

Research report

Review of Section 11 of the Homelessness (Scotland) Act 2003

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Shelter
Scotland

Summary

- Over two years after its implementation, this report reviews the operation of Section 11 of the Homelessness (Scotland) Act 2003, which requires lenders, private landlords and registered social landlords (RSLs) to notify the relevant local authority when they plan to initiate legal proceedings to repossess a property.
- Alongside secondary information, the report is based on local authority responses to a questionnaire to assess the impact that the Section 11 process is having on prevention of homelessness.
- Although there is guidance on using Section 11, the legislation is quite light-touch so local authorities have a lot of flexibility to decide how best to operate locally.
- Limited work has been done by local authorities to inform creditors and private landlords of their duties whereas more work has been done to engage RSLs.
- There is a wide variation between local authorities when engaging with potentially homeless households. As a minimum all local authorities are giving some sort of advice or assistance, while some are directly offering tailored one-to-one advice.
- Recording and monitoring of Section 11 notices varies, with some local authorities having no recording process in place. This is a key issue as the process is designed to help prevent homelessness. It is difficult to see how to assess its impact unless referrals are tracked to see if a homelessness application has been made as a consequence of an eviction or repossession.
- Additional engagement with creditors and landlords at a national level is needed to look at how repossessions and evictions can be avoided.
- This report sets out some recommendations to the Scottish Government and local authorities on how to use Section 11 as a homelessness prevention tool to best effect.

1. Introduction

Section 11 of the Homelessness etc (Scotland) Act 2003 requires lenders, private landlords and registered social landlords to notify the relevant local authority when they plan to initiate legal proceedings to repossess a property. Section 11 was implemented on 1 April 2009 and was designed to help prevent homelessness. Shelter Scotland produced a briefing paper in

March 2009 entitled 'Implementing Section 11 of the Homelessness (Scotland) Act 2003'¹. This paper recommended what local authorities should be doing with notices that are received. For example the process should involve writing a letter, providing a factsheet and offering follow up one-to-one follow up advice and information. This initial review of local authorities showed that some local authorities had already set up protocols and systems to deal with Section 11 notices.

Two years after Section 11 was implemented, this paper evaluates how the legislation is working by reviewing what it was put in place to do and how effective it has been in achieving this aim. We look at the following areas:

- What are the requirements under Section 11?
- Section 11 in practice – how local authorities are responding?
 - Day to day response
 - Wider policy and planning to prevent homelessness

2. Background

By alerting local authorities to households at risk of homelessness, Section 11 notification was intended to provide an early warning to local authorities, allowing them to provide information and support to households. This should prevent homelessness occurring or allow a planned route into suitable alternative accommodation if required.

The principle was laid out as one of the recommendations coming out of the work of the Homelessness Task Force in 2002²:

'Any landlord (other than a local authority landlord) or other person applying to the court for a re-possession order against a tenant or owner-occupier should be required to notify the relevant local authority of the application. This would enable the local authority to consider what assistance could be provided to prevent the eviction and avoid homelessness.'

The implementation of Section 11 forms part of the commitment that by 2012, all unintentionally homeless people will be entitled to a permanent home, one of the main strands of which is to prevent homelessness more effectively.

¹http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/implementing_section_11_of_the_homelessness_scotland_act_2003

² <http://www.scotland.gov.uk/library5/housing/htff-00.asp>

Methodology

Alongside secondary information, this report is based on an e-mail survey sent to the lead officer for Section 11 in each local authority. 16 out of 32 local authorities responded. The following questions were asked

- How have you attempted to inform landlords, creditors and RSLs of their duties under Section 11?
- What is the process for responding to a Section 11 referral?
 - Is there a difference between how you deal with private landlords, creditors and RSLs?
 - What are the sources of help that you offer for households at risk of eviction or repossession flagged up through Section 11 notifications?
 - What are the procedures in place to monitor the contact made with households at risk of eviction or repossession?
- How many households at risk of eviction or repossession, flagged up through Section 11 Notifications, have received some type of advice or assistance since April 2009?
- How many households at risk of eviction or repossession, flagged up through Section 11 notifications, have later presented as homeless to the local authority since April 2009?
- Does your Section 11 strategy form part of your broader approach to homelessness prevention?

3. What are the requirements under Section 11?

Detailed, statutory guidance has been provided for local authorities³ on the requirements under Section 11 and they should therefore have regard to this guidance when carrying out their legislative duties.

³ <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/access/homeless/s11guidance>

Statutory elements to the guidance stipulate that a notice must be given and the *form* in which it must be given for landlords and creditors. The Scottish Government has made available sample forms with the required information. The information required by the notice is that which the landlord or creditor would be reasonably expected to hold. This may not always include information which could be useful for the local authority in preventing homelessness, such as household composition.

The process

When a landlord (either RSL or private landlord) raises proceedings for possession of a property (i.e. decree of removing or a warrant of ejection or other order is sought) they have a duty to notify the local authority. This duty does not apply where the tenancy comes to a natural end. This notice is given to the relevant local authority.

The form of the notice requires the following information from landlords:

- Name, address and contact details of landlord
- Name and address of landlord's legal representatives
- Landlord registration reference (applicable to PRS landlords only)
- Name and full address of tenant
- Start date of tenancy
- Date of raising proceedings
- Court in which proceedings have been raised
- The legislation under which proceedings have been raised

Creditors must inform the local authority when they serve a notice or raise proceedings to repossess a property. Information creditors should provide includes:

- Name, address and contact details of creditor
- Name and address of the creditor's legal representatives
- Name of debtor/proprietor
- Full postal address of property
- Date of standard security
- Date of calling up notice/notice of default or raising of proceedings and where applicable
- Court in which application made or proceedings raised.

According to guidance the notice should be submitted at the earliest opportunity, although within 3 days of raising proceedings was suggested as good practice. There is then guidance on what should be done with the notification by local authorities but no standard process is followed.

Scottish Government guidance suggests that the information received by a local authority can be used by the authority and any partner organisations in two main ways. First of all, on a day to day level, the legislation allows each local authority to decide appropriate actions for making contact with households and advice services. Secondly, the information can be used on a wider strategic level i.e. each local authority should develop its own Section 11 plan feeding into a wider homelessness prevention strategy.

Legislation states that the local authority should be notified when proceedings for repossession are raised or where a particular type of notice is served. There is, however, no set time frame for giving notice, although guidance suggests:

'It is desirable that notification is given to local authorities at the same time as, or as soon as possible after, these actions are taken since the primary objective of the legislation is to alert local authorities to potential homelessness as soon as possible'

The guidance to local authorities suggests that 3 working days may be regarded as good practice, however guidance to creditors, private landlords and social landlords does not give a recommended time. There may therefore be some uncertainty among creditors and landlords over what is required.

There are no direct sanctions for non-compliance with the duties under Section 11. The guidance states that the failure to comply will impact on landlords and creditors in other ways although these are not specifically stipulated and the consequences are therefore not clear.

Non statutory guidance has also been drafted for private sector landlords⁴, social landlords⁵ and creditors⁶.

⁴ <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/access/homeless/privatelandlordsguidance>

⁵ <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/access/homeless/sociallandlordsguidance>

⁶ <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/access/homeless/creditorsguidance>

Alongside the duty to submit notifications, the implementation of Section 11 on 1 April 2009 also reinforced the duties of RSLs and creditors to tackle homelessness. For RSLs this means a shift from good practice to statutory compliance with standards on prevention and advice, with the Scottish Housing Regulator scrutinising performance. There were also plans to reference the Section 11 duty through the Mortgage Conduct of Business, although over two years on, this has not happened.

In summary, the system stipulates the kind of information lenders and landlords should send to local authorities, but not what should be done as a consequence and what the penalties are for failing to do so.

4. Section 11 in practice – how local authorities are responding

4.1 Day to day response

How many notifications are received?

The Scottish Government produces statistics of the notifications under Section 11. The latest figures recently published now give us two years of data. Across Scotland 14,116 notifications were lodged in the 12 months between April 2009 and April 2010. This rose slightly to 14,405 in the subsequent year 2010/11. The highest numbers of notifications are coming from creditors (71% of all notices across the two years). Perhaps unsurprisingly, only 3% of these notifications came from private landlords. This is because most tenancies in the PRS end after a lease period rather than going through formal eviction action.

Overall, the statistics produced by the Scottish Government need to be analysed over a longer time period. Any increases may mean a larger group of landlords and creditors are better informed about their duty to submit a notification rather than suggesting a rise in the number of evictions and repossessions. Over time it would be desirable for the numbers to go down as a consequence of early actions to prevent evictions and repossessions. These figures should also be analysed in conjunction with other homelessness indicators such as the Scottish Government HL1 statistics and the RSL eviction figures from the Scottish Housing Regulator.

Engaging with homeowners and tenants

Engagement with the homeowner or tenant once a notice has been received varies greatly amongst local authorities. The majority of local authorities will send out a standard letter to a household who is soon to be evicted or repossessed, signposting to information and advice. For example:

'In accordance with Section 11 of the Homelessness etc (Scotland) Act 2003, which came into effect on 1st April 2009, we have received information from <<name of landlord/creditor>> regarding a legal action which has been raised for recovery of the above property.'

If the purpose of the letter is to offer support and advice to prevent the household reaching a crisis or becoming homeless, then a less formal and more engaging approach may be more effective in getting homeowners and tenants to respond. While all local authorities that responded to the survey gave some sort of advice and assistance, some councils just send out this standard letter and advice booklet with no further attempt to contact the household.

Some local authorities that responded to the survey attempt to speak to tenants or homeowners directly. At one local authority, when a Section 11 notice is received from a social landlord it is forwarded to the homelessness team who send out a letter stating they will come and meet the tenant at a set time to discuss their options. However this good practice is not consistently applied. As for private tenants or homeowners, Section 11 notices are sent to the welfare advice team where a standard advice letter is sent out.

The majority of local authorities who responded have the same process for landlords, lenders and RSLs. However in the case of two or three local authorities, RSLs are more proactive and innovative due to an existing relationship between the local authority and RSL. For example one local authority has a protocol set up with the RSL which allows for more information to be given than the statutory information required. This understanding was already in place before Section 11 was implemented.

One local authority has a different information pack for those households who are facing repossessions and those facing eviction, although the same services and agencies are used.

Case Study 1

The council explicitly use the notifications as an opportunity to work with people who are at risk of homelessness with an early intervention approach to homelessness prevention.

There are different procedures for dealing with notices from creditors, private landlords and RSLs.

Creditors

Local authority landlord registration records are first checked to see whether a property is rented out. If so, tenants are sent a letter offering advice and assistance, as well as a letter to the homeowner (as landlord).

If the property is the principal home of the owner they will be sent a letter offering advice

and assistance within 3 working days of notification and is recorded on the database.

The advice offered at this stage includes:

- How to apply for Income Support for Mortgage Interest (ISMI) to assist with mortgage payments
- Details of Scottish Government schemes including Mortgage to Rent and Mortgage to Shared Equity Schemes.
- Moving the occupier nearer to the top of housing waiting lists
- Working together with partner agencies to prevent loss of home
- An information leaflet on a local independent and confidential service that can offer money advice, support and legal representation for free.

If there is no response to the letter, a visit will be carried out after 5 working days. Referrals are then made to an independent advice service. The council tax team are also notified.

Private landlords

Once the notification is received a letter offering advice and assistance is sent to the tenant within 3 working days. The advice offered includes:

- Negotiating with the landlord to prevent evictions
- Using the Rent Deposit Guarantee Scheme
- Working with the DWP and any other organisations to help process applications for housing benefit and other benefits quicker
- Working with partner agencies in cases of harassment and illegal eviction
- Referring the tenant to support organisations such as debt advice and welfare rights

If no contact is made from the tenant within two weeks, a home visit will be made.

RSLs

In 2008 the council entered into a voluntary agreement with RSLs that whenever a Notice for Proceedings for Recovery of Possession (NPRP) is served, the local authority will be notified. Within one working day of notification, the tenant will be sent a letter offering advice and assistance by the council.

If the tenant fails to address the reason for the NPRP being served and the RSL has to initiate court action, a further letter is sent to housing officers at the council with the housing officer contacting the tenant by letter and then visiting. This process also takes place if and when a Decree is obtained.

Throughout this process the RSL is notified of all contact the local authority housing officer has with the tenant.

The majority of local authorities will refer the household on to external advice services, most commonly the local Citizens' Advice Bureau (CAB). Others include money advice and legal advice agencies. For example, one local authority works with a frontline homelessness charity to respond to Section 11 notices. Section 11 notices are logged by the council homelessness service before being referred to the charity. They will then make contact with the household, initially sending a letter and information pack and offering advice and assistance, either face-to-face or by telephone.

Some councils have attempted to monitor the contact that has been made with households. In the period 1 April to 31 October 2009, one council's Housing Options team received 150 Section 11 notices. Of these, 111 cases were closed with no contact, 4 cases received advice and information only and 5 resulted in homelessness presentations arising. It is unclear in this instance whether the high number of cases closed with no contact was due to a reluctance on the part of the household to continue, or resource difficulties on the side of the local authority. Of course, the high attrition rate may reflect that issues had been resolved, although it seems unlikely in such high numbers.

Similar to other local authorities, one council writes to households notified to them under Section 11 offering advice and assistance. A review of Section 11 notices received by this council between 1 April and 30 September 2009 showed 110 notifications had been received. Of these, 82% contacted with an offer of assistance did not respond. Only 5% were provided with information and advice or received a complete assessment of their needs. 8% of households made arrangements to repay their debt, with the remaining households (4%) withdrawing from the assessment process. This low rate of response and action by homeowners and tenants would suggest that something in the process is not working successfully.

A review by one council six months after implementation highlighted challenges including the limited way households are contacted, knowledge gaps of staff and the volume of notices. However, successes highlighted were the result of increased partnership working with RSLs and advice services.

The quality of advice and information provided by the local authority to potentially homeless household is a vital part of how effective Section 11 notifications will be in reducing homelessness. Good staff knowledge and working in partnership with other advice organisations is therefore important, particularly high quality money advice and legal representation.

4.2 Wider policy and planning to prevent homelessness

Engaging with landlords and lenders

The survey showed that three local authorities engaged directly with creditors by writing to all banks and building societies to inform them of their duties. One council also worked specifically with the Council of Mortgage Lenders to help promote the duty to creditors. There was a general assumption amongst local authorities that much of the awareness raising with creditors was done directly by the Scottish Government immediately after implementation and it was felt that it would not be useful to duplicate that work locally, especially because almost all lenders work across many local authority areas.

More work was done with landlords to inform them of their duties. Nine local authorities had made attempts to directly contact private landlords in their local authority area. For many of the local authorities this was done through registered landlord lists, presentations to existing landlord forums and in one instance, from previous rent deposit scheme landlords.

There is further evidence of councils trying to inform private landlords of their duties with one council putting a notice on their landlord registration information page about Section 11 duties. One council published Section 11 information on their Private Landlord Advice webpages. This shows some attempt to engage with landlords, although this is not widespread or consistent.

There is also evidence of councils speaking to RSLs at the beginning of the process. Two of the councils who responded to the survey, had initial meetings with RSLs to ensure joint procedures in dealing with Section 11 notifications.

There are currently no penalties in place for landlords and lenders who don't submit notifications, however the introduction of sanctions could be a useful tool in ensuring the duty is met. In the case of private landlords, this could be done by working with landlord registration and for RSLs through the Scottish Housing Regulator. Lenders could be regulated through the Financial Services Authority.

Monitoring and recording intervention

In order for the legislation to work effectively in preventing homelessness, there needs to be operational systems put in place. Each local authority has a contact e-mail address for creditors and landlords to send Section 11 notifications. Which department in the council receives notifications varies between local authorities.

There appears to be a mixed picture amongst local authorities over how information is being recorded. Of those who responded to the survey two had no system in place for monitoring and recording, with the others having some form of database varying in scale. Three had a simple database where the number of notifications received and the number of people

receiving the information pack was recorded. Other databases also recorded progress and outcomes of all the households for whom the local authority had received an initial notification.

When asked about households that had received assistance, three specifically said that there is no way of recording this. The majority do not record direct advice and assistance.

Case Study 2

The council sends out a leaflet to households where a Section 11 notification has been received from their landlord or creditor. This is tailored to the local area although there is no separate process for dealing with homeowners, private tenants or social tenants. There is also no follow up assistance offered.

Although the statistics, i.e. number of notifications received are reported to the councils homelessness planning group each quarter, there is no further process for recording and monitoring. Contact with those at risk of homelessness is not recorded and tracked through and therefore it is difficult to know whether homelessness has been prevented through the notification system.

Looking at households where the local authority was notified under Section 11, many local authorities do not record whether they later went on to make homeless applications, however of those that do, the numbers are small - between 1% and 4% and in some cases 1 or 2 households over the whole process.

Recording and monitoring is a key issue – in order for the Section 11 process to successfully prevent homelessness, those notified to the local authority as potentially homeless should be tracked to see whether, through advice and information, homelessness is prevented.

Contribution to homelessness prevention

The guidance states that local authority strategies on Section 11 should form part of their broader approach to homelessness prevention. Most local authority respondents to the survey stated that Section 11 work forms part of their wider homelessness prevention strategy but it is not always clear to what extent.

Another element of the successful impact of the Section 11 notification process, is how well local authorities engage with landlords and lenders to limit eviction and possession action. By nature of the way the information is submitted to the local authority, they should have details of all those who submit Section 11 notices.

Each local authority is likely to already have a working relationship with RSLs. Local authorities can therefore engage with RSLs to find out why evictions are taking place and

work with them to help reduce evictions. At one council, attempts are made to engage with RSLs by sending out a questionnaire on the Section 11 process and whether as a result they have instigated any homelessness procedures that reduce evictions.

For notifications from lenders, local authorities will have the details of lenders who are repossessing properties and can form a picture of those who are doing it most often and engage with them. This may be difficult to do at a local authority level due to the small scale, however if details of lenders operating Scotland wide were provided to the Scottish Government centrally (which they currently are not) a national picture could be formed. The Scottish Government may then be able to engage with banks and creditors nationally to help put systems in place that will limit unnecessary repossessions.

As can be seen by the Scottish Government statistics, private landlords are submitting the fewest notifications and are therefore likely be the most difficult to engage with over reducing evictions and therefore homelessness. This may be due to the high numbers of private landlords many of whom have just one or two properties. There is also an issue with the nature of private rented tenancies. If a private landlord wishes tenants to leave it is simple to serve a Notice to Quit at the natural end of a 6 month short assured tenancy. It is not necessary, therefore, to inform the local authority under Section 11. Local authorities need to engage better with private landlords especially in light of the increasing reliance on the private rented sector and the upcoming changes to housing benefit, which affect 97% of local housing allowance claimants. As financial pressures and rent arrears are becoming an increasingly important issue in the private rented sector, the use of the Section 11 process may be a useful way for local authorities to intervene in the sector offering advice and support to help limit evictions.

Overall, local authorities need to be more creative in the ways they engage with creditors and landlords and focus on the goal of preventing homelessness.

5. Conclusions and Recommendations

Section 11 of the Homelessness (Scotland) Act 2003 was designed as a tool to prevent homelessness through early intervention. The regulation states that a notice must be given to a local authority and stipulates the form of the notice, but the process for local authorities dealing with the notices is not set out and is therefore open to interpretation by individual local authorities. There is a mixed picture of how local authorities are dealing with the process.

All local authorities give advice and assistance of some level to households who have been notified to the local authority as potentially homeless. The amount of assistance varies however between local authority and type of tenancy from a simple advice letter to the offer of specialist one to one advice. Knowledge of the levels of success of this advice is limited

however due to the lack of recording and monitoring. There are poor levels of tracking of notifications which is key to knowing whether the Section 11 process is having a positive impact on preventing homelessness.

In terms of ensuring that creditors and landlords are aware of their duties to notify the local authority under Section 11, there have been some attempts to engage with private landlords and creditors to a lesser extent. There has also been evidence of further engagement with RSLs to put in preventative steps to limit homelessness by engaging at an earlier point of possible eviction. Further engagement with creditors and private landlords has been limited, although the need for effective prevention is becoming increasingly urgent in light of increased pressure on the private rented sector.

We recommend that the Scottish Government should:

- Use reporting of Section 11 notifications from local authorities to directly engage with creditors at a national level to reduced repossessions and evictions, collecting details of lenders from local authorities.
- Review the effects of the process through analysis of Section 11 notification statistics alongside wider homelessness data and RSL evictions data.
- Consider a national awareness raising initiative amongst lenders and private landlords to increase knowledge of their duties under Section 11.
- Consider placing sanctions on landlords and lenders who fail report on Section 11.

We recommend that local authorities should:

- Put in place recording and monitoring systems, where they currently don't exist, to track the process of each household notified to the local authority as at risk of homelessness.
- Ensure that initial advice and assistance to households is clear and in plain English and put resources in place to follow up with households in person.
- Consider using Section 11 notifications as a way of intervening in the private rented sector to avoid evictions due to the changes in housing benefit and increased demand on the private rented sector.

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