

**CONSULTATION PAPER
HOMELESSNESS ETC (SCOTLAND) ACT 2003
IMPLEMENTATION OF SECTION 11**

Introduction

1. In the Ministerial Statement on Abolition of Priority Need by 2012 <http://www.scotland.gov.uk/Publications/2005/12/21133010/30119> commitment was given to bringing into force section 11 of the 2003 Act, and associated statutory guidance in 2006.
2. Section 11 of the Homelessness etc. Act requires all landlords (other than local authorities) and creditors to notify the relevant local authority when they raise repossession proceedings or serve certain other notices.
3. Regulations have been drafted (SI 2006/XX) under this section which specifies the form and manner of such notifications.
4. Statutory guidance to local authorities and non statutory guidance for landlords and creditors has been drafted by the Scottish Executive. Local authorities must have regard to statutory guidance when carrying out their duties under the legislation.
5. There is no statutory requirement on the Scottish Executive to issue guidance to landlords and creditors on the implementation of section 11. The reason for issuing this guidance to landlords and creditors is to help understanding not just on what their duties are under this provision, but also to clarify the purpose of these duties, thus assisting landlords and creditors to help prevent homelessness amongst their tenants and mortgagors.
6. This consultation paper is part of the process of the implementation of section 11 and is intended to ensure interested parties can express their views on the implementation of section 11 and the associated regulations and guidance.
7. The requirement on landlords (both social and private) and creditors to inform local authorities of any repossession proceedings and the service of certain other notices means that local authorities will be alerted to households at risk of homelessness. This means that they may be able to respond to prevent homelessness either on an individual basis or by reassessing their strategic approach.
8. Prevention of homelessness is a top priority for Ministers and local authorities in preparation for the right of all unintentionally homeless people to access permanent accommodation by 2012. The Scottish Executive believes that the duty under section 11 is an important part of this prevention agenda.
9. The paper contains 4 sections:
 - Section 1 sets out the draft regulations on the ‘form and manner’ of notification to local authorities.
 - Section 2 sets out the draft statutory guidance to local authorities and the non statutory guidance to landlords and creditors. Consultees are asked for their views on these drafts.
 - Section 3 contains the consultation questions; information on how to respond to the consultation; a copy of the respondent information form; and accompanying information on Scottish Executive consultation exercises.
 - Section 4 contains distribution information and the Annexes referred to throughout the paper.

9. The main pieces of primary legislation involved are the Housing (Scotland) Act 1987 and the Homelessness etc (Scotland) Act 2003 – these are referred to throughout this paper as the 1987 Act and the 2003 Act respectively.

10. Responses to this consultation paper should be sent to homelessness@scotland.gsi.gov.uk by [date to be confirmed following clearance]. It would be helpful if the e-mail header could read Section 11 – consultation response and also include your name or that of your organisation if you are replying on behalf of an organisation. If you would prefer to respond in hard copy please send this to:

The Homelessness Division
Scottish Executive Development Dept
Area 1H (South)
Victoria Quay
Edinburgh
EH6 6QQ

11. If you have any comment about how this consultation exercise has been conducted, please send them to:

Name: Pippa Goldschmidt
Address: Homelessness Division, Area 1 H (South), Victoria Quay, Edinburgh, EH6 6QQ
E-mail: Pippa.Goldschmidt@scotland.gsi.gov.uk

SECTION 1: DRAFT REGULATIONS

Introduction

1. Section 11 (3) of the 2003 Act gives power to the Scottish Ministers to bring forward regulations that prescribe the form of notice and manner in which notification of proceedings for possession or notification of service of certain notices is to be given by landlords and creditors to local authorities.
2. The form of notice means the nature of documentation and information that should be sent to local authorities from landlords and creditors. The form of notice referred to consists of forms 1 and 2 below.
3. The manner of giving notice means the method of communication which will be used to notify local authorities by landlords and creditors.
4. Not all notices under section 11 refer to proceedings being raised. Some refer to the service of notice by a creditor.
5. Regulations are to prescribe the form of a landlords or creditors notice of their own action which will include the details about the tenant or mortgagor included in Form 1 and 2 below.
6. Legislation has been amended under Section 11 (subsection 2) to provide for notice to local authorities of certain proceedings or the service of certain notices. The amendments are shown in the schedule to the 2003 Act. While most amended legislation deals with proceedings for possession under various acts (see Form 1 below), there are a number of amendments that deal with other occasions when notice under section 11 must be given (see Form 2 below).
7. One of these is a calling-up notice under the Conveyancing and Feudal Reform (Scotland) Act 1970. A calling up notice is used when a creditor requires payment of the amount secured by a standard security (mortgage), and, failing payment, intends to exercise its power to sell the property. Another is the service of a default notice under the same act, used when a creditor is calling on a debtor to remedy a failure to comply with the terms of the standard security. Another is an application to court by a creditor under the same act for a warrant to exercise a remedy such as sale of the property.
8. Please note that raising proceedings for possession is not subject to the same process as serving a calling-up notice. The calling -up notice is served on the debtor, not lodged in court. It requires from the debtor the complete discharge of the secured debt with no hearing in court. If the debtor is unable to comply, the creditor is entitled to exercise the right under the security including right of sale.

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HOUSING

The Notice to Local Authorities (Scotland) Regulations 2006

Made - - - - [] 2006

Laid before the Scottish Parliament [] 2006

Coming into force - - 2006

The Scottish Ministers, in exercise of the powers conferred by section 11(3) and (4) of the Homelessness etc. (Scotland) Act 2003⁽¹⁾ and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Notice to Local Authorities (Scotland) Regulations 2006 and shall come into force on (date to be completed).

Form of notice

2. The form of notice to be given under section 11 of the Homelessness etc. (Scotland) Act 2003 is—

- (1) as set out in Form 1 of the Schedule for the notices referred to in—
 - (a) subsection (1) and
 - (b) subsection (5)(c) to (g),

of that section; and

- (2) as set out in Form 2 of the Schedule for the notices referred to in subsection (5)(a) and (b) of that section.

Manner of giving notice

3. The notice must be sent by post or transmitted electronically.

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh

2006

⁽¹⁾ 2003 asp 10.

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SCHEDULE

Regulation 2

FORM 1

NOTICE OF PROCEEDINGS FOR POSSESSION OR PROCEEDINGS TO EJECT PROPRIETOR

To:

(Name of local authority in whose area the dwelling house that is the subject of proceedings is situated)

Take note that proceedings have been raised as under noted.

Name and address of landlord/creditor who has raised proceedings:

Contact telephone number of Landlord:

Name of tenant/s or proprietor/s against whom proceedings have been raised:

Full postal address of property that is the subject of proceedings:

Date of raising proceedings:

Court in which proceedings raised:

Enactment under which proceedings are being notified:

(please tick)

- (1) section 11(1) (notice to local authority of proceedings for possession of a dwelling house) of the Homelessness etc (Scotland) Act 2003 (asp 10);
- (2) section 12A(1) (notice to local authority of proceedings for possession of dwelling house let on protected tenancy or subject to statutory tenancy) of the Rent (Scotland) Act 1984 (c.58);
- (3) section 19A (1) (notice to local authority of proceedings for possession of house let on assured tenancy) of the Housing (Scotland) Act 1988 (c.43);
- (4) section 14(5A) (notice to local authority of proceedings for possession of house let on Scottish secure tenancy) of the 2001 Act;
- (5) section 36(6A) (notice to local authority of proceedings for possession of house let on short Scottish secure tenancy) of that Act;
- (6) section 4(4) (c) (notice to local authority of proceedings to eject proprietor in personal occupancy) of the Mortgage Rights (Scotland) Act 2001 (asp 11);
- (7) other (please state),

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FORM 2

NOTICE OF SERVICE OF CALLING-UP NOTICE, DEFAULT NOTICE OR NOTICE OF APPLICATION TO COURT FOR A WARRANT

To:

(Name of local authority in whose area the property referred to in the calling-up notice or default notice or notice of application to court for a warrant is situated).

Take note that a calling-up notice/default notice/notice of application to court for a warrant (delete as appropriate) has been served as under noted.

Name and address of the creditor who has served the calling-up notice or default notice or notice of application to court for a warrant:

Contact telephone number of the creditor:

Name of person/s on whom the calling-up notice or default notice or notice of application to court for a warrant has been served:

Full postal address of property referred to in the calling-up notice or default notice or notice of application to court for a warrant:

Date of calling-up notice or default notice or notice of application to court for a warrant.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the form of notice to the local authority to be used where a landlord raises proceedings for possession of a dwelling house or other proceedings under the enactments listed in the Homelessness etc. (Scotland) Act (asp 10). The appropriate form in the Schedule must be completed by the landlord and sent or transmitted electronically to the local authority in whose area the dwelling house is situated. Proceedings for possession of a dwelling house will include proceedings for possession of a dwelling house let on a short assured tenancy only where provision is sought to end this tenancy early through eviction.

SECTION 2

DRAFT GUIDANCE ON THE IMPLEMENTATION OF SECTION 11

- Statutory guidance will be made available to local authorities .Under subsection (4) the Scottish Ministers must consult such persons as they think fit before issuing such guidance.
- Comments are invited on the following :
 - i) Statutory Guidance for local authorities
 - ii) Guidance for landlords and creditors

i) STATUTORY GUIDANCE FOR LOCAL AUTHORITIES

HOMELESSNESS ETC (SCOTLAND) ACT 2003 **GUIDANCE FOR LOCAL AUTHORITIES ON SECTION 11**

Introduction

1. Section 11 of the Homelessness etc (Scotland). Act requires all landlords (other than local authorities) and creditors to notify the relevant local authority when they raise repossession proceedings or serve certain other notices.
2. Regulations have been brought into force (SI 2006/XX) under this section which specify the ‘form and manner’ of such notifications.

Purpose

3. The purpose of this guidance is to aid local authorities to respond to the information provided to them by landlords and creditors. This guidance is statutory guidance which local authorities must have regard to when carrying out their duties under the legislation.

Background

4. In the Ministerial Statement on Abolition of Priority Need by 2012 commitment was given to bringing into force section 11 of the 2003 Act, and associated statutory guidance, in 2006.
5. The requirement on landlords (both social and private) and creditors to inform local authorities of any repossession proceedings and the service of certain notices means that local authorities will be alerted to households at risk of homelessness at an earlier stage. This means that they may be able to respond either on an individual basis or by reassessing their strategic approach.
6. Prevention of homelessness activity is a priority for Ministers and local authorities in preparation for the right of all unintentionally homeless people to access permanent accommodation by 2012. The duty under section 11 will be a crucial part of these prevention activities.

Regulations – how they will work

7. The regulations specify two forms of notification to the local authority from landlords or creditors:

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

8. Proceedings for possession of a house that has been let require a court action. By contrast, serving a calling-up notice or notice of default on a debtor does not.

9. The regulations specify that landlords or creditors giving notice in these forms must tell local authorities the following information ('the form' of notification):

- Name and address and contact details of landlord /creditor
- Name and full postal address of main tenant or owner-occupier
- Date of raising notice
- Court in which notice raised (raising of proceedings only)
- The enactment under which notice has been raised

10. The "manner" of the notice relates to the way in which the information will be conveyed to local authorities. One of the main issues to be decided is what will be the best way of doing this and how local authorities will decide to manage the flow of information. For example, it may be that there should be one central communication point in each local authority for all landlords and creditors. But a complicating factor is that creditors who may provide credit attached to properties in different areas may not have any contact with the relevant local authorities and may not know which local authority to contact. The relevant local authority area is not always clear from the postal address.

11. Local authorities will need to make sure that landlords and creditors are aware of to whom they should send the information. They will need to take reasonable steps to make this information easily available to landlords and creditors who operate in their area. For private landlords this could be made available as part of the registration process. For RSLs this could be made available as part of the interactions between the local authorities and RSLs on the operation of section 5 and/or nomination agreements.

12. The notice can be sent to the local authority by post or electronically.

When will the local authority receive it? When will the requirement on the landlord or creditor be triggered?

13. The Act and the other enactments that it amends refer to notification happening where proceedings for repossession are "raised" or where a particular type of notice is served. This implies that the notification should happen when the court form or initial writ etc. is lodged or the notice is served at the outset of any action. This is to ensure that the local authority has sufficient warning of any action as the tenants or mortgagors may be at risk of homelessness. Landlords are obliged under subsection (1) to give notice *whenever* proceedings are raised for possession or certain notices are served. Proceedings for possession of a dwelling house will include proceedings for possession of a dwelling house let on a short assured tenancy *only* where provision is sought to end this tenancy early through eviction. It will not apply to short assured tenancies which end routinely without recourse to legal action.

14. Section 11 and the enactments listed in subsection (5) provide that notification should occur where proceedings are raised or certain notices are served and this should normally be construed as within a reasonable time of raising the action or serving the notice. Guidance to landlords and creditors from the Scottish Executive will advise that this notice is given at the same time as, or as soon as possible after, raising proceedings.

What are the consequences of a landlord or creditor failing to comply?

15. As a consequence of the Anti Social Behaviour Act (2004), private sector landlords are now required to register with their local authority who must be satisfied that they are fit and proper persons to let property, before registering them. As part of this consideration local authorities must take account of any evidence that the landlord has contravened any provision of the law relating to housing, or landlord and tenant law. Any contravention of section 11 could be used by the local authority to prevent subsequent registration.

16. It should be noted that the court is not obliged to check whether the landlord or creditor has followed the procedure under section 11 and this is not necessarily a reason for withholding a decree.

Registered Social Landlords (RSLs) who fail to comply.

17. Communities Scotland carry out individual inspections of RSLs at which the RSLs actions in this area may be considered. Communities Scotland will give consideration to how RSLs implementation of the duty under section 11 may be addressed through their themed inspections in specific geographical areas.

18. The duty to notify local authorities of proceedings under Section 11 should not be confused with the duty on social rented landlords to serve a notice on any qualifying occupiers indicating that proceedings are being sought (section 14 of the Housing (Scotland) Act 2001. While there is no duty on the landlord to give the local authority information about the household composition under Section 11, the landlord will still need to serve notices on all qualifying occupiers. According to section 14 of the 2001 Act, qualifying occupiers can apply to the court to be sisted as a party to the proceedings. This means that they are kept notified of the proceedings and have a right to be heard. It does not mean that they are able to delay proceedings, but proceedings may be adjourned at the instance of the court under section 16 (1) of the 2001 Act.

What can the local authority do once it receives information?

19. The local authority should act to prevent subsequent homelessness. If it cannot do this then it should act to ensure that subsequent homelessness is at least planned for and stress/trauma is minimised. In addition it should use the information gathered, as a result of this legislation being in force, to inform it's strategic/prevention activities.

20. The local authority should consider what it can do to help to prevent and alleviate homelessness for the household, and how it can do this most effectively. Local authorities should give priority to households already known to the local authority and known to be at risk of homelessness.

21. As the information it will receive will necessarily be limited, the local authority will want to find out more about whether the household contains dependent children or vulnerable people. It should do this in a sensitive way. It may be that the household has already been in contact with the local authority previously, perhaps with the social work or children's services departments.

It can:

- Write to the household. This would be most straightforward – but care would be needed to ensure that the household were not alarmed by another official communication while in a vulnerable situation. It should be noted that this form of intervention is less likely to be effective for households experiencing stress, such as those facing eviction. Consequently, the local authority should give consideration to alternative approaches. Consideration should be given to equalities issues here – for example how contact will be made with households that have literacy issues or those who are unable to read English.
- Visit the household. Again, care should be taken to minimise any possible alarm to the household.
- Provide the following info to the household:
 - (i) information and advice on tenants' rights with respect to the legal process of eviction;
 - (ii) information and advice on managing debt;
 - (iii) information and advice on mortgagors' rights under the Mortgage Rights Act and mortgage to rent schemes;
 - (iv) information and advice on benefits entitlements;
- Signpost to advice and information providers including Shelter Housing Advice Centres and Citizens Advice Bureaux provide housing advice and information to households facing eviction:

<http://scotland.shelter.org.uk/policy/policy-5197.cfm>

<http://www.cas.org.uk/>

- HomePoint and Money Advice Scotland provide access to directories of advice and information agencies in the appropriate local area: HomePoint should be contacted to provide a password to the National Directory for Advice and Information Providers.

http://www.homepoint.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/hpcs_006225.hcsp

http://www.moneyadvicescotland.org.uk/debtadvice/find_agency.php

- The Scottish Executive has an awareness publicity campaign for private sector housing called Better Renting Scotland which is backed up by a website (www.betterrentingscotland.com). The site provides access to a full range of information about landlords' and tenants' rights and responsibilities, with a digest of the main points and links to other relevant sites. This will be a long term resource and is intended to complement local efforts by local authorities in connection with HMO

licensing, registration and their increasing degree of engagement with private sector housing.

22. The local authority could also consider whether the following actions would help:

- Contacts with appropriate agencies who could act on behalf of the household
- Mediation with landlord or creditor to try and prevent eviction
- support to help people facing eviction as a result of anti-social behaviour;
- More general support to help sustain tenancy. For example if money management is a problem, then support should be offered to help this.
- Any prevention activity that the local authority considers will help.
- provision of loans to help people in rent/mortgage arrears;

23. If rent arrears have been caused by delays to payment of housing benefit then the local authority should investigate this immediately and inform the landlord that it is doing so. Local authorities should be mindful that under Section 12 of the 2003 Act (which came into force in July 2004) sheriffs have the power to take into account delays or failures in housing benefit administration when deciding whether to make an order for repossession

How should local authorities use this information to inform their strategic planning?

24. Information on particular landlords or creditors who are using the legal process of eviction may assist in the development of partnerships which will be useful in implementing the objectives of local authority homelessness strategies. Information regarding the number of potential evictions within a local authority area will assist in the planning of homelessness services for prevention and alleviation. Information received from landlords and creditors may also have the potential to identify particular geographies within a local authority area where there may be particular issues in relation to eviction. Additionally, follow up work with households may reveal better information about household composition and underlying causes of eviction that may feed into strategic planning.

Data protection issues

25. 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 does not apply to information being shared with different departments within the same local authority, but care of course should be taken to ensure that the information is used and stored carefully.

26. Local authorities should consider whether data protection issues are addressed in existing service level agreements with agencies with whom they may wish to share information.

27. Any information collected by landlords about qualifying occupiers (see paragraph 18) will be obtained for the purpose of serving a section 14 (of the 2001 Act) notice on the qualifying occupier. For data protection reasons, it cannot be used for another purpose except with the consent of the qualifying occupier, so this information cannot be routinely demanded by local authorities.

28. Local Authorities should give consideration to how long the notice from the landlord or creditor should be kept. It is a data protection principle that personal data processed for any purpose should not be kept longer than is necessary for that purpose.

What happens if the household does not respond to the local authority?

29. Failure to respond to any contact from the local authority is not in itself an indication that the household is making themselves homeless intentionally. There may well be a good reason for the tenant or mortgagor not to respond and if they subsequently present as homeless their case should be considered in the same way as anyone else's. Further attempts at contact by local authorities are particularly encouraged where a household has a history of homelessness.

The local authorities' own landlord function

30. Section 11 does not apply to local authorities, but as a matter of good practice they should ensure that relevant departments inform each other and in particular inform homelessness services about upcoming eviction actions as soon as is practicable so that all necessary steps can be taken to avoid homelessness. Local authorities should also be aware of possible links to other areas of their responsibility such as Housing Benefit administration, anti social behaviour and children's services.

How does the duty under section 11 interact with that under section 5 (of the 2001 Act)?

31. Section 5 gives a duty to RSLs to provide permanent accommodation to homeless households if requested to do so by local authorities (unless the RSL has good reason not to comply). There may be situations in which an RSL evicts households who then in turn present as homeless to the local authority who request the RSL to provide accommodation and RSLs have indeed expressed concern about this situation. The use of section 11 will allow the provision of advice and information to individuals facing eviction and will inform the strategic planning of preventative services by the local authority. The implementation of section 11 will provide an opportunity for the local authority and the RSL to work together to prevent future or repeat homelessness.

Local Authority Monitoring and Evaluation

32. Local authorities should give consideration to how best to monitor both the process and the outcomes arising from the implementation of section 11. This will include:

- Numbers of notifications from landlords and creditors
- The action taken by the local authority
- The outcomes for individuals or households concerned

33. Local authorities should consider how they will keep information and how they will use it to identify differing practice amongst different landlords and creditors.

34. Local authorities should consider whether they will publish information gathered and for what purpose.

35. On a strategic level, local authorities will wish to monitor the effect of the implementation of section 11 in helping them to prevent homelessness.

ii) GUIDANCE FOR LANDLORDS AND CREDITORS

HOMELESSNESS ETC (SCOTLAND) ACT 2003 **GUIDANCE FOR LANDLORDS AND CREDITORS ON THE IMPLEMENTATION** **OF SECTION 11**

Introduction

1. Section 11 of the Homelessness etc (Scotland) Act requires all landlords (other than local authorities) and creditors to notify the relevant local authority when they raise repossession proceedings or serve certain other notices.
2. Regulations have been brought into force (SI 2006/XX) under this section which specifies the form and manner of such notifications.

Purpose

3. The purpose of this 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. This guidance is non-statutory and is provided to assist landlords and creditors in identifying appropriate actions when notifying local authorities.

Background

4. In the Ministerial Statement on Abolition of Priority Need by 2012 commitment was given to bringing into force section 11 of the 2003 Act, and associated statutory guidance, in 2006.
5. The requirement on landlords (both social and private) and creditors to inform local authorities of any repossession proceedings and of the service of certain notices means that local authorities will be alerted to households a risk of homelessness at an earlier stage. This means that they may be able to respond either on an individual basis or by reassessing their strategic approach.
6. Prevention of homelessness activity is a priority for Ministers and local authorities in preparation for the right of all unintentionally homeless people to access permanent accommodation by 2012.

Landlords and Creditors

7. The Scottish Executive anticipates that the implementation of Section 11 will be a key measure in enabling local authorities and their partners to prevent homelessness. As part of this process, landlords and creditors are encouraged to give consideration as how to prevent eviction in the first place. The implementation of Section 11 is intended to benefit all partners involved including landlords, tenants, creditors, mortgagors, local authorities and wider communities.
8. Notification to local authorities will allow the provision of advice and information to be provided to those facing eviction and will inform local authorities strategic planning in providing services to prevent homelessness. The prevention of repeat or future homelessness will be of interest and benefit to landlords and creditors particularly in relation to the costs otherwise incurred by rent or mortgage arrears, anti social behaviour ,void tenancies, reletting and the administration of the eviction process.

9. Landlords should be mindful that under Section 12 of the 2003 Act (which came into force in July 2004) sheriffs have the power to take into account delays or failures in housing benefit administration when deciding whether to make an order for repossession. So if the planned repossession proceedings have been caused by rent arrears due to housing benefit delays it would likely be more advantageous for the landlord to get in touch with the local authority before starting proceedings.

Regulations – how they will work

10. The [draft] regulations specify two forms of notification to the local authority from landlords or creditors:

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

11. Proceedings for possession of a house that has been let require a court action. By contrast, serving a calling-up notice or notice of default on a debtor does not commence a court action.

What information should be sent to the local authority?

12. The regulations specify that landlords or creditors giving notice in these forms must tell local authorities the following information:

- Name and address and contact details of landlord /creditor
- Name and full postal address of main tenant or owner-occupier
- Date of raising notice
- Court in which notice raised (raising of proceedings only)
- The enactment under which notice has been raised

Who should the information be sent to and in what format?

13. The duty is on the landlords and creditors to comply with Section 11. However, landlords or creditors (particularly ones whose properties cover more than one local authority area) may be unclear which local authority to contact as postal addresses need not have any relation to local authority areas.

14. Local authorities will be asked to make sure that landlords and creditors are aware of to whom they should send the information. They will need to take reasonable steps to make this information easily available to landlords and creditors who operate in their area.

For landlords this could be made available as part of the registration process.

15. The notice can be sent to the local authority by post or electronically.

When will the requirement on the landlord or creditor be triggered?

16. The Act, and the other enactments that it amends, refer to notification happening where proceedings for possession are “raised” or where the calling-up notice or default notice is served. This implies that the notification should happen when the court form or initial writ etc. is lodged or the notice is served at the outset of any action. This is to ensure that the local authority has sufficient warning of any action. Landlords are obliged under subsection (1) to give notice *whenever* proceedings are raised for possession or a relevant notice is served.

Proceedings for possession of a dwelling house will include proceedings for possession of a dwelling house let on a short assured tenancy only where provision is sought to end the tenancy early through eviction.

17. The Act provides that notification should occur when proceedings are raised and this should normally be construed as within a reasonable time of raising the action. It would be desirable that this notice is given at the same time as, or as soon as possible after, raising proceedings, since the primary object of this provision is to alert local authorities to potential cases of homelessness at as early a stage as possible. Not all notices refer to proceedings being raised; some refer to the service of another notice by a creditor.

What are the consequences of a landlord or creditor failing to comply?

18. As a consequence of the Anti Social Behaviour Act (2004), private sector landlords are now required to register with their local authority who must be satisfied that they are fit and proper persons to let property, before registering them. As part of this consideration local authorities must take account of any evidence that the landlord has contravened any provision of the law relating to housing, or landlord and tenant law. Any contravention of section 11 could be used by the local authority to prevent subsequent registration.

Registered Social Landlords (RSLs) who fail to comply.

19. Communities Scotland carry out inspections of RSLs at which the RSLs actions in this area may be considered. Communities Scotland will give consideration to how RSLs implementation of the duty under section 11 may be addressed through their themed inspections in specific geographical areas.

20. The duty to notify local authorities of proceedings under Section 11 should not be confused with the duty on social rented landlords to serve a notice on any qualifying occupiers indicating that proceedings are being sought (section 14 of the Housing (Scotland) Act 2001). While there is no duty on the landlord to give the local authority information about the household composition under Section 11, the landlord will still need to serve notices on all qualifying occupiers.

How does the duty under section 11 interact with that under section 5 (of the 2001 Act)?

21. Section 5 gives a duty to RSLs to provide permanent accommodation to homeless households if requested to do so by local authorities (unless the RSL has good reason not to comply). There may be situations in which an RSL evicts households who then in turn present as homeless to the local authority who request the RSL to provide accommodation and RSLs have indeed expressed concern about this “never-ending duty”. The use of section 11 will allow the provision of advice and information to individuals facing eviction and will inform the strategic planning of preventative services by the local authority. The implementation of section 11 will provide an opportunity for the local authority and the RSL to work together to prevent repeat or future homelessness from eviction happening in the first place.

What can landlords and creditors do to help tenants and mortgagors facing eviction?

22. Landlords and creditors are encouraged to consider how to prevent eviction in the first place through their housing management / debt management practices.

23. Landlords and creditors can also contribute to the prevention of homelessness of individuals by identifying problems at an early stage and signposting them to advice and information on common causes of eviction:

- Shelter Housing Advice Centres and Citizens Advice Bureaux provide housing advice and information to individuals facing eviction :

<http://scotland.shelter.org.uk/policy/policy-5197.cfm>

<http://www.cas.org.uk/>

- HomePoint and Money Advice Scotland provide access to directories of advice and information agencies in the appropriate local area .HomePoint should be contacted to provide a password to the National Directory of Advice and Information Providers.

http://www.homepoint.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/hpcs_006225.hcsp

http://www.moneyadvicescotland.org.uk/debtadvice/find_agency.php

- The Scottish Executive has an awareness publicity campaign for private sector housing called Better Renting Scotland which is backed up by a website (www.betterrentingscotland.com). The site provides access to a full range of information about landlords' and tenants' rights and responsibilities, with a digest of the main points and links to other relevant sites including agencies working to prevent homelessness. This will be a long term resource and is intended to complement local efforts by local authorities in connection with HMO licensing, registration and their increasing degree of engagement with private sector housing.

24. Local authorities will be able to provide assistance to landlords and creditors in identifying which are the appropriate agencies in the local area. Local authorities will provide advice and information as part of their homelessness duties and many have advice and information strategies to complement their homelessness strategies.

Policy and Practice on Evictions for Landlords and Creditors

25. Communities Scotland Regulation and Inspection thematic study 'Evictions in Practice' issued in March 2005 was a study of evictions by social landlords. The policy and practice recommendations made were aimed at social landlords including RSLs, but the approach outlined should be used to inform the actions of all landlords and creditors. The recommendations for social landlords are as follows:

- Landlords need to make, maintain and record personal contact with tenants who have fallen into arrears or other difficulties with their tenancy. Contact should be tailored to meet tenants' individual needs and circumstances and sustained throughout the arrears recovery and court action processes, including the post decree stage. The aim should be to prevent unnecessary abandonment's and terminations as well as actual eviction.
- Landlords must carry out checks to identify qualifying occupiers before they issue a Notice of Proceedings. There should be a full assessment of advice and support needs for every tenant threatened with eviction before a notice is issued, and landlords should provide appropriate information, advice and assistance

throughout the process.

- Landlords need to contact the relevant homelessness service before starting any court action for recovery of possession. They should make sure the homelessness staff are fully aware of the household's circumstances and that they are at risk of homelessness, and homelessness services need to act on the information.
- Social work services must also be actively involved if there are children or other vulnerable household members.
- Landlords should work closely with the housing benefit service to address any difficulties arising from benefit payment issues. People should not face eviction action when rent arrears result from delays in the benefit system.
- Landlords should refer tenants with rent arrears to a debt counselling/money advice service. A referral would be defined as involving a debt counselling interview appointment being made on the tenant's behalf, or passing on the tenant's contact details to a debt counselling service for the purpose of setting up such an appointment.
- Landlords should record and monitor the outcomes from referrals to advice and support services, and periodically evaluate the effectiveness of the services.
- Strategic level analysis examining the types of households facing eviction action, the factors that contribute to their difficulties and the overall costs of eviction is rarely carried out. Landlords should focus on incorporating this kind of analysis into their routine monitoring systems.

Rent Arrears

26. Landlords and creditors should do all they can to prevent arrears arising and to recover them when they do. There have been adverse comments by the Judiciary about the practice of some landlords raising Actions for Repossession, obtaining Decree and only then negotiating regarding instalment payments. Landlords and creditors should try to negotiate with tenants prior to obtaining decree, so that the court may deal with any dispute on the level of contribution towards arrears should the negotiations not be successful.

27. The lower the level of debt, the more likely the landlord or creditor is to recover the arrears. It is important for landlords and creditors to identify difficulties quickly and to arrange to discuss matters with tenants and mortgagors. Reliance solely on routine procedures (such as successive computer-produced letters) is less likely to secure the results desired.

28. Most arrears appear to arise through accidents of circumstance, or because tenants or mortgagors get into difficulty with the general management of their affairs. If that is what has happened, early personal contact may prevent more acute difficulties later. If tenants or mortgagees are wilfully refusing to pay rent or their mortgage (although able to do so) early action can help to avoid the accumulation of large debts, and improve the chances of a tenant or mortgagor in bringing his or her affairs into proper order. Some tenants or mortgagees will

need general financial advice, perhaps from a specialist agency, and arrears letters should draw tenants' attention to sources of independent advice.

29. The Code of Guidance on Homelessness issued by the Scottish Executive to local authorities in May 2005 outlines some of the measures by which local authorities have been able to control rent arrears. The general approach outlined should be used to inform the actions taken by all landlords and creditors:

- Prospective tenants or mortgagors should be made fully aware of the commitment they are taking on, not only for rent but for council tax, electricity, gas and any extra payments for such things as common services.
- Missed payments, as well as the total of a tenant's or mortgagor's outstanding debts, may give an early warning of difficulties ahead, and enable special arrangements to be made for collection of payments, including direct payments of housing benefit to the landlord.
- There should be protocols for obtaining social work advice, if and when it is appropriate, including safeguards for confidentiality of client information.
- It is important to check that the tenant is receiving all benefits payments to which he or she is entitled. If applicants are not receiving their entitlement in full, they should be advised to apply immediately and given assistance to do; and thereafter priority should be given to such applications. Delays in processing housing benefit claims can cause rent arrears or exacerbate tenants' problems in dealing with rent arrears. All local authority homelessness strategies should include standards and targets for processing housing benefit claims. Tenants or mortgagors who get into difficulties should be encouraged to approach advice agencies.

Equalities

The Scottish Executive is committed to meet the terms of our Race Relations Act (as amended) duties and to promoting wider equality throughout our work. Research into homelessness amongst black and minority ethnic minority communities was carried out in 2004 and specific guidance is currently being developed on prevention of homelessness amongst BME communities.

It is considered that the proposals set out in this consultation paper would be of benefit to all people facing eviction in Scotland and would not have an adverse effect on any specific section of our communities. The guidance suggests that equalities issues should be taken into consideration when considering written communication and the provision of advice and information. The revised HL1 system will enable us to monitor this on an ongoing basis. We would be interested in your views, particularly if you are concerned that what is proposed would have an adverse impact on, or discriminate against, particular homeless people.

SECTION 3

Responding to this Consultation Paper

We are inviting written responses to this consultation paper by 30th March 2007. If possible please send your response electronically to homelessness@scotland.gov.uk

If you would prefer to send a hard copy this should be sent to:

The Homelessness Division
Scottish Executive Development Dept
Area 1H (South)
Victoria Quay
Edinburgh
EH6 6QQ

All responses should contain a respondent information form – which can be found on page 24 of this paper. If you would like to discuss this consultation, please contact Pippa Goldschmidt on 0131 244 0288 or by e-mail at Pippa.Goldschmidt@scotland.gsi.gov.uk. A consultation questionnaire is set out over the next few pages. It would be useful if you are able to respond using this questionnaire - if you require an electronic version please contact Robin Bate (robin.bate@scotland.gsi.gov.uk). If you are completing the questionnaire electronically the text boxes will expand to fit the length of response. If you are completing it in hard copy please mark clearly which question you are responding to on any additional sheets of paper.

We would be grateful if you could indicate clearly in your response which questions or parts of the consultation paper you are responding to (using the consultation questionnaire if appropriate) as this will aid our analysis of the responses received.

This consultation, and all other SE consultation exercises, can be viewed online at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Executive now has an email alert system for [SE consultations](#) ([SEconsult](#)). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new [SE consultations](#) (including web links). [SEconsult](#) complements, but in no way replaces SE distribution lists, and is designed to allow stakeholders to keep up to date with all [SE consultations](#) activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Access to consultation responses

We will make all responses available to the public in the Scottish Executive Library by 2nd May 2007 and on the [Scottish Executive consultation](#) web pages by the same day, unless confidentiality is requested. All responses not marked confidential will be checked for any potentially defamatory material before being logged in the library or placed on the website.

SECTION 11 – CONSULTATION RESPONSE

Name of individual/organisation:

Views are sought in relation to:

- the regulations on the form and manner of notifications to local authorities set out in Section 1 of this paper
- the statutory guidance to local authorities and the guidance to landlords and creditors set out in Section 2
- whether the paper addresses equalities issues
- the proposals for monitoring and evaluation of 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?

YES/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

Comment :

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?

YES/NO

Comment ;

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

YES/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/NO

Comment:

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/NO

Comment :

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

YES/NO

Comment :

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

YES/NO

Comment :

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

YES/NO

COMMENT

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

YES/NO

Comment :

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

Comment:

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/NO

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/NO

Comment :

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

YES/NO

Comment :

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

Comment:

EQUALITIES

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

concerns?

YES/NO

Comment:

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/NO

Comment :

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

YES/NO

Comment ;

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:

Postal Address:

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

The Scottish Executive Consultation Process

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body. Consultation exercises may involve seeking views in a number of different ways, such as public meetings, focus groups or questionnaire exercises.

Typically, [Scottish Executive consultations](#) involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the area of consultation, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses. Copies of all the responses received to consultation exercises (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4552).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review;
- inform the development of a particular policy;
- help decisions to be made between alternative policy proposals; or
- be used to finalise legislation before it is implemented.

SECTION 4

DISTRIBUTION

This paper has been sent to the following organisations (* denotes e-mail distribution). If you would like a full version of this list please contact Robin Bate on 0131 244 7374.

Local Authority Chief Executives

Local Authority Directors of Housing/Social Work

Local Authority Chief Housing Officers

Local Authority Homelessness Strategy Officers*

Homelessness Monitoring Group and subgroups member organisations*

Health Board Chairs

Chief Executives of Primary Care Trusts

Scottish Parliament Communities Committee

Scottish MEPs

Equalities Opportunities Commission

Commission for Racial Equality

Disability Rights Commission

Scottish Executive Library

SPICe Library

Other interested parties

ANNEX A

Membership of Homelessness Monitoring Group (as at July 2006)

Mike Neilson (chair)	Scottish Executive
Karen Watt	Communities Scotland
Mark Turley	CoSLA
John Mills	CoSLA
Rab Murray	Association of Directors of Social Work
Catriona Renfrew	Greater Glasgow Health Board
Liz Burns	Scottish Federation of Housing Associations
Archie Stoddart	Shelter Scotland
Robert Aldridge	Scottish Council for Single Homeless
Isobel Anderson	University of Stirling

Awareness Raising and Best Practice Subgroup

Pippa Goldschmidt	Scottish Executive (Chair)
Kate Bilton	Scottish Executive
Liz Burns	Scottish Federation of Housing Associations
Craig Dunlop	Shelter Scotland
Sheila Ferguson	Angus Council
Catherine Jamieson	Glasgow Homelessness Partnership
Carolanne Quigley	Communities Scotland
Margaret Taylor	Glasgow Homelessness Network

Intentionality Subgroup

Anna Donald	Scottish Executive (Chair)
Dawn Abell	Scottish Executive
Robert Aldridge	Scottish Council for the Single Homeless
Pat Bagot	Scottish Executive
Moir Bayne	Glasgow City Council
Kate Benson	Greater Glasgow Primary Care NHS Trust
Liz Burns	Scottish Federation of Housing Associations
Craig Dunlop	Shelter Scotland
Mark Feinmann	Glasgow City Council
Julie Hunter	North Lanarkshire Council
Deborah Quilgars	University of York
Paul Tyrer	Scottish Executive
Jan Young	Scottish Executive

2012 Planning Subgroup

Mike Neilson	Scottish Executive (chair)
Pat Bagot	Scottish Executive
Derek Bearhop	Scottish Executive
Liz Burns	Scottish Federation of Housing Associations
Michael Cameron	Communities Scotland
Dan Coote	Scottish Council for the Single Homeless
Gavin Corbett	Shelter Scotland
Anna Donald	Scottish Executive
Duncan Grey	Scottish Executive
Val Holtom	South Lanarkshire Council
David Lyon	City of Edinburgh Council
Murdo Mac Pherson	Communities Scotland
Jill Stewart	Moray Council
Paul Tyrer	Scottish Executive