



Consultation Paper: Homelessness etc (Scotland) Act 2003

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?

NO

Comment :

It is our understanding that all landlords and creditors will have guidance to encourage them to notify the local authority of action which, if successful, would lead to repossession of a home.

How will creditors, such as banks and building societies, be advised of the introduction of the non-statutory guidance?

Draft Schedule, Regulation 2 is unclear. In the "enactment under which proceedings are being notified" section, are landlords and creditors to tick more than one section?

It is unclear at what point the landlord or creditor is to notify the Local Authority.

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 :

Additional information would be of assistance to the local authority, for example: Start Date of the tenancy/ ownership; Grounds for the recovery of possession; basic information on what has been done to resolve the situation.

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 ;

Additional information would be of assistance to the local authority, for example: Start Date of the tenancy/ ownership/ credit arrangement; how much the debtor is required to pay to settle the matter.

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

No

Comment :

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:

The Council fully supports the high priority that is being given to try and avoid homelessness wherever possible. However, the form of the notification is of limited value as there is no statutory force behind it. There is no consequence for Creditors, such as banks and building societies that fail to comply.

The Sheriff Court will not be obliged to check whether the landlord or creditor has followed the procedure under section 11. It is our view that this is a weakness that should be addressed formally or at the very least through good practice guides made available to all Sheriffs. If a local authority has not been advised of the case, it may suggest that the landlord or creditor is taking action that is unreasonable.

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 :

The guidance should be more specific as to what stage local authorities should receive the notification of proceedings from landlords and creditors. Specific timelines should be set down in the legislation rather than it being stated in guidance that notification should be given at the same time as proceedings are raised for possession or certain notices are served as soon as possible thereafter.

The guidance states that it is implied that the notification should happen when the court form is submitted or the notice is served at the outset of any action. It may be helpful to specify that the notifications are to be issued within 7 working days of the notice being served.

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

YES

Comment :

As the threat is to an individual's home, we would recommend that the standard practice is to refer the section 11 notifications to homelessness teams who in turn should log the application in their advice and assistance to homeless people system. Consideration should be given to including it in the HL1 reporting system. This would be a standard approach across Scotland and

would allow Local Authorities to report on the issue in a systematic manner, however it is noted that not all of the people who are threatened with homelessness would come forward to make a claim under the legislation.

Local authorities are also required to ensure that landlords or creditors know where to send proceedings. It is not clear exactly how far local authorities will need to go to make this information easily available to landlords and creditors who operate in their area. A suggestion is that this could be made available as part of the registration process. For RSLs, this could be made available as part of the interactions between local authorities and RSLs on the operation of Section 5 and/or nomination agreements. Further clarification is needed as to exactly how far a local authority has to go to manage the flow of information. Specific guidance should be set out for land lords and creditors as to where they should send this information to prevent local authorities being in the firing line for any mix ups.

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

YES

Comment :

Further information would be of assistance.

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

NO

COMMENT

The guidance makes a number of positive suggestions as to how local authorities could use the notifications. However, it would be helpful to agree a standard approach to the management of Section 11 notifications.

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

YES

Comment :

With regards to Data Protection, the landlord or creditor has a statutory duty to pass information to the local authority on the proceedings or service of a notice. Therefore the affected tenant or mortgagor does not have to give permission. But if the local authority wishes to share this information subsequently with another party, such as an advice agency, permission will need to be gained from the tenant or mortgagor. This creates a burden on local authorities to ensure that data protection principles are followed and local authorities may be left unclear on what ways the information can be used and how it should be stored. Again, perhaps further clarification in this area would help prevent important data protection principles being breached.

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

Comment:

Section 2 point 10: Is it possible to set up a local authority gazetteer similar to the one that has been set up for the Sheriff Court system. This would allow any citizen, landlord or creditor to insert the postcode for the property concerned and be given the contact details for the relevant local authority.

Section 2 point 13: we are unclear when the notification should be received.

Section 2 point 14: It would be helpful to set a specific time limit for the notifications to be issued, for example the notification should be issued no later than 7 working days from the date of issue of the notice of proceedings.

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

Comment:

The non-statutory nature of the guidance is an issue. Will guidance be issued to the Financial Services Agency to make creditors aware of the new guidance and to promote its use?

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

Comment :

Landlords and creditors may see it as an additional burden on their services.

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

YES

Comment :

It will be useful to encourage landlords and creditors to understand how their actions and procedures can prevent homelessness.

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:

The guidance would have more impact if it were a requirement to lodge a copy of the notification in the court before the case was called.

EQUALITIES

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

YES

Comment:

All sectors of society will benefit from the section 11 process.

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.

Q.17: 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 :

It will be useful to monitor the implementation of section 11. It would have more impact if local authorities were to hold the information in a standard format. We have noted that no additional resources are being made available to manage the notification process.

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

YES

Comment ;

Consideration should be given to advising all local authorities to register notifications through the HL1 scheme. This will allow for a national assessment of the use of section 11 and allow for strategic planning on prevention measures.