



Homelessness etc., (Scotland) Act 2003 – implementation of section 11

Consultation Response from Govan Law Centre, Glasgow

Introduction

Govan Law Centre (GLC) is a community controlled law centre with charitable status (SCO 30193) based in Glasgow. We employ six solicitors, four of which undertake a large volume of defended eviction and mortgage repossession casework, with 700 sheriff court appearances per annum. Clients contact us directly, or through referrals from social work, money advice, CABx, Shelter, and other agencies.

We disseminate a large amount of free Scottish housing and debt law advice online at www.govanlc.com and www.bankcharges.info We undertake prevention of homelessness casework across Glasgow, but mostly within the South West. Our work is funded by the Glasgow Homelessness Partnership, Glasgow City Council and the law centre's generated income. East Dunbartonshire and East Renfrewshire Councils fund GLC to defend mortgage repossession actions within their local government areas.

In the South West of Glasgow we manage a pilot section 11 Prevention of Homelessness project in partnership with Glasgow City Council Social Work Department (South West), Govan Money Matters Advice Centre and Pollok CABx. We employ a project worker and co-ordinator, with social care qualifications.

Question 1

In order to make the manner of notification clear it would helpful to clarify whether the notice can be sent to any office of the local authority. This will be of importance in rural communities with a large geographical spread and several local council offices. Managing the section 11 duty would be easier if notices were sent to one place. All local authorities are required to appoint a chief executive, and the office of the chief executive is situated within the local authority's headquarters.¹ We would therefore suggest it may be helpful to amend Regulation 3 as follows:

< Manner of giving notice

- 3. The notice must be sent by post to the office of the chief executive of the local authority or transmitted electronically to that office.**

¹ <http://www.cosla.gov.uk/index.asp?leftId=10001D0EF-10766746>

Questions 2 & 3

We believe both Form 1 and Form 2 should also contain details of the solicitors acting for the landlord or lender (if any). Most proceedings for landlords and lenders will be raised by a firm of solicitors and it will be necessary to know who that is for the purposes of negotiating and preventing homelessness (assuming a client appoints an advisor). The following prompt is suggested:

< Name and address of creditor/landlords' solicitors (if any) >

We also suggest that it would be helpful to have details of the default upon which legal proceedings will be founded. This will usually be a sum of rent arrears or contractual arrears of a secured loan. Both Forms 1 and 2 could have a question such as:

< Amount of contractual arrears: >

We would note, for example, that under the Housing (Scotland) Act 2001 'qualifying occupiers' obtain a copy of the tenant's notice of proceedings for recovery of possession which contains details of rent arrears.² The rationale is to enable other occupiers to be aware of the seriousness of the problem and take preventative action.

Likewise, local authorities will want to prioritise their management of section 11 notices. They will want to assist the most vulnerable cases as a priority. If a tenant or debtor has thousands of pounds of arrears it will be more difficult to prevent their homelessness; and so it will be necessary to know whether significant intervention was needed.

Question 4

Form 2 will be completed by the lender's solicitor and appears to be fine. However, some private landlords may have to complete Form 1 without legal representation and may be confused by the legal terminology which follows the words, 'Enactment under which proceedings are being notified'. It may be easier to group these numbered paragraphs under the headings: 'For private sector landlords', 'For social landlords' and 'For secured lenders'.

Question 5

Yes. If section 11 notices are not sent to local authorities then the prevention of homelessness policy will not be delivered. We appreciate that Scottish Ministers do not wish to introduce procedural sanctions for failing to send a section 11 notice. We understand that the policy initiative is to prevent homelessness, as opposed to creating a new procedural defence for tenants or debtors.

However, our concern is that the sanctions for not complying with section 11 are 'after the fact' and of little comfort for individual tenants or homeowners. Thus if a

² See paragraph 41 of the Guidance on the 2001 Act and SSTs:
<http://www.scotland.gov.uk/Publications/2002/08/sst/1>

housing association fails to comply with section 11 this might only be picked up years later as part of a Communities Scotland RSL inspection.

If a private sector landlord fails to comply with section 11 it is noted that this could be a factor in determining whether they were a 'fit and proper' person to be a registered as a private landlord under the Antisocial Behaviour etc., (Scotland) Act 2004. However, if a private sector landlord fails to send a section 11 notice and the tenant is evicted, how would the local authority necessarily know about this? This is an important issue because we know that many private sector landlords often fail to adhere to their legal duties as a landlord.

Finally, we would note there is no sanction if a secured creditor fails to send a section 11 notice. While many of the High Street banks would be likely to comply as a matter of good practice, there are some less reputable companies in the consolidation or second loan markets who may ignore section 11, particularly if doing so has no legal effect.

GLC would like to suggest a non-sanction based solution to this issue. Firstly, we note that the Scottish Ministers are curtailed by the terms of section 11 itself: so one cannot change who gives notice to the local authority. However, it would be possible to bring into force an *Act of Sederunt* requiring a pursuer in an eviction or repossession action (excepting local authorities) to provide a copy of the section 11 notice with their Summon or Initial Writ at the time of seeking a warrant for service.

If a pursuer failed to provide a copy of the section 11 notice as posted (or e-mailed) to the local authority, the Sheriff Clerk could be empowered to return the Summons or Writ in order for a copy of the notice to be provided. This would ensure that pursuers gave section 11 notice in all cases. Section 32 of the Sheriff Courts (Scotland) Act 1971 gives the Court of Session general powers to regulate and prescribe civil procedure in the sheriff court.³

Question 11

We would like to offer some observations on what a local authority could do once it receives a section 11 notice.

In general, where legal proceedings have been raised against a tenant the local authority needs to assess whether proceedings will be contentious, difficult to resolve and likely to result in homelessness. If so a referral to a CABx or money advice agency is unlikely to be sufficient. If, for example, the level of arrears is high and/or the tenant has no income to make payments to arrears it may be necessary to defend the action in order to prevent homelessness, and obtain sufficient time to look at income maximisation and whether outgoing and liabilities can be minimised.

³ An up-to-date Section 32 of the 1971 Act is available online here: [http://www.statutelaw.gov.uk/content.aspx?LegType=All+Legislation&title=sheriff+courts+\(scotland\)+act+Year=1971&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&TYPE=QS&PageNumber=1&NavFrom=0&parentActiveTextDocId=1368492&ActiveTextDocId=1368542&filesize=17380](http://www.statutelaw.gov.uk/content.aspx?LegType=All+Legislation&title=sheriff+courts+(scotland)+act+Year=1971&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&TYPE=QS&PageNumber=1&NavFrom=0&parentActiveTextDocId=1368492&ActiveTextDocId=1368542&filesize=17380)

Defending court proceedings generally requires legal representation. In eviction proceedings this work is undertaken by law centre solicitors, who are members of the Scottish Association of Law Centres (SALC).⁴ The Shelter Housing Law Service (which is a member of SALC) also employs solicitors who undertake this work. There are some private firms of solicitors who undertake this work; and of course tenants may be eligible for advice and assistance and civil legal aid to defend proceedings. We believe it would be helpful if the Guidance recognised that sometimes tenants will need legal representation in order to prevent homelessness.

In the case of mortgage repossession it will generally be necessary to instruct a solicitor to pursue a section 2 application under the Mortgage Rights (Scotland) Act 2001 in order to prevent repossession. This is an area of particular unmet legal need as many homeowners will be in employment and either not eligible for legal aid or eligible with a contribution which they cannot afford. This can mean many homeowners will be unable to obtain help from a solicitor.

We believe local authorities can counter this problem by funding legal representation. This can be done in a variety of ways: the local authority can fund a law centre (such as Glasgow City Council does), it can fund a solicitor post (such as the Glasgow Homelessness Partnership does), or it can enter into a contractual arrangement to fund repossession defence work on a case by case basis (such as our service level agreements with East Dunbartonshire and East Renfrewshire Councils).

GLC also believes section 11 presents local authorities with an excellent opportunity to prevent homelessness on a strategic level. However, this needs dedicated co-ordination with specialist support services. In Glasgow, our Prevention of Homelessness Project was set up in recognition that:

- (a) In order to prevent homelessness when court proceedings have been raised it is necessary for clients to have access to specialist legal and money advice services on an urgent basis. We employ a worker with social care qualifications to manage and co-ordinate this service. Our project also has a dedicated solicitor and money advisor. Quick appointments are essential in order to undertake the necessary legal work, pursue mortgage indemnity insurance claims, where appropriate apply for and maximise benefits and income, challenge benefit overpayment decisions, look at debt relief options, and manage and reschedule multiple debts.
- (b) Separately, a fundamental problem with housing debt cases is that many clients will be suffering from depression or ill health, will generally have multiple debts, may have addiction or substance abuse problems, and may have other social problems (which the social work department may be aware of). Eviction or repossession proceedings are generally the tip of the iceberg. This often results in clients being unable to respond to correspondence and missing appointments because they are not in a position to cope. Our solution is, where appropriate, to make contact with clients and provide social care assistance to enable clients to access legal and money advice services. Again, this requires co-ordination. Without a co-ordinator a client may miss appointments, fail to complete paperwork etc., and end up being made homeless. It is generally more difficult to

⁴ Details of law centres can be found here: <http://www.govanlc.com/salc.htm>

help a tenant or debtor post decree, when problems have become more pronounced.

- (c) Finally, in order to prevent homelessness on a sustainable basis, we believe tenants and homeowners may need help to access other health, social work and welfare services to tackle the underlying causes of debt and homelessness. Any intervention that fails to look at the underlying problems a person may have will generally only prevent homelessness on a temporary basis.

In conclusion, local authorities should be encouraged to ensure that a range of free legal and money advice services are available within their local government area (including legal representation); and proactively co-ordinate these services to make sure that vulnerable people threatened with homelessness can access them.

GLC would also note that we are contracted to draft section 11 information and advice packs for the Glasgow Homelessness Partnership (to be sent to households subject to eviction or repossession proceedings). Instead of each local authority paying for the duplication of this work it may be helpful for the Scottish Executive to make this information available nationally; and no doubt the Glasgow Homelessness Partnership could be contacted to discuss same.

Mike Dailly
Principal Solicitor
47 Burleigh Street
Govan Law Centre
Glasgow
G51 3LB

Glasgow
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