

## **EAST AYRSHIRE COUNCIL**

### **CABINET REPORT – 22 APRIL 2009**

#### **IMPLEMENTATION OF SECTION 11 OF THE HOMELESSNESS ETC. (SCOTLAND) ACT 2003**

##### **Report by Executive Director of Neighbourhood Services**

### **1. PURPOSE OF REPORT**

- 1.1 To advise Cabinet of the implementation of Section 11 of The Homelessness etc. (Scotland) Act 2003 and the implications thereof for the Council.

### **2. BACKGROUND**

- 2.1 Following the implementation of those parts of section 11 of the Homelessness etc. (Scotland) Act 2003 on 2<sup>nd</sup> October 2008 which related to the making of regulations as to the form of notice to be served, the remaining parts of the section were implemented on 1<sup>st</sup> April 2009. The full implementation of Section 11 requires all landlords (other than local authorities) and creditors with effect from 1<sup>st</sup> April 2009 to notify the relevant local authority when they raise possession proceedings or serve certain other notices.
- 2.2 The aim of placing this duty on landlords and creditors is to ensure that local authorities are alerted to households at risk of homelessness 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 can also help inform strategic planning of homelessness services to include activities to promote prevention of homelessness.
- 2.3 Prevention of homelessness has been identified by the Scottish Government and COSLA as one of four key joint priorities that will enable local authorities to address homelessness. This is in line with the general principle of early intervention and set within the context of preparations for the right of all unintentionally homeless people to access settled accommodation by 2012.

### **3. SECTION 11 DUTIES**

- 3.1 The duty to notify the local authority falls on all landlords and all creditors, other than local authorities themselves. This includes all landlords in the private rented housing sector.
- 3.2 Landlords are obliged to give notice whenever proceedings are raised for possession. The duty does not apply in cases where the tenancy ends routinely without recourse to legal action.

- 3.3 The regulations made under section 11 specify two separate forms of notification that landlords or creditors must use to notify the local authority: Notice by Landlord of Proceedings for Possession and Notice by Creditor of: Service of Calling-up Notice/Notice of Default; or Application to Court for a Warrant to Exercise Remedies on Default; or Proceedings to Eject Proprietor.
- 3.4 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.
- 3.5 There are no statutory 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, and this is not necessarily a reason for withholding a decree. However, failure to comply with the duties may impact on landlords and creditors in other ways. In accordance with the provisions of Anti Social Behaviour (Scotland) Act 2004, private sector landlords are required to register with the appropriate local authority. 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 should take into account any evidence that the landlord has contravened any provision of the law relating to housing, or landlord and tenant law.

#### **4. THE BENEFITS OF SECTION 11**

- 4.1 Local authorities have statutory duties to prevent homelessness. They also have a statutory duty under section 2 of the 2001 Act to ensure that advice and information about the prevention of homelessness and any services which may assist in the prevention of homelessness is available free of charge.
- 4.2 The information passed to authorities by landlords and creditors, as a result of Section 11, can be used to inform strategic planning on prevention work and delivery of homelessness services. In addition, authorities can choose to act in response to individual notices to try to prevent homelessness from occurring and reduce the stress associated with the loss of a home.
- 4.3 Monitoring the process and outcomes arising from operation of section 11 can assist the authority to understand how the duty contributes to the prevention of homelessness, and help identify the effectiveness of interventions. From April 2008 to March 2009, 940 households were presented to the Council on homelessness grounds. Following a full assessment, 180 households were found to be homeless due to their landlord or creditor raising possession for proceedings as a result of rent arrears, mortgage default and other action by their landlord. Of these 180 households, 65 had children.

## **5. FINANCIAL IMPLICATIONS**

- 5.1 Existing resources will be used to monitor the processes and outcomes arising from the operation of Section 11 of the Act.

## **6. LEGAL IMPLICATIONS**

- 6.1 The implementation of section 11 of the Act will assist the local authority in implementing its statutory duties in connection with homelessness.

## **7. COMMUNITY PLANNING IMPLICATIONS**

- 7.1 The implementation of Section 11 of the Act will assist in the early intervention and prevention of homelessness. This supports the East Ayrshire Community Plan themes of “Eliminating Poverty” and “Improving Health and Wellbeing”.

## **8. ASSET MANAGEMENT IMPLICATIONS**

- 8.1 There are no Asset Management Implications.

## **9. RISK MANAGEMENT IMPLICATIONS**

- 9.1 Meeting this additional duty and utilising existing resources may adversely impact on current levels of service provision. This will require to be monitored to assess the extent of follow up actions associated with this activity.

## **10. RECOMMENDATIONS**

- 10.1 The Cabinet is recommended to note the contents of the report.

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Executive Director of Neighbourhood Services

CMCA/GD/LA

7<sup>th</sup> April 2009

### **LIST OF BACKGROUND PAPERS**

1. The Homelessness etc. (Scotland) Act 2003 Act

Any person wishing to inspect the background papers listed above should telephone 01563 554873 and ask for Gerry Darroch, email: [gerry.darroch@east-ayrshire.gov.uk](mailto:gerry.darroch@east-ayrshire.gov.uk)

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