

EXECUTIVE NOTE

THE NOTICE TO LOCAL AUTHORITIES (SCOTLAND) REGULATIONS 2008 SSI 2008/324

The above instrument is made in exercise of the powers conferred by section 11(3) and (4) of the Homelessness etc (Scotland) Act 2003 (asp 10). The instrument is subject to negative resolution procedure.

Policy

Section 11 of the Homelessness etc (Scotland) Act 2003 places a duty on landlords and creditors (other than local authority landlords) to inform the relevant local authority when they raise proceedings for possession or serve certain other notices. The Homelessness etc (Scotland) Act 2003 (Commencement No 3) Order 2008 brings section 11 into force for the purposes of making regulations on 2 October 2008 and for all purposes on 1 April 2009. The instrument sets out in regulations the form and manner of notification to be provided to the local authority.

Local authorities have statutory duties to people who are homeless or threatened with homelessness. The purpose of introducing the duty to notify for landlords and creditors is to give local authorities early notice of households at risk of homelessness as a result of eviction, giving them the opportunity to act in individual cases to prevent homelessness occurring, and/or use the information received to inform their strategic approach to planning and delivery of homelessness services. The policy is consistent with broader principles of early intervention.

Consultation

Within Government

The Scottish Housing Regulator, the Financial Services Authority, and Housing and Regeneration, Public Health and Wellbeing, Constitution, Law and Courts, and Enterprise, Energy and Tourism Directorates have had input into development of the Regulations and accompanying guidance.

Public Consultation

A draft instrument and accompanying statutory guidance for local authorities and non-statutory guidance for landlords and creditors were consulted on in 2007. An analysis of responses was published by the Scottish Government in 2008 and the instrument and guidance documents revised to reflect comments received. Revised drafts of the statutory and non-statutory guidance will be made available for further comments prior to being finalised when the duty to notify comes into force on 1 April 2009.

Financial effects

The duty placed on landlords and creditors to notify the relevant local authority has financial implications: it is an additional step to be undertaken when raising proceedings for possession or serving other notices. The instrument itself, however, has very limited financial and

resource implications: it sets out the forms to be used. The forms are short, self-explanatory and straightforward to complete.

The instrument has minimal financial implications for local authorities. More detailed information is given in the attached regulatory impact assessment.

Regulatory Impact Assessment

A regulatory impact assessment has been produced (a copy of which accompanies this Executive Note).

Equalities Impact Assessment

Public consultation on the draft instrument sought views on whether particular groups would be specifically affected by the forms and manner of notice proposed. Respondents did not identify any particular groups likely to be affected by the proposals; however, respondents did identify the need for local authorities' services to be responsive to a full range of needs. Local authorities have duties under equal opportunities legislation and section 106 of the Housing (Scotland) Act 2001 requires local authorities to encourage equal opportunities and the observance of equal opportunity requirements in conducting their housing and homelessness functions.

Scottish Government
September 2008

REGULATORY IMPACT ASSESSMENT

Form and manner of notice to be given to local authorities by landlords and creditors in accordance with duty under section 11 of Homelessness etc (Scotland) Act 2003

Title of proposals

This is the full Regulatory Impact Assessment (RIA) of proposed regulations made under section 11 of the Homelessness etc (Scotland) Act 2003. The regulations set out the form and manner of notice to be provided to local authorities by landlords and creditors (with the exception of local authority landlords) when raising proceedings for possession or serving certain other notices.

Purpose, intended effect and rationale for Government intervention

Section 11 of the Homelessness etc (Scotland) Act 2003 introduces a new duty on all landlords and creditors (except local authority landlords) to notify the relevant local authority when they raise proceedings for possession or serve certain other notices. This is to give local authorities early warning of households at risk of homelessness due to eviction or repossession. Local authorities can use the information to inform their strategic planning and delivery of homelessness services; they can also choose to respond on an individual basis to notices received.

The purpose of the regulations is to set out the forms to be used by landlords and creditors when notifying the local authority. The regulations also specify how the notice should be sent to local authorities.

Section 11 will be commenced on 1 April 2009 for all purposes (The Homelessness etc (Scotland) Act 2003 (Commencement No 3) Order 2008). Should no action be taken by Government to make regulations, landlords and creditors will have a duty to notify the local authority in accordance with section 11 but there will be no standard form and manner of notice. Landlords and creditors would have to compose their own notices and local authorities would not receive the information in a consistent way.

Consultation

Within Government

The Scottish Housing Regulator, the Financial Services Authority, and Housing and Regeneration, Public Health and Wellbeing, Constitution, Law and Courts, and Enterprise, Energy and Tourism Directorates have had input into development of the regulations and accompanying guidance.

Public consultation

Draft regulations and guidance for local authorities, landlords and creditors were subject to a twelve week consultation in early 2007. Responses were invited from a wide range of interested parties including the legal profession, social housing landlords, organisations representing creditors and private sector landlords, the voluntary sector and local government.

Forty-eight responses were received to the consultation. An analysis was carried out by the Scottish Government Communities Analytical Services and a report published in February 2008¹.

Drafts of the guidance to local authorities, landlords and creditors will be made available to stakeholders for further comment before being finalised for publication in advance of 1 April 2009.

Options

Option 1: Do Nothing

The ‘do nothing’ option would mean there is no standard form or manner in which landlords and creditors should fulfil their duty to notify local authorities under section 11. Landlords and creditors would have to seek legal advice on how they should comply with the duty and create their own forms of notice; local authorities would not receive the information in a consistent way.

This option is not recommended.

Option 2: Specify the form and manner of notice

Use the powers of Scottish Ministers in section 11(3) of the Homelessness etc (Scotland) Act 2003 to specify in regulations the form and manner of notice to be provided in accordance with duties under section 11.

This option would fulfil the expectation in the 2003 Act that the form and manner of notice be set out in regulations. Landlords and creditors would have the benefit of a standard form to use when fulfilling their obligations under the 2003 Act, and local authorities would receive consistent information.

This option was the subject of consultation.

Costs and benefits

The duty under section 11 falls on landlords and creditors and there are some resource implications for them in complying with it. The regulations set out the forms to be used by landlords and creditors in order to comply, and as such, limit the burden placed on them by setting out clearly what is expected. The regulations have minimal resource implications for local authorities.

Benefits

Setting out the forms of notice in regulations promotes clarity and reduces the potential risk of confusion or dispute between landlords and creditors and local authorities. There are

¹ <http://www.scotland.gov.uk/Publications/2008/02/13101539/0>

benefits to landlords and creditors of having a single, prescribed form to complete in order to comply with the section 11 duty. If forms were not set out in regulations landlords and creditors would have to take legal advice on how to comply with section 11 and create their own forms of notice.

The forms set out the information to be provided by the landlord and creditor, allowing for consistency and ease of processing by local authorities. If no forms were prescribed authorities may receive differing levels of information from individual landlords, making processing the information more complicated and resource intensive.

Costs

There are minimal administrative costs for landlords and creditors in completing the forms. They are short, straightforward and should take a legal trainee or junior member of staff no more than 10 minutes to complete. The information required of landlords and creditors is that which would be routinely held by them and would be required for the wider process of undertaking eviction or repossession.

There may be cost implications for local authorities where they choose to follow up individual notices. The limited nature of the information to be provided on the form means that authorities would likely have to conduct further enquiries about the household to determine and deliver an appropriate response. However, there is no duty on local authorities to follow up receipt of individual notifications.

Local authorities receive funding from the Scottish Government for tackling and preventing homelessness through the local government settlement. It is for authorities to determine allocation of resources based on local priorities. Where local authorities do incur additional costs through choosing to follow up individual cases, these are likely to be offset by savings of future costs associated with homelessness. The receipt of information via the notices will also contribute to local authorities' strategic planning of more effective prevention services.

Small/micro firms impact test

Landlords and creditors of all business sizes will be subject to the section 11 duty and would be required to complete the forms set out in the instrument in order to comply. Many private sector landlords let one or two properties on a personal rather than professional basis so the requirement to complete the proposed forms to comply with the duty will impact on individuals and small and micro firms.

All landlords and creditors are required to follow certain procedures when taking action to recover property or debt. The requirement to complete the forms to comply with section 11 is a very small part of a much larger process, and as such is expected to have minimal impact on businesses. It is recognised that small and micro firms tend to have fewer resources to call on; however, as noted above, the proposed forms are very short and straightforward and should not present a significant additional burden on small businesses or their legal representatives. Flexibility or exemption for small/micro businesses is not considered appropriate as it would materially affect the potential benefit, and would result in these businesses undertaking additional work to determine how they should comply with the section 11 duty.

Legal aid impact test

The proposed forms of notice would not give rise to increased use of legal processes, create new rights or responsibilities or impact directly on the legal aid fund. However, if they choose to respond to individual cases, authorities may recommend in some circumstances that tenants/debtors seek legal advice on their options.

Test run of business forms

The draft forms of notice were consulted on as part of the public consultation exercise. Respondents to the consultation included the Council of Mortgage Lenders, housing associations, representatives of private landlords and legal firms. The forms have been simplified and guidance notes added in response to feedback.

Competition assessment

It is not anticipated there would be any impact upon competition in any given market.

Enforcement, sanctions and monitoring

The Scottish Government has no direct sanctions against non-compliance with the proposed forms, or with section 11 as a whole. However, failure to comply may impact on landlords and creditors in other ways. Social landlords are subject to inspection by the Scottish Housing Regulator; private sector landlords must pass a 'fit and proper' test in order to be registered by the relevant local authority to let property; and creditors are regulated by the Financial Services Authority. The Government is currently discussing with the relevant bodies the potential impact of non-compliance.

Implementation and delivery plan

It is intended that the proposed regulations come into force on 1 April 2009 to coincide with commencement of section 11 of the Homelessness etc (Scotland) Act 2003. Draft guidance for local authorities, landlords and creditors on section 11 will be made available to stakeholders for final comments prior being published in advance of 1 April 2009.

The commencement of section 11 and the taking effect of the proposed regulations will be preceded by appropriate communication to interested and relevant parties.

Post-implementation review

Consideration will be given to monitoring the efficacy of section 11 and the form and manner of notice prescribed in the instrument.

The Government acknowledges the need for a Review RIA to be completed on the proposed regulations within 10 years of them coming into force.

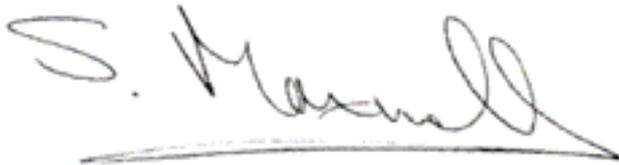
Summary and recommendation

After full consideration of the costs and benefits it is recommended that option 2 is adopted. Placing the form and manner of notice to be provided in regulations promotes clarity and facilitates delivery of the policy objectives behind section 11.

Declaration and publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed

A handwritten signature in black ink, appearing to read 'S. Maxwell', with a horizontal line underneath it.

Stewart Maxwell
Minister for Communities
29 September 2008