



Middleton Buildings

10-12 High Street

BELFAST

BT1 2BA

[www.housingrights.org.uk](http://www.housingrights.org.uk)

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## **Consultation on the Housing Bill (Northern Ireland)**

**Issued by the Department for Social Development NI**

**February 2010**

## General comments

Housing Rights Service welcomes the opportunity to comment on the proposals for new housing legislation. Before commenting on the specific issues raised in the document, we would like to focus on some general areas.

### Private Rented Housing

Housing Rights Service is very disappointed at the lack of detail in the document regarding the private rented sector. This is surprising given that Minister Ritchie has stated that “The Bill would aim to improve the operation of the private rented sector for the benefit of both tenants and landlords...” and the Executive Summary refers to this sector as being the main focus of the Bill. We understand, from our conversations with DSD officials, that the detail will not be available until the strategy for the private rented sector is finalised. However, there is no clear timetable for the publication of the strategy. Given that the draft strategy was issued for consultation in May 2009, we feel there has been ample opportunity for government to formalise policy in this area.

A number of the proposals contained within the consultation document depend on the use of the private rented sector. In our view, their success or failure will depend greatly on the content of private rented strategy and any subsequent legislation. However, because there is no detail regarding plans for legislative provisions in this sector it is impossible for us to comment on the effectiveness of these proposals. Additionally, because of the timing of this consultation, there is no scope for consultees to influence the outcome of proposals for legislation in the private rented sector as none are included in this document. This does not comply with the good practice principles of consultation.<sup>1</sup> Also, consultees are not being offered the opportunity to comment on equality impact. We suggest that, in order to comply with good practice, the DSD should publish its legislative proposals relating to the private rented sector for consultation prior to introducing this draft Housing Bill to the NI Assembly.

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<sup>1</sup> Code of Practice on Consultation, HM Government, July 2008

## **Anti social behaviour/Community Safety**

Having studied the proposals in some detail, it would seem that the main focus of this Bill is actually anti social behaviour. The majority of the proposals will extend current provisions. As such, Housing Rights Service believes it would be beneficial to state the current position regarding the effectiveness or otherwise of the existing tools for tackling anti social behaviour. Having this context would enable a clearer understanding of why there is a need for change and could be used as a baseline to monitor and evaluate the impact of the proposed policy. The document, however, fails to provide consultees with this information. If such information is not available, it would be legitimate to question why government feels it is necessary to extend the current enforcement tools.

Housing Rights Service is very aware of the devastating impact anti social behaviour has on lives and communities. We have direct experience of this when advising both victims and perpetrators of anti social behaviour. It is our stated view that, where behaviour is persistent and wilful, remedies must be available to protect individuals and communities. However, measures must be appropriate. A lot of the measures proposed in this Bill centre around possession action and using the threat of possession as a sanction. We believe that a more balanced approach is required which includes prevention, support, resettlement as well as enforcement. Education and training for social housing providers is also essential. In our experience some social landlords are not properly trained in the area of anti social behaviour including, for example, dealing with complaints and allegations; understanding problem behaviour in the context of mental ill health and resolving disputes without immediately resorting to eviction.

In general, our main concerns regarding these proposals are:

- whether the need to extend the current provisions can be evidenced;
- the potential misuse of these 'tools' to speed up possession and
- the options available for individuals and families who lose their homes as a result of these policies.

We suggest that greater emphasis is needed on assisting social landlords to use the existing range of 'tools' more effectively. We also recommend that the DSD requires registered housing associations to publish their policies and procedures in relation to anti social behaviour (as will soon be required of the Housing Executive under the forthcoming Housing Amendment Act).

# Specific comments

## Chapter 1 Private Rented Housing

### Houses in Multiple Occupation

**PROPOSAL:** To require, where appropriate, the owner or operator of the property to clarify relationships within a house. *(We would particularly welcome your views on the best ways for implementing this proposal and on the need for any alternative or additional actions to ensure all homes which meet the HMO definition are registered and meet standards.)*

We believe it could be difficult to evidence some family relations within a household particularly extended relations such as uncle, aunt, nephew and niece. Required documentation should be official and in some cases, birth or marriage certificates may suffice. However, this could prove problematic for some HMO occupants in particular for non UK nationals who may not have such paperwork in this country.

There are other situations, in housing law and other statute, where proof of family relations is required. We suggest that the DSD make enquiries with, for example the Housing Executive, social services and enforcement authorities in other jurisdictions to determine what systems they have in place to evidence family relations.

However, to minimise the scope for abuse we believe that the onus of proof must rest with the HMO landlord or operator. If proof cannot be supplied then the property should come under the scope of the HMO regulations.

**PROPOSAL:** Require landlords to notify the appropriate authority of any of their properties that appear to fall within the definition of a HMO.

We agree with this proposal as a significant number of HMO properties remain undetected in Northern Ireland.

**PROPOSAL:** Increase fines for non compliance with the registration scheme process for HMOs up to a maximum of £20,000.

We agree that increased fines for non compliance with the registration scheme are needed. However, whilst all HMOs must comply with the regulation requirements, not all are required to be registered with the Housing Executive. We therefore recommend that these fines should apply in cases where landlords knowingly operate unregistered HMOs. We understand this is the case in England.

## QUESTIONS

- 1. Do the proposals achieve the aim of making the existing system of regulating HMOs more effective?**

On the whole, we believe that the proposals will be an important step towards improving the existing system provided that landlords and operators are made aware of their obligations. In our opinion, the introduction of mandatory registration for all private landlords would greatly assist to raise awareness of this requirement and make it more difficult for HMO landlords to avoid registration.

**2. Are there any alternative or additional actions that are needed to ensure that all homes which meet the HMO definition are registered and meet required standards?**

Currently the Housing Executive is required to compile and maintain a register for HMOs but the Housing (NI) Order 2003 states that: "A registration scheme need not be for the whole of Northern Ireland and need not apply to every description of a house in multiple occupation." The Housing Executive has now stipulated that all HMOs are specified for registration. Housing Rights Service therefore recommends that the legislation be amended to reflect this change. In other words all HMO landlords and operators would be statutorily obliged to register their properties. Where they fail to do so, this could be legally challenged.

We also suggest that the DSD look towards the Scottish landlord registration scheme for enforcement options. In particular, we would support some form of Rent Penalty Notice system whereby tenants either pay a reduced or no rent payment where a landlord fails to comply with registration. A similar system is used under the Private Tenancies Order to limit the amount of rent that can be charged for non fit properties. Were this to be extended to cover HMO properties, the Private Tenancies Order may need amending as it applies to tenants and not licensees.

We also recommend that the ancillary provisions be amended to include a section regarding the supply of information to HMO occupants. It is important that residents are aware of their rights and responsibilities. Landlords/operators should be legally obliged to provide rent books and statement of tenancy terms to HMO occupants. Currently this is not a requirement under law unless the

occupants are tenants. This is often not the case in HMOs where occupants can be licensees.

3. Do you have any views on the best ways to implement the proposals on evidence of family relationships?

Please see earlier answer.

## Chapter 2 Homelessness

### Securing Accommodation for Homeless People in the Private Rented Sector

**PROPOSAL:** Provide safeguards for homeless people in circumstances where the Housing Executive decides to discharge its homelessness duty by securing accommodation in the private rented sector.

#### QUESTIONS

1. Do you agree that, like local housing authorities in England and Scotland, the Housing Executive should where appropriate discharge its homelessness duty by securing accommodation in the private rented sector subject to certain safeguards?

Housing Rights Service does not object to this in principle. However, there must be certain safeguards in place before implementing this proposal.

Firstly, we believe that it should be a voluntary arrangement. Applicants should be offered the option of a private tenancy where it is considered that the

accommodation would be suitable to their needs. It should be based on choice and applicants should not be penalised for refusing an offer.

Secondly, in the interest of fairness and equality, we believe that this option should be considered for all housing list applicants and not used specifically for homeless applicants (FDAs); a higher proportion of whom are likely to have specific support needs.

Thirdly, the accommodation must be "suitable". It would be essential that the Housing Executive is given guidance on what constitutes "suitable". This should be issued by the DSD which has statutory responsibility for the development of housing policy and legislation. It would need to include issues such as:

- affordability and sustainability (i.e. rent should not be higher than the Local Housing Allowance/Shared Rate and cash deposits/rent-in-advance should not be made a condition for access)
- quality (i.e. the accommodation standards should be higher than the basic fitness standards e.g. meet decent homes standards)
- tenancy management (i.e. landlords must show that they comply with all relevant legal obligations)
- access to support networks and facilities (such as family, schools, health centres etc).

Fourthly, to minimise cases of tenancy breakdown, it will be important that the Housing Executive's responsibility towards the tenant continues for a period of at least 12 months. It is vital that the Housing Executive's duty to accommodate does not end once the offer of a private tenancy is accepted. The duty should only cease when the Housing Executive is satisfied that both the tenant and landlord are happy with the arrangement and have renewed the tenancy.

Legislation would therefore need to specify that the homelessness duty (i.e. FDA status) is not discharged until after a period of at least 12 months.

**2. Do you agree that appropriate use of the private rented sector would offer the Housing Executive a useful tool to meet an individual's housing need?**

Given the shortage of social housing, use of the private rented sector will enable some people to be housed more quickly but this in itself does not guarantee that individual needs will be met, particularly in the longer term. In our experience the vast majority of homeless people simply want a home. Whilst the private rented sector can offer more choice in terms of location, sustaining a private tenancy can be problematic for many of our clients. There is limited security of tenure in the sector (e.g. 6 month default tenancies and 4 weeks notice to quit) and problems with quality, affordability and management practices. If the thrust of government housing policy is to make more use of private rented accommodation to house people who would normally access social rented housing, then it has a moral obligation to ensure that the sector is fit for purpose. Unfortunately, at the time of this consultation, the DSD strategy for the private rented sector is still in formation. It is therefore impossible for us to comment on how effective these proposals will be in improving standards within the sector. In our view the success, or otherwise, of the above proposal will depend greatly on this implementation of strategy and any subsequent legislation.

**3. Are there particular circumstances where such use of private rented sector accommodation would not be appropriate?**

Private rented accommodation is not likely to be suitable for people with medium to high support needs. For example, single homeless people are not normally awarded Full Duty Applicant status unless they are considered to be vulnerable as a result of their age, mental ill health or disability. It is therefore

unlikely that this client group's needs could be met through private rented accommodation.

Lack of security of tenure could present problems for applicants with school aged children. If the tenancy breaks down this could have implications for children's education and wellbeing.

Our general view is that such accommodation would be more suited to applicants with no or low support needs.

### **Duty Owed to Person from Abroad**

**PROPOSAL:** Provide for the Housing Executive's duty under the homelessness legislation to come to an end in cases where a person ceases to be eligible for such assistance.

It is our understanding that this proposal is needed to address an anomaly in current legislation. On this basis we do not object to this proposal.

## Chapter 3 Fuel Poverty

### Brokering Arrangements with Energy Providers

**PROPOSAL:** Give the Housing Executive and registered housing associations powers to broker energy at a discounted price for their tenants.

**QUESTION:**

- Do you agree that giving social housing providers powers to broker the purchase of discounted energy on behalf of their tenants would be a useful tool in alleviating fuel poverty in social housing?

Housing Rights Service agrees with this proposal provided payment to the energy provider is not included in the rental payment.

## Chapter 4 Community Safety

### Injunctions Against Anti Social Behaviour, Illegal Use of Premises and Breach of Tenancy Agreement

#### PROPOSAL:

- a) Widen the application of the existing form of injunction against anti social behaviour
- b) introduce a new form of injunction against illegal use of premises
- c) place injunctions against breach of tenancy agreement on a statutory footing
- d) provide for a power of exclusion from any premises to be attached to injunctions
- e) provide for a power of arrest to be attached to injunctions, and
- f) extend the scope of injunctions to cover sites provided for Travellers.

These proposals are an extension to powers that currently exist. We are not aware of any evaluation of the effectiveness of the current tools and would ask the DSD to satisfy itself that these additional measures are actually needed. At a recent consultation on these proposals the PSNI were not sure that extending the injunction tool would do anything to strengthen the raft of legislation that already exists to deal with anti social behaviour. If indeed current injunctions are inadequate, perhaps we should reconsider introducing more of the same.

The DSD has advised that the extension of injunction to cover Traveller sites is needed to protect the Traveller community from anti social behaviour. We acknowledge this and would caution against the use of injunctions to exclude members of the Travelling Community from their own accommodation.

## **Introductory Tenancies: Extension of Trial Period**

**PROPOSAL:** Enable NIHE and registered housing associations to extend the trial period of an introductory tenancy for up to 6 months.

Housing Rights Service is not convinced that extending introductory tenancies is necessary. Provided a landlord issues a Notice Seeking Possession (NSP) prior to the end of the introductory period, a secure tenancy will not be created. A NSP in itself does not necessarily have to be enforced immediately thereby giving the landlord an extended period to allow the tenant to change their behaviour. It has been argued that some tenants wait until the 12 month introductory period lapses before becoming anti social. In our view an extension of up to 6 months would do nothing to change this situation.

Should this proposal be implemented we would want to see it being applied only where a tenant's conduct gives cause for concern while approaching 12 months and not applied as standard to all tenancies.

## **Demoted Tenancies**

**PROPOSAL:** Enable the courts to grant "demotion orders" in respect of Housing Executive and housing association secure tenancies where the court is satisfied that the tenant or a person residing in or visiting the dwelling-house has engaged in, or has threatened to engage in, conduct which would enable the court to grant an injunction against anti social behaviour or unlawful use of premises and the court considers it reasonable to make such an order. A demotion order would effectively remove the tenant's security of tenure.

Our understanding is that the DSD has not identified a particular need for demoted tenancies, but that they are available in England. We would ask the DSD to clarify on what evidence this new policy is therefore based?

Housing Rights Service has serious concerns about demotion orders and their potential for misuse. We would like to highlight the following issues.

Currently a secure tenancy cannot be brought to an end without proving statutory grounds for possession. It would appear that the same level of evidence would not be needed for a demotion order. Instead, a lower level of evidence would be required similar to that needed for an injunction. Once this order has been granted by the court, it will allow the tenant to remain in the property at the landlord's discretion and be evicted at short notice. The document contains no detail of the process for eviction or whether the tenant can be promoted back to secure tenancy status. We would have serious concerns that a demotion order is tantamount to possession by stealth. For this reason we could not support this proposal.

If this proposal were to be introduced we would be asking for safeguards. These safeguards would be necessary to ensure demotion orders are not misused; that tenants were supported to change their behaviour and that the demotion would be up to a maximum period of 12 months after which time tenants would automatically revert to secure tenancies. Where a tenancy was demoted the landlord should take lead responsibility for assisting the household to address behaviour problems. This would require an assessment and appropriate support package where required.

## Proceedings for Possession: Judge's Discretion

**PROPOSAL:** Require the court to take account of the following factors when considering applications for orders for possession of secure tenancies in cases involving anti social behaviour:

- the effect of any nuisance or annoyance;
- the likely effect of such nuisance or annoyance continuing, and
- the likely effect of a repeat of the nuisance.

The DSD has advised that there is inconsistency in the courts in how Judges deal with cases of anti social behaviour and therefore guidance is needed. Housing Rights Service does not object to this proposal, but would seek assurances that the guidance is fair, balanced and considers the impact of the possession order on the tenant.

## Exchange of Tenancies: Grounds for Refusal

**PROPOSAL:** Enable NIHE and registered housing associations to withhold consent to an exchange where certain order for possession, ASBOs, demotion orders or injunctions have been made in respect of either party to the proposed exchange or a member of their households.

We do not object to this proposal in principle. However, discretion should be allowed to enable cases to be assessed on an individual basis. Our reason for this is that the anti social behaviour of a household member should not always take precedence over a tenant's housing need, e.g. where a disabled and/or elderly person requires adapted or ground floor accommodation.

## Information Sharing

**PROPOSAL:** Permit the disclosure of information about possession orders, demotion orders, injunctions etc where such information is required to enable social housing providers to withhold consent to a mutual exchange or to refuse to complete a house sale.

We do not object to this proposal in principle provided information sharing is conducted in a responsible manner.

## Crime Prevention

PROPOSAL: Give the Housing Executive power to take such action as it considers necessary for the prevention of crime and anti social behaviour.

We have no objection to this proposal.

## Homelessness Duty in Cases of Anti Social Behaviour

PROPOSAL: Individuals who are unsuitable to be tenants of social housing because of their unacceptable behaviour should not be in a position to access Housing Executive or housing association tenancies via the homelessness legislation, even if evidence of their unsuitability does not emerge until after the Executive has established that their housing circumstances are such that they would otherwise meet the statutory criteria for homelessness assistance.

Housing Rights Service is unclear about the rationale for introducing this measure for a number of reasons.

- The Housing Executive's homelessness duty is only fully discharged once an applicant has been allocated a tenancy. All social housing tenancies are introductory so that immediate action can be taken to evict a household during the initial 12 months should they display anti social behaviour.
- A sizable proportion of homeless people would be considered to have vulnerabilities which enabled them to be awarded Full Duty Applicant status in the first place, e.g. addictions, personality disorders, mental ill health etc. The impact of homelessness itself, coupled with stressful temporary accommodation environments, can lead to serious behavioural problems. It is not therefore fair to judge someone's behaviour in temporary accommodation settings and decide to

remove homelessness assistance on this assessment.

- What options are available to vulnerable homeless people where assistance is withdrawn? Without any kind of statutory intervention the likely option would be rough sleeping which has serious implications for the health, safety and well being of the individual and can potentially contribute to wider community safety problems.

We therefore do not support this proposal.

## QUESTIONS

1. **Do you agree that the proposals on community safety and anti social behaviour are reasonable and provide social housing providers with appropriate tools to ensure tenants and others can peacefully enjoy their homes?**

Housing Rights Service is very aware of the impact which anti social behaviour has on lives and communities. We are aware of this through our work with both victims and alleged perpetrators. We agree that effective remedies must be available to protect the individual and community. However, responses must be appropriate. We have concerns that most of these measures relate to possession action. Whilst we acknowledge that possession is appropriate in some cases it is important to remember that it has the effect of displacing the problem without actually dealing with it.

We are not aware of any analysis into the effectiveness of the current legislation tools to deal with anti social behaviour. Most of these were introduced under the Housing (NI) Order 2003 and followed on from those in operation in England.

The remedies currently being proposed in this Housing Bill again follow on from those being used in England.<sup>2</sup> In 2006, research was published into the uptake of legislative remedies available to housing authorities in England.<sup>3</sup> Some of the key issues that were identified in this review were:

- Injunctions were widely used, and were cited as being 'swift and easy-to-use' power
- Demoted tenancies are not well used, only around 30% had used them
- Possession was still the most widespread power used, having been used by 77% of housing providers in 2005-2006.

The more general issues identified included:

- There are capability issues regarding Housing Providers in relation to lack of knowledge, experience and resources and it was highlighted that it is essential that housing providers understand the full range of tools and powers.
- Multi agency effort is essential. Weaknesses were identified in partnership working relating to the commitment of social, mental health and youth services.
- There needs to be effective information sharing protocols in place to ensure appropriate action is always taken on an individual basis.

We believe that there is a pertinent need for in depth analysis into the effectiveness of the anti social measures/tools that are currently available in Northern Ireland. This would enable us to benchmark successful measures and make future policies more effective.

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<sup>2</sup> Part II Anti Social Behaviour Act 2003

<sup>3</sup> Communities and Local Government- Priority review of the uptake by social landlords of legislative powers to tackle anti-social behaviour (2006)

## 2. Are there any additional proposals which should be considered?

Anti social behaviour is a multidisciplinary problem and both victims and perpetrators need to be offered more support in dealing with the issue. There is already a wide variety of legislative remedies available. In Britain, there appears to be a shift towards using more interventionist methods such as family interventions projects and community agreements such as Acceptable Behaviour Contracts and Good Neighbour Agreements. Reviews conducted in England have identified the following main issues as successful factors in dealing with the problem:

- a) the importance of partnership working;
- b) effective information sharing protocols between the relevant parties; and
- c) adopting a holistic approach.

In our view, the most effective way of tackling anti social behaviour is to deliver a multidisciplinary 'whole household' approach. This means that adults, children, and partners of those involved in anti social behaviour all benefit from the service, as does the community. A good example of this work is the Shelter Inclusion Project. A recent evaluation of the project showed that:

- 91 per cent of households using the service ceased their anti social behaviour altogether; and
- in its five-year operation, there was only one eviction of a household using the service. This was for mortgage arrears.<sup>4</sup>

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<sup>4</sup> Managing antisocial behaviour in the community: five years on (2007)  
[http://england.shelter.org.uk/\\_data/assets/pdf\\_file/0008/48428/33531.pdf](http://england.shelter.org.uk/_data/assets/pdf_file/0008/48428/33531.pdf)

Effective partnership working with relevant agencies (e.g. social services, mental health organisations, probation, education welfare etc) is, in our view, the best way of tackling anti social behaviour in the long-term.

## Chapter 5 Housing Executive Functions

### Partnership between the Housing Executive and Other Bodies

**PROPOSAL:** Enable the Department to make regulations prescribing arrangements which may be entered into by the Housing Executive and other bodies in relation to the exercise of certain functions, if the arrangements are likely to lead to an improvement in the way in which those functions are exercised.

**PROPOSAL:** Enable the Housing Executive to provide indemnities to some or all of its members and staff.

#### QUESTION

- Do you agree that the Housing Executive should be able to work in partnership with other bodies, particularly in terms of tackling homelessness?

Housing Rights Service agrees with this proposal.

## Chapter 6 Housing Associations

### Rent Surplus Fund

**PROPOSAL:** Repeal primary legislation relating to the Rent Surplus Fund for housing associations.

#### QUESTION

- Do you agree that provisions in primary legislation relating to the Rent Surplus Fund should be repealed?

Housing Rights Service agrees with these proposals.

## Chapter 7 Equality Screening

#### QUESTIONS

- Do you agree with the overall conclusion of this screening?

No, we are not in entire agreement with the conclusions and would like to raise the following points.

#### **Homelessness and private rented housing**

We believe the screening in relation to homelessness is inadequate. The main concern here is whether this policy is more likely to affect homeless people with vulnerabilities such as disability or mental ill health. However, such information is not supplied. The screening document (page 12) states that NIHE would be less likely to house FDAs with over 150 points in the private rented sector. Thereby implying that they would have more support needs. This is too simplistic an

analysis because, for example, a significant number of these cases are more likely to be intimidation/hate crime victims. The fact is that FDAs are more likely to be awarded this status because of priority need, which includes: age, ill health, mental health, disability, age and dependants etc. In fact, it covers most section 75 groupings. In our view this policy will impact significantly more on section 75 groups.

### **Community safety**

The screening document states that there is no evidence of a greater involvement from any particular group in terms of (a) suffering the effects of anti social behaviour and (b) causing anti social behaviour. We would suggest that young people and also people with mental ill health and disabilities are more likely to be involved and affected by anti social behaviour.

- **Do you have additional information/evidence that the Department should consider when making its final conclusions on this screening?**

With regard to community safety, we acknowledge that there is a lack of evidence analysing the effectiveness of anti social behaviour interventions in Northern Ireland or the reasons why one method is favoured over another. Statistics showing the Housing Executive's usage of current powers are somewhat helpful. We recommend the DSD contact the Equality Unit within the Housing Executive to request these statistics.

We also recommend that the DSD discuss the potential impact of these proposals with organisations representing the Section 75 categories. Again, the Housing Executive's Equality Consultative Forum Steering Group may be a useful way of achieving this.

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**For further information contact:**

Nicola McCrudden (Policy Manager) 028 90267919 / [nicola@housingrights.org.uk](mailto:nicola@housingrights.org.uk)

Fiona Douglas (Policy Officer) 028 90267926 / [fionaD@housingrights.org.uk](mailto:fionaD@housingrights.org.uk)