

11 Respondent Information Form

Overcrowding Statutory Notices, Private Rented Housing (Scotland) Act 2011, Part 3



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Shelter Scotland

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Battye

Forename

James

2. Postal Address

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3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick **ONE** of the

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes No

following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

RIF Questions

1. Does the notice contain the right information? If not, what should be added or removed?

Yes No

If no, please explain your answer

While the notice does draw attention to the main issues in terms of homelessness and the landlord's responsibility to follow the correct procedures should they need to ask an occupant to leave, these could both be given greater emphasis.

In terms of a landlord's responsibility to follow the correct procedures, should they need to ask an occupant to leave, notice should be drawn to sections 22, 23 and 23A of the Rent (Scotland) Act 1984 which make it a criminal offence to harass or unlawfully deprive a residential occupier of any premises. Should a landlord need to remove occupiers from a premises where all other efforts to resolve the overcrowding have failed they should do so by seeking a possession and eviction order from the sheriff court.

In relation to homelessness, section 24(3)(d) of the Housing (Scotland) Act 1987 specifies that a person is homeless if they have access to accommodation but this is overcrowded within the meaning of section 135 of the 1987 Act. This is the same definition as used in the provisions of the Private Rented Housing (Scotland) Act 2011. The notice to the owner should make this clear so they can confidently advise that help may be available from their local authority under the homelessness legislation.

It would also be useful for owners to have more information on the definition of overcrowding so it is crystal clear as to the number of occupants which the dwelling can comfortably contain without being overcrowded. This could include an explanation of the 'room' and 'space' standards contained in the Housing (Scotland) Act 1987 as sections 136 and 137.

2. Do you have any suggestions to improve the layout of the document to make it clearer and easier to use?

Yes No

The requirement for a landlord to follow the correct procedures should they require an occupier to leave should be very clearly set out in bold and at the top of the notes section of the notice. The same applies to raising owners' awareness of local authorities' duties to households who are living in overcrowded accommodation under the homelessness legislation.

3. Who do you think should be given a copy of the notice?

In addition to the notice being served on the owner of the property it should also be copied to the local authority's homelessness team. This will enable the local authority's homelessness team to be informed in advance of any homelessness application as a result of the overcrowding in the property.

4. Do you agree that this information and advice should be included in the notice to the occupier?

Yes No

Information and advice for occupiers is absolutely crucial. As overcrowding is part of the definition of "homeless" under the Housing (Scotland) Act 1987 this must be clearly articulated to the occupiers who are living in the overcrowded accommodation. Occupiers must also be made aware that the landlord must follow the correct legal processes if they need to take action to remove occupiers from the premises, and failure to do this could be considered an illegal eviction. Importantly, the notice should provide contact details of agencies who provide independent and impartial advice. Failure to provide this information to occupiers would put people – who may already be in a vulnerable position – in a situation where they are put at risk of homelessness and made even more vulnerable.

5. Is there anything else that should be included?

Yes No

Importantly the information and advice should also set out the steps available to occupiers who are living in overcrowded accommodation to improve their housing situation. It should be clearly stated that as the local authority considers their property to be overcrowded it is likely that they will be considered to be homeless under the Housing (Scotland) Act 1987 and if deemed to be homeless they will have the right to settled accommodation from the local authority.

In addition to referring occupiers to advice providers – such as Shelter Scotland and Citizens Advice – it should also be stated that, if a landlord pursues an eviction without first obtaining a court order this is likely to be an illegal eviction. In this case occupiers can either telephone Crimestoppers or the Police if it is an emergency.

6. How can a local authority ensure that the notice is understood by the occupants,

The notice should be available in a range of languages and accessible formats. Where tenants are identified as being particularly vulnerable this should also be accompanied with a visit to the property from the local authority, with an interpreter should this be required. The aim of the visit

should be to explain the notice and what steps the owner will need to take to address the overcrowding.

7. In what circumstances do you think a request for information and advice from the occupier would be unreasonable?

Under no circumstances would a request for information and advice from an occupier be unreasonable. Occupiers should always have an opportunity to seek information and advice on their housing situation, particularly where the serving of an overcrowding statutory notice may lead to homelessness.

8. How can a local authority respond efficiently and effectively to such requests?

These notices should only be used in extreme circumstances where all other interventions to solve the overcrowding have failed. This will ensure that local authority resources are targeted effectively.

9. How should a local authority measure and define reasonableness and proportionality in relation to overcrowding in a privately rented house?

Local authorities should take into account the situation of the occupiers and the likelihood of securing suitable alternative accommodation. Local authorities should also always clearly articulate their reasons for serving the notice and explain how they have considered reasonableness and proportionately in deciding to serve the notice.

10. What circumstances could justify a house being overcrowded?

In Shelter Scotland's view everyone in Scotland should have access to a safe, secure and affordable home which meets their needs. Overcrowding is one of the side-effects of a housing market where supply is not meeting demand. The solution to a problem of overcrowding is to increase the supply of appropriately sized affordable homes in the local area.

Consequently local authorities should approach issues of overcrowding sensitively and use overcrowding statutory notices only as an intervention of last resort. Before serving such a notice local authorities must be sure that the overcrowding is not temporary – e.g. while a member of the household is between premises – and that the household living in the property are not vulnerable and at risk of homelessness. If it is clear that some members of the household have a vulnerability of some sort then another intervention should be prioritised, e.g. housing options or a homelessness application. This approach should also be pursued where a disabled occupier has had property adapted as it is likely to be very difficult to secure suitably adapted or adaptable alternative accommodation.

Only in the most extreme cases of persistent overcrowding should such a notice be used. And when it is used landlords should be offered support to

assist them in dealing with the overcrowding and reducing the number of occupants in the property.

11. How should a local authority ensure that it effectively gathers the views of the landlord, occupier and others living in the house prior to serving an overcrowding statutory notice?

Local authorities should make effective use of landlord registration to engage with the landlord to address the overcrowding.

The local authority should also make efforts to contact the occupiers using a combination of methods, including house calls with interpreters if necessary. Wherever possible the private rented sector team should engage closely with other parts of the local authority who may have had contact with the household - e.g. social work, homelessness and education – to ensure insofar as possible that all other avenues of resolving the overcrowding have been pursued.

12. How should a local authority go about ensuring it has identified the circumstances of the occupier and others living in a potentially overcrowded house?

As stated in the answer to Question 11 above, the local authority should engage with other parts of the local authority who may have had contact with any of the occupiers to get a detailed understanding of the circumstances of the occupiers. This should be used to gauge whether the occupiers have any additional needs in terms of support, both in respect of their housing situation and general health and wellbeing.

13. How can a local authority decide if the service of a notice is likely to cause homelessness?

By definition the occupiers will already be homeless as living in an overcrowded property is part of the definition of homelessness under the Housing (Scotland) Act 1987.

Where there is a lack of suitable accommodation for the household locally – usually a contributing factor to overcrowding – then this should act as a warning sign that the service of a notice is likely to put occupiers in a position where they do not have a place to stay, with rough sleeping or the displacement of overcrowding to another area, being potential side effects.

14. To what extent do you think the serving of overcrowding statutory notices will have an impact on creating homelessness?

The service of an overcrowding statutory notice is highly likely to lead to homelessness. Landlords should ensure they send a notice to the relevant local authority under section 11 of the Homelessness etc. (Scotland) Act 2003 if they are pursuing an eviction action in response to the overcrowding

statutory notice. To mitigate against this local authorities should ensure that the overcrowding statutory notice is accompanied by an offer of a housing options interview, at which point a homelessness assessment can be considered.

15. How can local authorities ensure that those living within an overcrowded, privately rented home are supported to move into alternative, suitable accommodation?

Private rented sector teams should work alongside homelessness teams in the area to make sure that all avenues to resolve the overcrowding have been pursued. As outlined in our answer to Question 14 above the overcrowding statutory notice should be accompanied by the offer of a housing options interview, where a homelessness application can be considered. If possible the housing options interview should be offered proactively via an outreach service, thereby ensuring that vulnerable occupiers are made aware of potential solutions to the overcrowding.

16. How could harm affecting occupants, neighbours or other people in the locality be defined in the guidance? Worth giving examples?

In terms of occupants, very clear harm caused by the serving of a notice would be street homelessness and vulnerable occupants being put at risk of poor management practices from private landlords, e.g. illegal eviction. A worked example of overcrowding statutory notice leading to street homelessness and an example of the serving of a notice leading to an illegal eviction should be included in any guidance.

17. How should local authorities go about identifying and evidencing 'harm' being caused as a result of overcrowding?

As outlined in our answer to Question 11 above, the local authority should work closely with other departments, such as social work, education and homelessness services.

18. How can a local authority ensure the right people receive a copy of the notice and accompanying documents? What would constitute reasonable enquiries?

Ideally the notice and accompanying documents should be served on the occupants in person and, as set out in our answer to Question 3 above, the notice should also be sent to the local authority's homelessness team.

19. What mechanisms could local authorities put in place to ensure the information they need is obtained efficiently from a person from whom they want information?

Local authorities should adopt a compliance-based approach with both owners and occupiers, i.e. they should be there to help both parties resolve the overcrowding by actively engaging with each through a variety of interventions. Central to this should be an emphasis on housing options and homelessness services, ensuring the approach is led by seeking a housing solution for the occupiers. By approaching overcrowding in this way the local authority is much more likely to have a positive response when they ask for background information on the occupiers from owners and managing agents.

20. Do you agree that the guidance should cover all the areas mentioned in this document?

Yes No

N/A

21. Is there anything else the guidance should contain?

Yes No

The guidance should also cover an example of illegal eviction. Shelter Scotland has published several examples of illegal eviction in the private rented sector to support our campaign on illegal eviction.¹ This should include good practice guidance for landlords on how to follow the correct legal processes to remove occupants from a premises, should this be a course of action that they wish to pursue.

22. Is it helpful to include examples or case studies such as those given above in the guidance?

Yes No

As set out above, the guidance should also include an example of an illegal eviction, including advice for landlords on the correct legal processes to follow. The guidance should also set out what advice and information can be given to occupiers if they believe their landlord is pursuing an illegal eviction.

¹Shelter Scotland, Illegal eviction, know your rights, October 2014
http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/illegal_eviction_know_your_rights

23. What groups do you think would be affected – positively or negatively? (Think about listing the groups covered by the legislation, for ease of reference?)

As stated in the partial equality impact assessment one in three non-white households live in the private rented sector, compared with one in fourteen white households. Consequently Shelter Scotland fears that there is a risk that minority ethnic households may be disproportionately affected by the introduction of overcrowding statutory notices.

The introduction of notices could also have a disproportionate impact upon disabled people. It is often difficult to find accommodation which is adapted or adaptable for a disabled person to live in with their family. Consequently an overcrowding statutory notice, which leads to the disabled occupant being asked to leave the property, would have a significant impact on the disabled person's housing situation.

24. What could we do to avoid or mitigate any negative effect? Or increase the positive impact?

Local authorities should ensure they pursue interventions which put housing solutions first, focused on securing the occupants alternative accommodation which meets their needs and is not overcrowded.

Linked to this is the clear need for an increased supply of appropriately-sized affordable housing in areas where overcrowding is deemed to be prevalent.

25. Do you have any comments on the partial Equality Impact Assessment?

Yes No

A more detailed exploration of how the use of overcrowding statutory notices will impact upon minority ethnic households is required.

26. Do you have any views on the effect preparing and implementing Overcrowding Statutory Notices may have on your business?

Yes No

N/A

27. Do you have any comments on the partial BRIA?

Yes No

N/A