

REPORT TO: HOUSING COMMITTEE - 19 MARCH 2007

REPORT ON: SECTION 11,
HOMELESSNESS etc (SCOTLAND) ACT 2003

REPORT BY: DIRECTOR OF HOUSING

REPORT NO: 180-2007

1. PURPOSE OF REPORT

- 1.1. To provide Dundee's response to the consultation paper issued by the Scottish Executive on the implementation of Section 11 of the Homelessness etc (Scotland) Act 2003.

2. RECOMMENDATIONS

It is recommended that Housing Committee:

- 2.1. Note the contents of this report.
- 2.2. Approve the consultation response attached at Appendix 1.
- 2.3. Remit the Depute Chief Executive (Support Services) in conjunction with the Director of Housing and Director of Social Work to oversee the implementation of this report.

3. FINANCIAL IMPLICATIONS

- 3.1. As this is currently a consultation document at this time there are no financial implications for the Housing Revenue Account or Council Tax.

4. SUSTAINABILITY POLICY IMPLICATIONS

- 4.1. None, as this is currently a consultation document.

5. EQUAL OPPORTUNITY IMPLICATIONS

- 5.1. None, as this is currently a consultation document.

6. BACKGROUND

- 6.1. In the Ministerial Statement on Abolition of Priority Need by 2012 commitment was given to bringing into force Section 11 of the Homelessness etc (Scotland) Act 2003, along with associated guidance.

- 6.2. Prevention of homelessness is a priority for Ministers and Local Authorities in preparation for the right of all intentionally homeless people to access permanent accommodation by 2012. The duty under Section 11 will be a crucial part of these prevention activities.
- 6.3. Section 11 of the 2003 Act places a duty on all landlords (both social and private) and creditors to inform Local Authorities of any repossession proceedings. The service of certain notices means that Local Authorities will be alerted to households at risk of homelessness at an earlier stage. The intention is that Local Authorities will be able to respond either by:
- a. taking action to prevent homelessness occurring, or
 - b. if homelessness cannot be prevented, it is planned for an the stress/trauma is minimised.
- 6.4. Local Authorities are now asked to respond to this consultation paper and express their views on the implementation and the associated regulations and guidance.

7. REGULATIONS - HOW THEY WILL WORK

7.1. Regulations

The regulations specify that landlords or creditors giving notice in the form of either

- a. Notice of Proceedings for Possession, or Proceedings to Eject Proprietor.
- b. Notice of Service of Calling-up Notice, Default Notice, or Notice of Application to Court for a Warrant.

must advise Local Authorities.

Local Authorities are tasked to ensure that all landlords and creditors are aware of to whom they should send the information. Authorities must be seen to take reasonable steps to make this information easily available to landlords and creditors who operate in their area.

7.2. Timescales

The Act refers to notification being given when proceedings for repossession are being "raised" or when a specified notice is served.

The Scottish Executive is to issue guidance to landlords and creditors advising that notice is given at the time of raising proceedings or as soon as possible thereafter.

7.3. RSLs and Private Landlords or Creditors who Fail to Comply

Themed Inspections by Communities Scotland will take cognisance of RSL's adherence to Section 11 of the Act.

As a consequence of the Antisocial Behaviour Act (2004) private sector landlords are required to register with their Local Authority who must be satisfied that they are fit and proper persons to let property before registering them. Any contravention of Section 11 could be used by the Local Authority to prevent subsequent registration.

There is currently, no known recourse for creditors who do not comply.

It should also be noted that the court has no obligation to check whether a landlord or creditor has followed the procedure under S11 and this is not necessarily a reason for withholding a decree.

7.4. **Action Required by the Local Authority**

Local Authorities should act timeously to prevent and alleviate homelessness for the household and investigate how this can be done most effectively. Links with various departments such as Childrens Services, Social Work etc will be essential. A corporate approach is required to ensure all departments assist where possible.

If homelessness cannot be prevented, then it should be planned for, and Local Authorities should give priority to households already known to the Local Authority to be at risk of homelessness.

As a matter of good practice, relevant Departments should liaise and in particular inform homeless services about upcoming evictions as soon as practical to ensure all necessary steps are taken to avoid homelessness. Links should also be in place with other departments who may have some responsibility such as Housing Benefit, Antisocial and Children's Services.

Local Authorities will require to ensure that data protection issues are addressed within service level agreements with all partner agencies who will assist with this duty.

Local Authorities will have a duty to monitor the process and outcomes of Section 11. On a strategic level, Local Authorities will require to monitor the effect of Section 11 on their prevention of homelessness strategies. Information gathered on particular landlords or creditors and potential evictions within a Local Authority area should be used to inform the strategic planning process. Additional follow up work may reveal better information about household composition and underlying causes of eviction which could also be fed into the planning process.

8. **IMPLICATIONS OF IMPLEMENTATION OF SECTION 11**

- 8.1. The consultation document issued by the Scottish Executive targets specific questions as to implementing Section 11, and the guidance to Local Authorities, landlords and creditors.
- 8.2. Section 11 will become a statutory duty for Local Authorities and must be seen to play an important role in the Prevention of Homelessness Agenda.
- 8.3. If this duty is to be effective then a corporate approach will be required and the following areas addressed:
 - **Lead Officers/Department** identified to receive all notices. This service will require to be co-ordinated on a citywide basis. As a minimum the following outcomes require to be monitored:
 - Numbers of notifications from landlords and creditors.
 - Action taken by the Local Authority.
 - Outcomes for individuals or households concerned.

- **Liaison between Council Departments** and a co-ordinated approach to strategy and planning.
- **Joint Working** arrangement between departments, such as Social Work, Legal Services, Housing, etc.
- **Capacity** There are a number of areas where capacity is likely to become an issue:
 - Welfare Rights
 - Homeless Advice
 - Advocacy Services
 - Tenancy Support
- **Private Tenants - Owner Occupiers** Levels of assistance to this category are often limited by legislation. The private sector may be less willing to accept arrangements and solutions suggested by the advice centres. This may well result in more legal remedies requiring to be sought and access to additional court representation being required.
- **Partnership Working** The voluntary sector's assistance in this regard may be limited as this will be a statutory duty of the Council. A formal working arrangement may require to be established and this would need to be addressed through a service level agreement to ensure compliance under data protection issues.
- **Funding** The Scottish Executive's funding for money advice has helped to increase the level of money advice services within all Scottish Local Authority areas, but in some respects the level of work now being done has only highlighted the relative under-funding of the sector in previous years.

8.4. This initiative will require to be adequately resourced in order to give effective and meaningful support and assistance to those individuals facing homelessness.

9. **TIMESCALES FOR CONSULTATION**

9.1. The deadline for responses to this consultation document is **Friday 30 March 2007**. All responses are required to be sent by e-mail prior to this date.

9.2. Following the closing date, all views and suggestions detailed in the consultation response will be analysed and used as part of the decision making process.

10. **CONSULTATION**

10.1. All Unit Managers and District Managers of the Housing Department have been consulted on the contents of this report.

10.2. The Chief Executive, the Depute Chief Executive (Support Services), Depute Chief Executive (Finance), Assistant Chief Executive (Community Planning), Director of Social Work, Director of Economic Development and the Head of Communities have been consulted on this report.

11. **BACKGROUND PAPERS**

- 11.1. The Scottish Executive's Consultation Paper on Homelessness etc (Scotland) Act 2003, Implementation of Section 11.

ELAINE ZWIRLEIN
DIRECTOR OF HOUSING

FEBRUARY 2007

DUNDEE CITY COUNCIL RESPONSE - MARCH 2007

HOMELESSNESS etc (SCOTLAND) ACT 2003 - SECTION 11
CONSULTATION RESPONSE

CONSULTATION QUESTIONS

Views are sought on the implementation of Section 11 and the associated regulations and guidance; in particular:

Section 1 - Draft Regulations

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: No comment.

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:

- It would assist if a named contact was given for each organisation.
- A note of any previous action taken to resolve this issue would also assist.
- A comments box - for any additional information that the landlord is willing to supply.

Q3 Do you believe that the information outlined in the Calling-up Notice etc is sufficient to ensure effective implementation of Section 11?

YES/NO

No.

Comment:

- Again, it would assist if a named contact person was given for each organisation.
- Details of the reason for service of the notice would also assist.

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

YES/NO

Yes.

Comment:

These forms are designed to allow the minimum of information to be given. Written in 'crystal mark' English in a 'proforma' style may encourage a more detailed explanation of issues such as:

- The situation leading up to this point.
- Steps already taken to attempt to alleviate the problem.
- Action required to cancel this notice, ie minimum payment etc.

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?

YES/NO

Yes.

Comment:

It should be clearly stated **on these forms** that they must be served within 24 hours of the notice being served. This allows maximum time for Local Authorities to respond.

There is no mention of follow-up from the Notice being served. The landlords creditors have no obligation to advise of any updates or changes to the situation.

- If a case is taken to the next level.
- When the eviction is to proceed.
- If a case has been cancelled.
- If an agreement has been reached.

This could lead to Local Authority staff wasting limited time and resources which may be better spent on another case.

Section 2A - 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

No.

Comment:

It states notification "should occur when proceedings are raised". It also states "Guidance to landlord that this notice is given at the same time as, or as soon as possible after, raising proceedings".

This could vary quite considerably by the approach taken by various landlords and creditors. A set timescale, ie within 24 hours would remove any dubiety regarding timescales.

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 is potentially a complex issue for Local Authorities and suitable staff will require to be identified. Whilst Dundee welcomes this proactive approach to prevention of homelessness it does raise other concerns.

Identifying relevant staff to cover such a broad range of money advice/legal issues, and monitoring of Section 11 will require adequate **time and resources** to put in place.

Q8 It is clear from the guidance which information Local Authorities should expect to receive from landlords and creditors?

YES/NO

Yes.

Comment:

Information is minimal and note comments at Questions 2, 3, 4 and 5. We should attempt to collate as much useful information as possible when these notices are received.

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:

If this action is to be effective additional resources will be required. In many cases where a person has housing debt, there are many other debt issues which require to be addressed to assist them to sustain the occupancy of their home. Whilst this distinctly proactive approach is welcomed it will only be effective if it is **properly resourced and funded**.

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

YES/NO

No.

Comment: None.

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.

Comment: See response to Question 9.

Section 2B - 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/NO

Yes.

Comment: None.

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: None.

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

YES/NO

Yes.

Comment: None.

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:

Landlords and creditors should be advised of steps that can be taken prior to serving notices. Early intervention is the key to prevention of homelessness and good practice guidance should be issued.

Equalities

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

YES/NO

No.

Comment:

I do not believe that the proposals will create inequalities within Local Authorities, but more likely between Local Authorities. There is no mention of resources throughout this consultation document. No measure of levels of poverty, social or economic factors has been addressed. This proposal could be seen to promote inequality as the guidance gives options for a two-tier service.

- a. Write to the household.
- b. Visit the household.

Without adequate resources to implement Section 11 of the Act then the letter will be the only recourse many authorities can manage.

Another area that raises the issue of inequality is the absence of guidance on how to ensure that creditors comply. This is a gap that requires to be addressed to ensure equality between tenants and owner occupiers thereby reducing the risk of homelessness.

The enactment of Section 11 is likely to significantly increase demand for and put pressure on existing advice, advocacy and homeless services. There is a need to take account of this in the forthcoming spending review. Section 11 can make a real contribution to the prevention of homelessness, however, our fear is that without adequate resources in place the legislation will not be fully utilised or effective.

This is a statutory duty for Local Authorities and the voluntary sector's assistance may be limited as they will regard this as a Local Authority function. Again, resources may be at the heart of any solution to this issue.