



**East Dunbartonshire Council**

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# Consultation Response to the Homelessness etc (Scotland) Act 2003 – Implementation of Section 11

**Submitted on behalf of**

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## **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

**Q2: Do you believe that the information outlined in the Notice of Proceedings in Form1 is sufficient to ensure effective implementation of section 11?**

YES however

**Comment:**

The form merely notifies the local authority and therefore this would fulfil parts 1 to 6 of section 7. It would not necessarily ensure that part 7 of section 11 is implemented, namely it would not provide details of what the Local Authority does with the information. Only when FORM1 is coupled with appropriate local authority guidance will effective implementation of section 11 be seen.

**Q3: Do you believe that the information in the Calling – up Notice etc, in Form 2 is sufficient to ensure effective implementation of Section 11?**

YES

**Comment:** however, as above and,

The explanatory note states that ‘These regulations prescribe the form of notice to the local authority to be used where the landlord raises proceedings for possession.....’ Mortgage providers are not landlords, therefore all references to the financial organisation being a landlord should be deleted when referring to calling up notices.

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

YES

**Comment:**

They could be designed in a table form for ease of use / completion.

**Q5: Do you have any general comments or suggestions on the form and manner of the notifications to local authorities from landlords and creditors as outlined in the regulations set out in section 1?**

YES

**Comment:**

We have concerns regarding the manner of giving notice. While the statement 'The notice must be sent by post or transmitted electronically is in itself very clear we are concerned that some landlords and probably most creditors will either not be aware of the implementation of Section 11 or even if they were, they would have no knowledge of the local authority area / address with which to send the notification to. Therefore how and who is responsible for making these creditors aware of the local authority area within which the house is located. How will they know that Kirkintilloch is in East Dunbartonshire and not in Glasgow for example? Local Authorities can make efforts to educate lenders and landlords in their area but this is no guarantee that all those who live in a mortgaged house in East Dunbartonshire received this mortgage from an East Dunbartonshire based provider. It is plausible that the credit provider is based in England or even outside Britain. Further guidance is therefore sought regarding how these providers will be made aware of both Section 11 implementation and local authority areas and contact addresses. This understanding is critical if Section 11 is to be successfully implemented.

**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

**Comment:**

The guidance clearly states that landlords / creditors advise local authorities at the time proceedings for repossession are raised.

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

YES

**Comment:**

See response to question 5. Creditors unlike local authorities provide a service not linked to local authority / or even national boundaries as such local authorities have no comprehension or means of comprehending what creditors operate within their boundary. Local Authorities therefore cannot possibly have any means of ensuring that all creditors are made aware of where to send proceeding notices. If, as detailed in the guidance, the Scottish Executive are issuing guidance to landlords and creditors, we must therefore assume that the Scottish Executive holds the contact details of such agencies / people, therefore it would make sense that the Scottish Executive, at the

same time advise these creditors / landlords of the contact details of each of the 32 local authorities, therefore avoiding work duplication.

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

YES

**Comment:**

Draft form 1 and draft form 2 details the information that local authorities should receive from landlords and creditors.

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

YES

**Comment:**

However there is a statement in the guidance which states that 'Local authorities should give priority to households already known to the local authority and known to be at risk of homelessness'. What is meant by 'priority' if a notification of proceeding has been issued then all the households notified are at risk of homelessness, the local authority would have a statutory duty to assist them all.

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

NO

**Comment:**

**Q11: Do you have any general comments or suggestion you believe would strengthen the statutory guidance to local authorities set out in section 2?**

YES

**Comment:**

Guidance is sought on how to identify creditors that operate within a local authority boundary as local authorities have no means of gaining an understanding of this.

Guidance is also sought in line with changes in the local connection provision. If a creditor advises a local authority of possession proceedings against a property outwith the local authority area, once the local connection provision is abolished. Would the receiving local authority have the responsibility of acting accordingly or should this information be sent back to the creditor or to the appropriate local authority. (if the information is to be sent to the appropriate authority is this a breach of data protection?)

## **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?**

YES

**Comment:**

**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

**Comment:**

The guidance states that the 'purpose of the guidance is to help landlords and creditors to implement their duties under Section 11 and subsequently to assist landlords and creditors to help prevent homelessness amongst their tenants and mortgagors'.

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

YES

**Comment:**

**Q15: Do you have any general comment or suggestions you believe would strengthen the guidance to landlords and creditors set out in section 2?**

NO

**Comment:**

## **EQUALITIES**

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

YES

**Comment: However**

The guidance does have a heavy landlord focus, there does not seem to be any sanctions that could be imposed on creditors yet landlords can be penalised. Why do the guidance / legislation include creditors when, (a) it will prove difficult if not impossible to identify all those operating in the local authority area, and (b) there are no penalties / sanctions that can be applied if and when creditors fail to comply with the regulations? The guidance states that 'the proposals set out in the consultation paper would be of benefit to all people facing eviction in Scotland', however while it will prove beneficial to tenants it is unlikely to have any significant effect on owner occupiers who face repossession. This is owing to the fact that local authorities have no means of communicating the information to all creditors who operate in the area as creditors

operate cross boundary and at a national / international level. Even if local authorities managed to identify the creditors there is little if any benefit and equally no sanction which will encourage them to comply.

**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

**Comment: However**

We would be keen to note that the failure of landlords / creditors complying with the regulations does not equate to local authority failure.

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

NO

**Comment:**

**ADDITIONAL COMMENTS:**

The guidance does have a heavy focus on landlord information / advice and it understandable as to how this is the case, as this is area where local authorities have more experience / contact. However we have concerns regarding how we ensure that creditors comply with the regulations given the fact that (a) there are no sanctions / consequences to them and (b) we have no means of identifying all the creditors that operate in East Dunbartonshire. Similarly while creditors are likely to recoup the monies owed to them, through repossession landlords are not it would be more likely that landlords are more willing / open to working with the local authority or the individual to prevent homelessness, it is unlikely that creditors will be as willing. In addition as a result of landlord registration and the RSL inspection process it is easier to impose sanctions on landlords who do not comply. We would therefore propose that the landlord and creditor guidance should be split and issued as separate pieces of guidance.

Publicity initiated at a national level would be beneficial in order to raise public awareness of the implications of Section 11 for tenants / owner occupiers and landlords / creditors. It cannot be presumed that tenants / owner occupiers will welcome local authorities receiving information from their landlord / mortgage provider without their knowledge and consent.