the UK¹.

GMAC-RFC offers its mortgage products only through regulated intermediaries and offers a full range of mainstream, niche and non-conforming mortgage products. GMAC-RFC prides itself on its worldwide reputation as a responsible lender.

We welcome the opportunity to present our comments on the implementation of section 11 of the Homelessness etc (Scotland) Act 2003 ('2003 Act'). We concur that the prevention of homelessness is very important and understand its priority status. Furthermore, we subscribe to the maxim 'prevention is better than cure' and support any measures adopted to prevent homelessness. We have established a Foundation, which is specifically aimed at preventing mortgage repossessions for all borrowers, not just our own.

We believe the provisions of section 11 are in line with the FSA's Treating Customers Fairly (TCF) initiative, the spearhead of principles-based regulation. Section 11 also falls in line with the sentiment of Mortgages: Conduct of Business (MCOB) regulation, particularly 13.3.1, which stipulates that *a firm must deal fairly with a customer who is in arrears*. Any measures to treat customers fairly is surely a step in the right direction.

Please note that as a mortgage lender, for the purposes of the 2003 Act, our response will be from the viewpoint of a creditor. We would welcome the opportunity to expand or clarify any of the remarks made below, if this is deemed to be useful.

Questions for discussion

1. Is the form and manner of the notifications of proceedings to local authorities clear to you from the information in these regulations?

In our opinion, only the 'form' of notification is clear. The information contained in this paper is undecided on the 'manner' of notification. Although it is clear that the notice can be sent electronically or by post, there is no consensus on whether the information should be sent to a centralised system, or directly to the local authority where the property is located. We would appreciate a definitive stance on this issue. We are concerned that as a creditor, providing credit for numerous properties in various locations, we may not know which local authority to contact. Consequently, a centralised system would be ideal because it would minimise administrative costs and time.

2. 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.

3. 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.

¹ Measured on gross mortgage lending for the calendar year 2005.

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

Referring to our earlier comments in question 1 regarding a centralised local authority system, we would suggest that Forms 1 and 2 are tweaked to reflect this. Assuming a centralised system is adopted, it would be more appropriate for the name of the relevant local authority to be automatically generated on an online form, once the property address is entered.

5. 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.

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

Yes.

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

Yes. We believe the situation is clearer and easier for landlords because the process of being made aware of the relevant local authority could be incorporated into the registration process. Although the guidance does provide that local authorities will be asked to make sure creditors are aware of whom they should be informing, as a creditor, we still feel left in the dark on this matter. The guidance stipulates that it is the duty of the creditor or landlord to comply with section 11. However, not knowing which local authority to contact makes this duty harder to fulfil. We would like to stress the importance of effective communication between local authorities and creditors in order to ensure the successful operation of section 11. Furthermore, we reiterate that the use of a centralised system would be extremely beneficial.

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

Yes.

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

Yes.

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

Although unavoidable, we have reservations about sharing customer information with local authorities. The guidance provides that local authorities should not keep data longer than is necessary for that purpose. However, we believe this does not go far enough to address our concerns. If a local authority does not act on the data because it is premature or due to resource issues, how long will the data be kept? We would appreciate further clarification on this. Furthermore, we would have appreciated some reference to the safe destruction of data by local authorities.

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

No.

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

Yes.

13. 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.

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

Yes.

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

No.

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

Yes.

17. 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.

We agree with local authorities being asked to monitor implementation, as it would provide some useful feedback on the effectiveness of section 11 over the initial year.

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

No.

Conclusion

We concur with the implementation of section 11 for the most part. However, we would appreciate further guidance on the retention and destruction of data by local authorities. We would also appreciate further clarification on whether a centralised system for local authorities will be introduced, or whether local authorities will have to be contacted individually. We note that the Consultation Paper is silent on the role of creditors in buy-to-let situations, where the name of the tenant is unknown. Again, further clarification on this issue would be appreciated.

We welcome the spirit of section 11, which we believe falls in line with the FSA's move towards more principles-based regulation, in particular the move to ensure that customers are treated fairly as per Principles for Business 6.

In conclusion, we are encouraged to see a move that ensures lenders meet wider MCOB obligations and treat their customers fairly. Furthermore, section 11 has the advantage of focusing on the great social problem of homelessness and delivering measures to prevent it.