

**SCOTTISH EXECUTIVE CONSULTATION ON
HOMELESSNESS ETC (SCOTLAND) ACT 2003 - IMPLEMENTATION OF SECTION 11
RESPONSE BY ABERDEEN CITY COUNCIL**

Section 1	
1.	<p>Is the form and manner of notifications of proceedings to local authorities clear to you from the information contained in these regulations?</p> <p>YES/NO</p> <p>Comment :</p> <p>Although the form and manner of notifications is clear, the timescales are not. Sufficient notice of proceedings must be given to local authorities so that appropriate interventions can be attempted. A minimum lead time should be specified in the Order.</p>
2.	<p>Do you believe that the information outlined in the Notice of Proceedings in Form 1 is sufficient to ensure effective implementation of section 11?</p> <p>YES/NO</p> <p>Comment :</p> <p>The Notice of Proceedings (Form 1) contains no indication of the cause of the proceedings being raised. Authorities would therefore be unable to make an appropriate decision as to which action should be taken in the first instance. For example, an authority might have a different initial approach to a household against which proceedings for possession were being taken as a result of anti-social behaviour than it would if the reason for the action was debt related.</p> <p>Form 1 should contain a tick list of the most common reasons for the issuing of proceedings.</p> <p>In addition, it would be useful to have an early indication of the type of household affected by the notice, especially to highlight whether there are children or other vulnerable people involved.</p> <p>It would also be helpful to know what measures the landlord/creditor has already taken to try to prevent the situation deteriorating to the extent that a notice of proceedings for possession or ejection is now required. For simplicity, it is suggested that a simple tick-list of actions / interventions could be devised.</p>
3.	<p>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?</p> <p>YES/NO</p> <p>Comment ;</p> <p>See comments in Q2 above.</p>
4.	<p>Do you have any suggestions to make Forms 1 and 2 in the regulations more ‘user friendly’?</p> <p>YES/NO</p> <p>Comment :</p>

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5.	<p>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?</p> <p>YES/NO</p> <p>Comment:</p> <p>A UK-wide advertising and information campaign should be funded and led by the Scottish Executive to promulgate the new requirements. Local authorities would play their part, but the Executive must take the lead.</p> <p>The Scottish Executive should hold information centrally as to how each local authority wishes to receive notices. A web-based system (similar to the Private Sector Landlord Registration system) could be hosted by the Scottish Executive allowing those raising proceedings to notify the relevant local authority electronically.</p>
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Section 2	
A) STATUTORY GUIDANCE TO LOCAL AUTHORITIES	
6.	<p>Are you clear from the guidance at which stage local authorities should expect to receive the notification of proceedings?</p> <p>YES/NO</p> <p>Comment:</p> <p>As with Question 1, the Regulations should specify the minimum period of notice that local authorities should be given. It is also not clear at what point in time action is "raised". It is suggested that notification should be served on the relevant local authority within one working day of service on the Court or individual.</p>
7.	<p>Do you have any comments/suggestions in relation to local authorities ensuring landlords or creditors know where to send proceedings?</p> <p>YES/NO</p> <p>Comment :</p> <p>Each local authority should be obliged to take measures to ensure that the relevant information is displayed locally (in paper and electronic formats), and is communicated to RSLs and registered private landlords (through the registration system). The Scottish Executive should take the lead in publicity to lenders. The Scottish Executive could hold information centrally as to how each local authority wishes to receive notices. A web-based system (similar to the Private Sector Landlord Registration system) could be hosted by the Scottish Executive allowing those contemplating raising proceedings to verify in which local authority area the property in question is situated and to whom the notification should be sent for that local authority.</p>

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<p>8.</p>	<p>Is it clear from the guidance which information local authorities should expect to receive from landlords and creditors?</p> <p>YES/NO</p> <p>Comment :</p> <p>The guidance is clear on the information that local authorities should receive from landlords and creditors. However, the additional information referred to in this response would assist local authorities in acting appropriately.</p>
<p>9.</p>	<p>Is the guidance clear on what actions should be taken by local authorities when notification is received from landlords and creditors?</p> <p>YES/NO</p> <p>COMMENT</p> <p>The guidance spells out the types of action local authorities may take upon receipt of a notification from a landlord/creditor. However, there would be resource, training and timing implications for authorities (especially in the short term) in shifting from a reactive response once homelessness has arisen towards a more proactive, preventative, approach.</p>
<p>10.</p>	<p>Do you have any comments about the data protection issues raised in the guidance?</p> <p>YES/NO</p> <p>Comment :</p> <p>It is clear that information from notices may be shared within the local authority for the purpose intended but not to outside agencies (including Council funded advice agencies) without express consent from the household. This means that the first approach to the household will always be from the local authority. This might not always be desirable.</p> <p>Specific guidance on how long data should be kept would be welcome. It is suggested that summary data (such as the number of notices per landlord/creditor and landlord/creditor type, and the reasons for proceedings) should be kept in perpetuity for strategic planning purposes.</p> <p>Given that private sector landlords are registered triennially, it might be considered that full information relating to each landlord should be kept for at least six years (in case the landlord does not immediately reapply for registration but does subsequently). That way, the authority might be reasonable sure that it will have relevant information to assist in the determination of the fit and proper person test.</p> <p>Authorities may also wish to retain information received about breaches of Section 11, especially from landlords in the private sector, again to determine fitness. However, since this information is likely to be revealed from the household's subsequent presentation as homeless, this Section would not cover it.</p>

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11.	<p>Do you have any general comments or suggestions you believe would strengthen the statutory guidance to local authorities set out in section 2?</p> <p>YES/NO</p> <p>Comment:</p> <p>The guidance should be comprehensive, taking into account the issues raised in this response and those of other respondents. It would be helpful to have diagrams or flowcharts to ensure clarity on what action should be taken at each stage.</p>
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B) GUIDANCE TO LANDLORDS AND CREDITORS	
12.	<p>Is it clear from this guidance what the duty of landlords and creditors under section 11 is and how it should be discharged?</p> <p>YES/NO</p> <p>Comment:</p> <p>Although the duties on landlords and creditors is clear, it is not at all clear how non UK-based landlords and creditors would be apprised of their obligations. It would be most helpful to all concerned if all those raising proceedings were obliged to provide contact details for relevant advice and information sources to prevent the household from becoming homeless and to reduce the burden on local authorities.</p> <p>The timescales for service of notice should also be defined and clarified.</p>
13.	<p>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?</p> <p>YES/NO</p> <p>Comment :</p> <p>The benefits to landlords and creditors are not clear in the guidance. Other than the potential cost saving in not taking eviction action the case is not well made.</p>
14.	<p>Is it clear from the guidance what actions landlords and creditors can take to help prevent homelessness?</p> <p>YES/NO</p> <p>Comment :</p> <p>Although it is clear, the range of information sources suggested will not assist landlords and creditors to prevent homelessness when they are under pressure to deliver other priorities and recoup financial losses.</p>

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15.	<p>Do you have any general comments or suggestions you believe would strengthen the guidance to landlords and creditors set out in section 2?</p> <p>YES/NO</p> <p>Comment:</p> <p>A central advice and assistance resource base would be helpful (possibly linked to the details of providers registered with HomePoint). Diagrams and flowcharts (paper and on-line) would be useful.</p> <p>Advice should also be provided to creditors on what action to take if they do not know the relevant local authority.</p>
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EQUALITIES	
16.	<p>Do you feel the proposals promote equality? If not, please give details of your concerns?</p> <p>YES/NO</p> <p>Comment:</p> <p>Given that the action that may be taken against those who breach the Regulations as proposed is different depending on the type of landlord / creditor, there are obvious questions of inequality. It would be far simpler if the Courts were able to delay consideration of proceedings until satisfied that the relevant local authority had received the requisite notices AND had time to act.</p> <p>A fundamental issue to be tackled is how those issuing proceedings are made aware of the requirement to notify the Local Authority. This should not be a major problem for local landlords (private or public) seeking possession from tenants. However, mortgagees and creditors might be based anywhere in the UK or even abroad. How would a lender in, say, France be made aware of their duties?</p> <p>A UK-wide advertising and information campaign should be funded and led by the Scottish Executive to promulgate the new requirements. Local authorities would play their part, but the Executive must take the lead.</p> <p>Another issue is what realistic action may be taken on those who do not comply with the notification requirements. There are five categories of potential litigants with different potential penalties: a) UK-based Registered Social Landlords; b) private sector landlords; c) UK-based mortgagees; and d) non-UK-based mortgagees.</p> <p>a) UK-based Registered Social Landlords (RSLs)</p> <p>It is not anticipated that any long-term difficulties would be encountered with RSLs. These landlords are subject to regulation and inspection by Communities Scotland, and the RSLs' actions in this area would be scrutinised.</p>

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b) Private Sector Landlords

The landlord registration scheme requires landlords of property in the private sector to register with the local authority. Landlords are subject to the fit and proper test before registration; a landlord that contravened Section 11 could be refused subsequent re-registration. However, very firm guidance must be issued on how this provision should be used. For example, a landlord with a single property who repeatedly failed to notify the local authority of proceedings might be assumed to be not a "fit and proper person" and the process of de-registration, or refusal of registration, could begin. However, a landlord with many properties that occasionally breached the Regulations might be able to argue administrative error, or apportion blame to agents. Whilst it might be for the local authority to make a judgement on this, clear guidance should be provided to avoid the Regulations being seen as less of secondary importance, and to avoid a "postcode lottery" with some Councils taking a softer approach to others.

c) UK-Based Mortgagees

It may be reasonably presumed that UK-based mortgagees would be exposed to the Executive's information campaign about the Regulations. However, it is not clear what action could be taken against them for a failure to adhere to the Regulations. If no action is possible, then the Regulations will rapidly fall into disrepute.

d) UK-Based Creditors

It may be reasonably presumed that UK-based creditors might be exposed to the Executive's information campaign about the Regulations. However, these creditors may not understand the import of them in relation to their duties and responsibilities. Again, however, it is not clear what action could be taken against them for a failure to adhere to the Regulations. If no action is possible, then the Regulations will rapidly fall into disrepute.

e) Non-UK-Based Mortgagees and Non-UK-Based Creditors

It is not at all clear how these mortgagees would be exposed to the Regulations let alone what action could be taken for any breaches. Such mortgagees are not likely to be bound by or influenced by the Financial Standards Authority, or any other UK regulatory body.

It would be better if an obligation were placed on the Court to ascertain whether the landlord or creditor had followed the procedure under Section 11. Courts should be able to delay consideration of proceedings until satisfied that the relevant local authority had received the requisite notices AND had time to act.

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	<p>MONITORING AND EVALUATION OF IMPLEMENTATION</p> <p>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.</p>
<p>17.</p>	<p>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?</p> <p>YES/NO</p> <p>Comment :</p> <p>Depending on the type and range of monitoring information to be collected, additional resources might be required by local authorities.</p>
<p>18.</p>	<p>Do you have any other comments or suggestions about the monitoring and evaluation of the implementation of section 11?</p> <p>YES/NO</p> <p>Comment:</p> <p>It is vital that the details of the information to be requested of local authorities is agreed and notified in advance of the commencement of the Regulations. This should be done in sufficient time to enable local authorities to establish appropriate systems and procedures.</p>

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Respondent information form

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name: Graham Thomson
Postal Address: Aberdeen City Council
Planning and Policy (Services to Adults)
Strategic Leadership
Floor 5
St. Nicholas House
Broad Street
Aberdeen
AB10 1AX

1. Are you responding: (please tick one box)
(a) as an individual go to Q2a/b and then Q4
(b) **on behalf of** a group/organisation go to Q3 and then Q4

INDIVIDUALS

- 2a. Do you agree to your response being made available to the public (in Scottish Executive library and/or on the Scottish Executive website)?

Yes (go to 2b below)
No, not at all We will treat your response as confidential

- 2b. **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available
Yes, make my response available, but not my name or address
Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

3. The name and address of your organisation **will be** made available to the public (in the Scottish Executive library and/or on the Scottish Executive website). Are you also content for your **response** to be made available?

Yes
No We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

4. We will share your response internally with other Scottish Executive policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

Yes
No