

HOMELESSNESS ETC (SCOTLAND) ACT 2003

GUIDANCE FOR LOCAL AUTHORITIES ON SECTION 11

Introduction

1. Section 11(1) of the [Homelessness etc \(Scotland\) Act 2003](#) (“the 2003 Act”) places a duty on landlords (other than local authorities themselves) to notify the relevant local authority when they raise proceedings for possession of a dwellinghouse.

2. Section 11(2) and the Schedule to the 2003 Act make amendments to the enactments and provisions listed below, to require either creditors or landlords to give notice to local authorities in the following scenarios:

- Sections 19B, 21(2A) and 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (“the 1970 Act”) where a creditor serves a calling up notice, a notice of default, or applies to court for remedies on default;
- Section 12 of the Rent (Scotland) Act 1984, where a landlord raises possession proceedings of a house which is let on a protected tenancy or a statutory tenancy;
- Section 19A of the Housing (Scotland) Act 1988, where a landlord raises possession proceedings of a house let on an assured tenancy;
- Sections 14 and 36 of the Housing (Scotland) Act 2001, where a landlord raises possession proceedings of a house let on a Scottish secure tenancy or a short Scottish secure tenancy; and
- Section 4 of the Mortgage Rights (Scotland) Act 2001, where a creditor commences proceedings to eject a proprietor in occupancy of a house (under section 5 of the Heritable Securities (Scotland) Act 1894).

3. The duties placed on landlords and creditors in terms of section 11 and the amendments to the above provisions came into force on 1 April 2009. Sections 11(3) and (4) give Scottish Ministers the power to prescribe by Regulations the ‘form and manner’ of such notices to local authorities and the [Notice to Local Authorities \(Scotland\) Regulations 2008](#) (SSI 2008/324) made under this power came into force on the same date.

4. The purpose of this guidance is to help local authorities develop and operate local strategies and procedures around receipt of notices under section 11 and the amendments to the other enactments referred to above. This is statutory guidance in terms of section 79 of the Housing (Scotland) Act 2001 to which local authorities, as corporate bodies, should have regard when carrying out their statutory duties. Local authorities should also have regard to the requirements of the Data Protection Act 1998 when developing and operating their strategies.

5. This guidance is not, and is no substitute for, legal advice on the operation of section 11 and the associated amendments to other enactments. The law on possession of heritable property in Scotland is complex and this note is not an interpretation of statute. Nor should it be taken as a comprehensive discussion of the operation of proceedings for possession.

Background

6. The Scottish Government is strongly committed to preventing homelessness wherever possible and ensuring it is tackled effectively where it does occur. Central to the Government's homelessness policy is the target to give all unintentionally homeless households access to settled accommodation by 2012. This is to be achieved by removing the priority need categorisation which separates households into those entitled to settled accommodation and those currently entitled to temporary accommodation, advice and assistance.

7. Prevention of homelessness has been identified by the Scottish Government and Convention of Scottish Local Authorities (COSLA) as one of four key joint priorities that will enable local authorities to address the 2012 target. Prevention activity across all services is also in line with the Government's broader principles of early intervention¹. New guidance on the [prevention of homelessness](#) has been prepared by the Scottish Government in association with COSLA and was published in June 2009 as an addition to the [Code of Guidance on Homelessness](#). This note should be read in conjunction with the Code which provides broader context and advice for local authorities in carrying out relevant activities and discharging their statutory duties towards people who are homeless or threatened with homelessness.

8. The requirement on landlords and creditors in section 11 and in the other statutory provisions referred to in paragraph 2 above will ensure that local authorities are alerted to households at risk of homelessness due to eviction or property repossession at an early stage. Local authorities may be able to respond on an individual basis to prevent homelessness occurring, and the information contained in the notices as prescribed by the Notice to Local Authorities (Scotland) Regulations 2008 can also help inform strategic planning within homelessness services and of prevention activity across a range of services. Protocols on the receipt of this information operated in some areas of Scotland in anticipation of the commencement of section 11 and the associated amendments to provisions in other enactments. An evaluation was published in March 2009 of the Prevention of Homelessness Section 11 Pilot Project in Glasgow, a partnership between Glasgow South West Community Health and Care Partnership, Money Matters Money Advice Centre and the Govan Law Centre. The evaluation, conducted by Danny Phillips Associates, found that the project demonstrated the value of partnership working amongst local bodies to identify and assist those facing a very real threat of homelessness². Under section 11, the submission of certain information on households at risk of losing their home will become a statutory requirement for landlords and creditors and can be viewed as a trigger for individual action.

9. The Scottish Government anticipates that section 11 and the associated amendments to provisions in other enactments will be a key measure in enabling local authorities and their partners to prevent homelessness. Local authority receipt of statutory notices from landlords and creditors can be viewed as a helpful trigger

¹ Early Years and Early Intervention: A Joint Scottish Government and COSLA Statement, March 2008. Available on the Scottish Government website at: <http://www.scotland.gov.uk/Publications/2008/03/141214280/0>

² [Prevention of Homelessness Partnership, Evaluation of Section 11 Pilot Project by Danny Phillips Associates.](#)

for the engagement of a wide range of local or national services designed to help prevent homelessness. Many authorities already have arrangements in place with local services and agencies, sometimes for the benefit of particular client groups. The commencement of section 11 adds weight to the importance of prevention work and should help strengthen local partnerships and joint working.

The duty

10. The duties on each party are summarised below:

Landlords

11. Section 11 requires landlords in the social and private rented sectors to notify the relevant local authority when they raise proceedings for possession of a dwellinghouse. Section 11 also amends the following acts, full details of the amendments are set out in the Schedule to the 2003 Act³:

- The Rent (Scotland) Act 1984;
- The Housing (Scotland) Act 1988; and
- The Housing (Scotland) Act 2001.

12. Proceedings for possession means any proceedings in which a decree of removing or warrant of ejection or other like order is sought. The raising of proceedings in a court is required in order to lawfully evict a tenant in the social sector (under the Scottish Secure Tenancy regime) and in the private rented sector (under the protected and statutory, and assured and short assured tenancy regimes). Section 11 also binds the Crown.

13. The duty is to give notice whenever proceedings are “raised” for possession in a court of law. Notice should be given to the local authority each time proceedings are raised.

14. The duty is unlikely to apply in cases where a tenancy ends routinely without recourse to legal action – for example in the social sector by the tenant giving notice to the landlord, or in the private rented (PRS) sector with the routine ending of a six month short assured tenancy. However, it is anticipated that notice would need to be given if a private sector landlord raised proceedings to evict a tenant with a short assured tenancy before the minimum tenancy period had expired.

15. The duty does not apply until proceedings for possession are actually raised. One of the required pieces of information in terms of the 2008 Regulations is the date on which proceedings were raised. In terms of section 11 and the associated amendments to provisions in other enactments, private sector landlords do not legally need to notify the local authority when they serve an AT6 form or a section 33 notice (under the Housing (Scotland) Act 1988) on the tenant as these indicate only an intention to commence proceedings.

³ http://www.opsi.gov.uk/legislation/scotland/acts/asp_20030010_en_1

16. However, within the context of developing closer working relationships and broader prevention work it is open to local authorities and landlords to consider the benefit of developing protocols around the exchange of information at these earlier points. There are existing examples of this type of arrangement: one local authority has negotiated with a local Registered Social Landlord (RSL) the sharing of information at the stage of issuing a Notice of Proceedings; at this point the authority sends out an information pack to the tenants. The RSL then contacts the authority again if they are proceeding to court, at which point the authority undertakes to try to contact the household in person.

17. The duty to notify the local authority under section 11 should not be confused with the separate duty on social landlords under section 14 of the Housing (Scotland) Act 2001 to serve a notice on any qualifying occupiers indicating that proceedings are being raised to recover possession⁴. The section 11 duty is to notify the local authority when proceedings are raised; the section 14 duty is to notify qualifying occupiers of an intention to raise proceedings. While there is no duty on social landlords 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 in accordance with the 2001 Act. The provisions of the 2001 Act mean that qualifying occupiers can apply to the court to be sisted as a party to the proceedings (i.e. they are kept notified of the proceedings and have a right to be heard).

Creditors

18. Section 11 amends the Conveyancing and Feudal Reform (Scotland) Act 1970 and the Mortgage Rights (Scotland) Act 2001. The amendments require creditors to notify the relevant local authority when they:

- Serve a calling up notice requiring discharge of the debt secured (under section 19 of the Conveyancing and Feudal Reform (Scotland) Act 1970);
- Serve a notice of default calling on a debtor to remedy a default (under section 21 of the Conveyancing and Feudal Reform (Scotland) Act 1970);
- Apply to court for a warrant to exercise remedies on default (under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970); or
- Raise proceedings to eject a proprietor (under section 5 of the Heritable Securities (Scotland) Act 1894).

19. The duty applies to all creditors who take security over a residential property. It also applies regardless of whether the mortgage is first charge, second charge, buy-to-let or a debt consolidation loan. As stated above, section 11 binds the Crown.

20. There is no legal requirement for trustees in bankruptcy to notify the local authority when they exercise power under the Bankruptcy (Scotland) Act 1985 to obtain the authority of a sheriff to sell or dispose of the debtor's home, or when they raise an action for possession. The Accountant in Bankruptcy publishes guidance for

⁴ Guidance on this duty is contained within the circular SEDD Circular 6/2002 *Housing (Scotland) Act 2001 Scottish Secure & Short Scottish Secure Tenancy* available on the Scottish Government website at: <http://www.scotland.gov.uk/Publications/2002/08/sst/0>.

trustees and consideration is being given to updating this guidance in line with arrangements under section 11.

Local authorities

21. Section 11 does not apply to local authorities in relation to their landlord function. However, authorities should take a corporate approach to preventing homelessness and put in place appropriate tenancy sustainment, debt management and evictions procedures which ensure that all necessary steps are taken to prevent homelessness occurring. Local authorities should also be aware of links to other areas of their responsibility such as administration of Housing Benefit, tackling anti-social behaviour and children's services.

22. To ensure that homelessness prevention is given corporate consideration, some local authorities have found it helpful to develop information sharing protocols and a method of obtaining informed consent from households to enable information exchange between departments and with other relevant agencies.

The Notice to Local Authorities (Scotland) Regulations 2008

23. Regulations have been made under sections 11(3) and (4) prescribing the form and manner of notice to local authorities. The Notice to Local Authorities (Scotland) Regulations 2008 prescribe two separate forms of notification for landlords and creditors in schedules 1 and 2 of the Regulations. As the forms of notice are set out in regulations they cannot be amended by local authorities or landlords and creditors. Sample forms are available on the [section 11 webpage](#) on the Scottish Government website.

24. The form of notice to be given by landlords is at Schedule 1 of the Regulations and requires the following information:

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

25. The form of notice to be given by creditors is at Schedule 2 and requires the following information:

- 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 the standard security;

- Date of calling up notice/notice of default or raising of proceedings; and where applicable; and
- Court in which application made or proceedings raised.

26. It is recognised that the information to be included in the notices is limited and does not include information such as household composition which authorities may find helpful in prioritising action or identifying an appropriate response. Some landlords and creditors, particularly those operating at a smaller, local level, may hold this information but others, particularly larger companies, will not. The information required is therefore that which landlords and creditors, or their representatives, would reasonably be expected to hold.

27. It is open to local authorities to discuss with landlords and creditors the mutual benefits of sharing additional information and development of protocols and practices which allow this to be most effective. Examples of arrangements already in place include local agreements to share information on household type where this is known; action already taken in relation to the case (to avoid unnecessary or unhelpful duplication); and reason for raising the action. In undertaking any discussions on this issue, local authorities should be mindful of the terms of the Data Protection Act 1998 which prohibits the passing on of personal data for a purpose other than for which it was collected, unless the household or individual gives consent. New practices might be helpfully adopted to aid information sharing in the context of data protection principles; for example, private sector landlord organisations have indicated they are receptive to the suggestion of writing into the terms of new leases that information will be shared with the local authority and other relevant services in the event of rent arrears accruing. It is open to RSLs to adopt this practice also. Authorities may find it helpful to share experiences and best practice on the development of protocols in order to realise the optimum benefit of information exchange.

28. Large creditors take security over property in many different areas throughout Scotland. They generally use specialist solicitors firms to undertake and manage arrears recovery so authorities could give consideration to developing relationships with these firms, or with creditors directly, to promote shared understanding of practices on arrears and possession.

29. The Regulations provide that the forms can be sent to the local authority by post or transmitted electronically. Where forms are sent by post, authorities may wish to encourage use of recorded delivery so the sender has proof of receipt. Where forms are sent electronically, automated acknowledgements may be helpful to senders, again to demonstrate compliance with statutory requirements. A full list of [local authority contact points](#) to which section 11 notices and notices under the amended provision of other enactments should be sent is available on the Scottish Government website and has been drawn to the attention of national stakeholder bodies, including representative organisations for landlords, creditors and local authorities. Local authorities may wish to undertake additional awareness raising at a local level via regular contacts with RSLs, private sector landlords (through the registration database, landlord forums or accreditation schemes), local lenders and solicitors.

30. Postal addresses do not always identify the local authority area and, as such, some landlords and creditors may not be aware of which authority to send notices to. [Ordnance Survey](#) and the [Boundary Commission](#) have helpful tools on their websites which identify the relevant local authority when a postcode is entered. These tools are promoted in the guidance for landlords and creditors. However, there are likely to be occasions where notices are sent to the wrong authority and local authorities are encouraged to work together to ensure these notices are passed to the correct address.

Timing

31. The timing of the notification to local authorities is linked to the serving of certain notices and proceedings for possession being raised in order that the local authority has sufficient warning of any action which may result in homelessness.

32. The 2003 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”. The Act does not give Ministers power to specify any further requirements about when the notification should be sent. Clearly, it is desirable that notice is given to local authorities at the same time as, or as soon as possible after, proceedings are raised or notices served since the primary objective of the legislation is to alert local authorities to potential homelessness as early as possible. Draft guidance to creditors and landlords on the duty under section 11 highlights the importance of notifying the local authority at the earliest opportunity, and it has been suggested that within 3 working days might be regarded as good practice.

Failure to comply with the duty

33. There are no direct sanctions against non-compliance with the duties under section 11. Courts are not obliged to check whether the landlord or creditor has followed the procedure under section 11 – although they may choose to have regard to this. It is outwith the scope of the regulations to introduce any sanction; however, failure to comply with the duties may impact on landlords and creditors in other ways through decisions or actions taken by other parties, for example regulatory and registration bodies.

34. It is open to local authorities to take action to address non-compliance through awareness raising and provision of information. This is particularly relevant in the case of social and private sector landlords where strong partnerships are required in order to develop and deliver local housing strategies. Local authorities have statutory responsibilities to provide advice to private landlords on good practice in private letting, and this should include advice on compliance with housing law. Local authorities may wish to record any incidences of non-compliance which come to their attention and, where they think it appropriate, share these with regulatory or industry membership bodies.

Private rented sector landlords

35. Recent policy developments, including the updated [Local Housing Strategy Guidance](#) issued jointly by the Scottish Government and COSLA, promote stronger partnership working between local authorities and the private rented sector and failure by landlords to comply with section 11 and the associated amended enactments may have broader implications for their business.

36. In accordance with the Antisocial Behaviour etc (Scotland) Act 2004 private sector landlords are required to register with the local authority in which they rent property. The local authority must be satisfied the landlord is a fit and proper person to let property before registering them. As part of this consideration local authorities may take into account any evidence that the landlord has contravened any provision of the law relating to housing, or landlord and tenant law.

37. Landlords who are members of Landlord Accreditation Scotland are required to operate in accordance with the Scottish Core Standards for Accredited Landlords. The standards state that landlords must use the correct legal procedures for seeking possession of a property; from 1 April 2009 these procedures include giving notice to the relevant local authority when raising procedures for possession. Local accreditation schemes also require members to operate to the Core Standards or are in the process of moving towards this.

Registered Social Landlords

38. Social landlords have a key role in preventing and tackling homelessness. The expectations of RSLs in this area are set out clearly in the Scottish Housing Regulator's Performance Standards which include specific activity standards on prevention, advice and information and arrears management. The Regulator carries out individual inspections of RSLs which consider specifically the effectiveness of arrangements for notifying local authorities of any planned legal action and/or evictions. From 1 April 2009 this will shift from consideration of good practice to scrutiny of statutory compliance. The Regulator will also give consideration to how RSLs' implementation of the duty under section 11 and associated amended enactments may be addressed through their themed inspections and other activities.

39. Failure by RSLs to comply with the duty will impact on relationships with local authorities and authorities may wish to consider what influence they may have to encourage compliance.

Creditors

40. First charge lenders are regulated in the way they conduct their business in relation to residential mortgages by the Financial Services Authority (FSA) through the Mortgage Code of Business (MCOB). MCOB 13 outlines how creditors should treat arrears and possession. Requirements include the fair treatment of customers in arrears; contact within 15 days of arrears occurring; use of reasonable efforts to reach agreement with the customer over the method of repayment; and taking action to repossess only where all else has failed. Lenders must also act in accordance with the FSA's principles of treating customers fairly (TCF).

41. Specific reference to the section 11 duty and the duties in the associated amended enactments will be included in MCOB 13 when it is next updated, but in the meantime the duty complements and reinforces the principles behind the actions and behaviour required of lenders. The FSA has a range of sanctions against lenders who fail to comply with the MCOB and TCF principles. These include dialogue, warning notices and fines.

42. The Council of Mortgage Lenders published industry guidance in October 2008 on arrears and possessions to help lenders comply with MCOB and TCF principles. The guidance is available on CML's website⁵ and applies to first charge mortgage lenders regulated by the FSA. The document sets out MCOB requirements and guidance and includes both policy and procedure good practice examples.

43. Second charge and debt consolidation lenders are regulated by the Consumer Credit Act 1974. The Act requires businesses offering these products to be licensed by the Office of Fair Trading (OFT). The OFT must be satisfied that an applicant for a licence is a fit person to engage in the activities identified on the application; it also looks at competence and any evidence of unfair or illegal business practices. In addition to conducting their own enquiries, OFT receives information about licences from sources including Local Authority Trading Standards, the Financial Services Authority, consumer bodies, e.g. Citizens Advice, and from Consumer Direct. Once granted a licence, lenders are required to maintain the required standard of fitness. OFT has the ability to deny or revoke a licence, to vary it, limit its life or to impose requirements where they are dissatisfied with certain aspects of conduct.

44. The Financial Leasing Association (FLA) published Good Practice Guidelines for Second Charge Mortgages in November 2008⁶. The guidelines encourage customers to contact their local authority at an early stage in cases of arrears, and supplement the FLA's existing Lending Code to which all full members of the organisation must comply.

Receipt of notification

45. Section 11 and the associated amended enactments place no particular duties on local authorities in terms of how they should respond to notices received. Individual authorities have flexibility to develop their own approaches and have a range of related statutory duties which will inform the development of local practice and procedure. These include:

- Duties under the Housing (Scotland) Act 1987 towards people who are homeless or threatened with homelessness;
- Duties under the Housing (Scotland) Act 2001 to secure that free advice and information about the prevention of homelessness and any services which may assist in the prevention of homelessness is available to anyone who requests it and to prepare and publish a local housing strategy; and

⁵ www.cml.org.uk

⁶ www.fla.org.uk

- Duties under the Antisocial Behaviour (Scotland) Act 2004 and regulations made under section 99 of that Act to provide advice to landlords on best practice in private renting and to tenants and prospective tenants on letting practice.

46. Local authorities' strategies on section 11 and associated amended enactments should form part of their broader approach to homelessness prevention and to implementation of their wider local housing strategy. In addition to using the information received to inform strategic planning, authorities can choose to act in response to individual notices to try to prevent homelessness from occurring. Where it is not possible to prevent homelessness, planning can be undertaken to minimise the stress and trauma associated with loss of a home and to deliver an appropriate response which ensures the household can access sustainable accommodation as quickly as possible.

Strategic planning

47. Information received by local authorities through, and relationships developed as a result of the requirements of section 11 and associated amended enactments can be used by authorities and partner organisations as additional evidence to inform and review strategic planning of homelessness services and prevention activity across a range of other services.

48. Section 11 and the associated amended enactments highlight the importance of joint working among partners to prevent and alleviate homelessness. Local authorities will receive information from a range of housing providers, providing opportunities for dialogue. In some cases there will be existing relationships with private and social sector landlords, and possibly creditors, but in others the duty provides the opportunity to identify and work with new partners. Updated Local Housing Strategy guidance is clear about the need for strategic planning of housing to cover all tenures, and the new legislation provides a further opportunity for authorities to develop local relationships which can help them fulfil their broader housing and homelessness functions.

49. Information about the number of potential evictions within a local authority area can assist in the planning and delivery of services for prevention and alleviation of homelessness, or help identify particular geographies within an area where there may be specific 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 of prevention and other strategies, including tenancy sustainment.

Individual response

50. It is recognised that following up each case notified may not be an effective or appropriate use of resources, but it is for authorities to develop their own approaches in this area. In considering what action to take, authorities may wish to give priority to households already known to them.

51. There is a range of interventions which can be made in order to prevent homelessness occurring or to help manage a household's experience of homelessness. As noted at paragraph 5 the Scottish Government has worked with COSLA and other stakeholders to develop specific guidance on prevention of homelessness. Ongoing monitoring of the impact and effectiveness of specific interventions can help authorities develop their homelessness prevention services and their knowledge of what works, and there is benefit in the sharing of practice among authorities to help develop service responses.

Making enquiries

52. As the information received via the notice will necessarily be limited, authorities may wish to find out more about the household and the circumstances surrounding the action taken by the landlord or creditor. Making enquiries can help authorities develop their knowledge base on reasons for homelessness locally and help develop possible interventions and broader prevention strategies.

53. Local authorities can draw on information held corporately to help identify particular households, for example where vulnerable people are present. Data held by the social work or children's services teams may be helpful, although such enquiries should be conducted with sensitivity. Cross-referencing with the landlord registration database will help authorities identify properties which are subject to a buy-to-let mortgage and which may have tenants.

54. Authorities can also make further enquiries with relevant organisations including the creditor or landlord. Landlords and creditors are not obliged to divulge any additional information and may require a Data Protection mandate to be signed by the tenant or borrower before they will discuss cases with the local authority. As noted at para 27, the development of local protocols on information sharing can assist in devising appropriate responses to s11 notices.

55. Authorities can also explore with the household the circumstances which led to the potential eviction and its likely impact. It is generally not in a landlord or creditor's interest to end a tenancy or mortgage and identification of the issues is helpful in understanding the most appropriate response and can inform strategic planning, including local authority and other housing providers' tenancy sustainment strategies.

56. There are a range of scenarios in which landlords and creditors take action to repossess a property or call in a mortgage. Rent/mortgage arrears or antisocial behaviour are perhaps the most well-known, but it is important to recognise other situations for example where a private sector property is required for another purpose, or where a tenancy has been terminated properly and the tenant has refused to vacate.

57. It should be noted that section 11 and the associated amended enactments are not intended to be a barrier to eviction. Notification is intended to give early notice to local authorities that a household is facing potential homelessness and it is for the local authority to determine appropriate actions which may prevent the household reaching housing crisis. In some cases it may be appropriate to seek

continued residence of the tenant in that particular property, but in other cases continuation of the existing arrangements may not be helpful for the tenant or the landlord/creditor and the most appropriate solution may be for these arrangements to come to a managed end and the household helped to find alternative accommodation.

58. Where an authority decides to act in response to a particular notice it is for them to determine the most appropriate intervention based on the circumstances of the case and local knowledge. In all cases, it is recommended a response is provided which aims to resolve the situation for all parties and which takes account of the interests of all relevant local authority departments. In developing a response, local authorities will also wish to consider the broader principles of joint working and the objectives of their local housing strategy and homelessness action plan.

Initial contact

59. There are a number of ways initial contact can be made with a household and authorities will wish to consider the most appropriate method in the circumstances. It is possible that the household may have literacy issues or may not be able to read English and authorities may wish to consider approaches which meet a variety of needs. However they choose to make initial contact, local authorities may wish to consider advising the household of the statutory duty on authorities regarding homelessness and the duty on landlords and creditors to inform the authority when possession proceedings commence, hence minimising the risk of causing further distress or alarm. They may also wish to consider providing a Data Protection mandate to the household and explaining that consent is required before the authority can discuss the case with the landlord, creditor or their legal representatives.

60. Where a section 11 notice or a notice under one of the provisions of the associated amended enactments refers to a property purchased on a buy-to-let mortgage and there are tenants in the property, authorities can choose to contact the landlord to discuss the circumstances of the case and the potential implications for the tenants. They can also contact the tenants direct. The tenants should be aware of the action undertaken as creditors have statutory obligations under the Conveyancing and Feudal Reform (Scotland) Act 1970 to notify the occupier of the relevant property by recorded delivery when commencing various forms of enforcement action against a landlord in default or breach of their standard security conditions.

61. In some cases, the tenant or mortgage holder will not respond to contact from the local authority. There may be a number of reasons for this and failure to respond is not in itself an indication that the household is making themselves homeless intentionally. If the household subsequently presents as homeless their case should be considered in the same way as any other. Local authorities may wish to consider the value of making further attempts to contact households where there is a history of homelessness.

Providing information

62. Some households will need general financial, housing or legal advice. Authorities may be able to provide advice, or secure it from external agencies. Examples of advice which may be appropriate are:

- Information and advice on tenants' rights with respect to the legal process of eviction;
- Information and advice on managing debt;
- Information and advice on mortgagors' rights under the Mortgage Rights (Scotland) Act 2001 and Mortgage to Rent Schemes; and
- Information and advice on benefits entitlements.

63. They could also signpost the household to appropriate advice and information providers. These include Shelter (0808 800 4444 or <http://www.scotland.shelter.org.uk>), Citizens Advice Bureaux or Citizens Advice Direct (0844 848 9600 or www.citizensadvisedirect.org.uk) and National Debtline (0808 808 4000 or www.nationaldebtline.co.uk/scotland). Money advice can be obtained from the Consumer Credit Counselling Service (0800 138 1111 or www.cccs.co.uk) and the Money Advice Scotland website (www.moneyadvicescotland.org.uk) has a directory of money advice agencies.

64. Consideration of the appropriate types of advice services provides an opportunity for authorities to monitor and review current provision in the area including how accessible services are and the extent to which they work in partnership to provide a joined up response to users.

65. Authorities could also consider whether the following actions would be beneficial:

- Contacts with appropriate agencies who could act on behalf of the household;
- Consideration of housing options to identify alternative accommodation;
- Support to help people facing eviction as a result of anti-social behaviour;
- More general support to help sustain the tenancy, including advice on rights and responsibilities; and
- Provision of loans to help people in rent/mortgage arrears.

66. A number of organisations offer independent mediation. This service may not be appropriate in all cases, for example where a private landlord requires their property for another purpose, but there may be occasions where mediation may be a helpful option. The parties in dispute, and not the mediator, decide what will happen and the terms of any agreement made. This might include continuation of the existing tenancy or facilitation of the ending of a tenancy where this is the most suitable option. A list of local mediation services is available from Scottish Mediation Network (www.scottishmediation.org.uk)

67. The legal aid system in Scotland provides free or subsidised legal assistance for individuals who cannot afford to pay for it themselves. The Scottish Legal Aid Board can provide information about the legal aid system. Local authorities can signpost households to the Board's website (www.slabb.org.uk) or helpline (0845 122 8686 – 7am to 11pm) which provides information about legal aid, how to apply and where solicitors who do work under legal aid are located.

Rent and other arrears

68. Landlords/creditors may be taking action to recover the property due to rent/mortgage arrears. In these cases, the individual may also have other debt and would benefit from money advice services and possibly a benefits entitlement check. In addition, it may be appropriate to consider whether broader advice on rights and responsibilities of maintaining a tenancy, for example paying the rent on time, would be helpful.

69. If the household is in rent arrears and these 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.

70. Where rent arrears have occurred following introduction of the Local Housing Allowance, there is benefit in the adoption of an early, cross-departmental response to avoid these building up. Authorities have discretion to make direct payment of rent to landlords in line with Department for Work and Pensions guidance⁷ and where doing so will serve as a safeguard to ensure rent is paid on time and the household can continue to maintain their home.

71. More broadly, local authorities should consider the benefits of developing corporate debt policies which are informed by the full range of corporate responsibilities.

Antisocial Behaviour

72. The Scottish Government and COSLA published jointly in March 2009 their shared vision for how antisocial behaviour (ASB) should be tackled: [*Promoting Positive Outcomes: Working Together to Prevent Antisocial Behaviour in Scotland*](#). This recognises the need to place prevention and early intervention at the heart of government strategy; to address the causes of antisocial behaviour such as drink, drugs and deprivation, and not just the symptoms; to promote positive behaviour and the work of role models and mentors; and to punish bad behaviour in an appropriate, proportionate and timely manner.

73. The Framework outlines strategic aims, national actions, local recommendations and good practice examples. One of the national actions is for the Scottish Government, COSLA and other national partners to improve the shared guidance they provide to local partners. This will involve revisiting guidance on implementing the 2004 Act by the end of 2009 on key areas of good practice, such as partnership working and the use of analysis; and establishing a series of National Policy Position Statements by the end of 2009 to provide clarity on key ASB issues.

⁷ <http://www.dwp.gov.uk/housingbenefit/claims-processing/lha/products/lha-guidance-manual-amd1.pdf>

Data protection issues

74. Landlords and creditors have a statutory duty under section 11 and the associated amended enactments to pass certain information to the local authority on raising possession proceedings or service of notices, such as calling up notices. Local authorities can share this information with different departments within the same authority; however, if they wish to share the information subsequently with another party, such as an advice agency, permission needs to be given from the tenant or mortgage holder. Effective joint working is important in the planning and delivery of homelessness services and there may be value in authorities considering whether data protection issues are addressed in existing service level agreements with agencies with whom they may wish to share information, and developing protocols which allow local data sharing to be effective.

Monitoring and Evaluation

75. Monitoring the operation of and outcomes arising from receipt of notices under section 11 will aid understanding of how the duty can best contribute to prevention of homelessness, and help identify the efficacy of interventions. It can also help develop wider work to improve the evidence base on the impact of the recession on repossessions and homelessness.

76. Following discussion with COSLA, the Scottish Government plans to collect from local authorities, via the HL2, summary data on the number of notices received from social landlords, private landlords and creditors. It is proposed that returns be fed back to individual local authorities along with supplementary data from courts and the HL1, helping authorities set the receipt of notices in the wider context. The data received will also feed into a broader evaluation of the impact of section 11 and the associated amended enactments in the next year to 18 months. This work will be carried out in the context of monitoring the overall impact of, and response to, the recession.

77. Local authorities may also find it helpful to develop practices around recording action taken as a result of receiving notices and outcomes for the household concerned, particularly whether or not they subsequently applied as homeless or whether they managed to sustain their accommodation. In the longer term, this information can help evaluation of whether particular interventions are helpful for particular groups.

78. Local authorities' strategies on and procedures around the operation of section 11 and the associated amended enactments are likely to evolve over time. Evaluation of what works, and what doesn't work, is an important factor in developing appropriate responses on homelessness prevention. Guidance on prevention of homelessness discusses approaches to monitoring and evaluation of prevention activity, drawing on the evaluation of the Scottish Government's Innovation Fund published in November 2008⁸. The evaluation, conducted by Research for Real, is accompanied by good practice guidance.⁹

⁸ <http://www.scotland.gov.uk/Publications/2008/11/13103556/0>

⁹ <http://www.scotland.gov.uk/Publications/2008/06/25093503/0>

79. Authorities may wish to consider whether they will publish any monitoring information gathered and for what purpose. In publishing any information, they will wish to be aware of data protection legislation and FSA rules regarding publication of information about the activities of first charge lenders.

Equalities

80. Local authorities will wish to consider the impact of section 11 and associated amended enactments upon ethnic minority households and other equalities groups, and consider the particular needs of these groups in relation to the services and information provided as a result of the local authority receiving notification. The Scottish Government is currently finalising guidance on prevention of homelessness amongst ethnic minority households.

Scottish Government
July 2009