



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

RESPONSE TO THE CONSULTATION ON THE PROPOSED HOUSING (ANTI-SOCIAL BEHAVIOUR) BILL (NORTHERN IRELAND)

1. The Northern Ireland Human Rights Commission ('the Commission') pursuant to Section 69(1) of the Northern Ireland Act 1998 reviews the adequacy and effectiveness of law and practice relating to the protection of Human Rights. In accordance with this function the following statutory advice is submitted to the Department of Social Development ('the Department') in response to the consultation on the Proposed Housing (Anti-Social Behaviour) Bill (Northern Ireland).
2. The Commission bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe and United Nations (UN) systems. The relevant international treaties in this context include:
 - *The European Convention on Human Rights, 1950* ('ECHR') [UK ratification 1951];
 - *The International Labour Organisation Social Security (Minimum Standards) Convention, 1952* ('ILO Convention No 102') [UK ratification 1954];
 - *The European Social Charter, 1961* [UK ratification 1962];
 - *The European Code of Social Security, 1964* [UK ratification 1968];
 - *The International Covenant on Civil and Political Rights, 1966* ('ICCPR')[UK ratification 1976];
 - *The International Covenant on Economic, Social and Cultural Rights, 1966* ('ICESCR') [UK ratification 1976], and
 - *Convention on the Rights of the Child* ('CRC') [UK ratification 1991].
3. The Northern Ireland Executive ('NI Executive') is subject to the obligations contained within these international treaties by virtue of the United Kingdom Government's ratification. In addition, Section 26(1) of the Northern Ireland Act 1998 provides that "[i]f the Secretary of State

considers that any action proposed to be taken by a Minister or Northern Ireland department would be incompatible with any international obligations... he may by order direct that the proposed action shall not be taken".

4. The Commission notes that the proposed Bill has not yet been drafted. This response will therefore be based on international human rights standards that should be taken into account at the drafting stage. In this respect, the Commission further observes that the policy under consultation makes no reference to the applicable human rights obligations. **The Commission advises that consideration for human rights should be integrated into the NI Executive's work at all stages, including at policy-making level.**

Short Secure Tenancies

5. Under ICESCR, Article 11, everyone has a right to adequate housing. This includes an obligation upon the State to ensure legal security of tenure, availability, accessibility, affordability and habitability of housing, as well as cultural adequacy and appropriate location of the home.¹ The ICESCR Committee has explained that legal security of tenure refers to guarantees of "*legal protections against forced eviction, harassment and other threats*".²
6. Civil and political rights, in particular the right to private and family life (ICCPR, Article 17 and ECHR, Article 8), the right to an effective remedy (ICCPR, Article 2(3) and ECHR, Article 13) and the right to a fair hearing (ICCPR, Article 14 and ECHR, Article 6), also provide protections with regard to evictions. In addition, States must ensure that their actions or omissions will not result in individuals becoming destitute (ICCPR, Article 7 and ECHR, Article 3).
7. International human rights law imposes positive obligations upon the State to take reasonable measures to protect individuals from harm caused by others.³ This is particularly relevant to the present discussion, as addressing anti-social behaviour of tenants and protecting the rights of victims of crimes or anti-social behaviour also form part of the State's positive duty to prevent harm inflicted on individuals by third parties.⁴
8. The Commission welcomes the aim of the proposal to help tenants "*avoid eviction by engaging with support that helps them deal with the issues that caused them to behave in an anti-social way*" and to

¹ ICESCR, General Comment 4: Right to Adequate Housing (1991), para 8.

² Ibid, para 8a.

³ ICCPR, Article 2; ECtHR, *Opuz v Turkey*, App No 33401/02 (9 September 2009), para 144.

⁴ Ibid.

*“encourage [...] landlords to choose the option of supporting the tenant rather than immediately seeking possession”.*⁵

9. The Commission advises that in circumstances where the eviction due to anti-social behaviour of the tenant or member of the household is concerned, there are various human rights at issue. On one hand, the right to housing and private and family life of the tenant and members of the household and on the other hand, the rights of others affected by the anti-social behaviour. As the rights engaged are not absolute rights, it is for the State to balance those rights in making a decision.
10. ICCPR, Article 17 states:
 1. *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
 2. *Everyone has the right to the protection of the law against such interference or attacks.*
11. ECHR, Article 8 states:
 1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
 2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*
12. The European Court of Human Rights ('ECtHR') has ruled on eviction cases brought before it on a number occasions and confirmed that:

*the loss of one's home is the most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in light of the relevant principles under Article 8 of the Convention.*⁶
13. Consequently, all cases in which a public authority requests possession of a property, the applicant must be able to challenge such an order and the relevant court must be able to consider the proportionality of the measure. This has also been confirmed by the Supreme Court in

⁵ DSD, Regulatory Impact Assessment: Housing (Anti-social Behaviour) Bill Consultation 2013.

⁶ ECtHR, *Buckland v UK*, App No 40060/08 (18/12/2012), para 65.

Manchester City Council v Pinnock.⁷ The rights to a fair hearing (ICCPR, Article 14 and ECHR, Article 6) and to an effective remedy (ICCPR, Article 2(3) and ECHR, Article 13) afford similar protections. In this respect, the ECtHR has stated:

*The effect of Article 13 is (...) to require the provision of a domestic remedy allowing the competent "national authority" both to deal with the substance of the relevant Convention complaint and to grant appropriate relief.*⁸

14. The determination of whether an interference is proportionate requires the State to examine whether the proposed action:
 - a) is in accordance with the law;
 - b) pursues a legitimate aim, in accordance with ECHR, Article 8(2), and
 - c) is necessary as there is no alternative and less intrusive measure by which the same objective could be achieved.
15. The ECtHR has stated that in eviction cases involving anti-social behaviour by the applicant or a member of their household, the State must balance the individuals' right to private life against the public interest in protecting the rights of others and preventing anti-social behaviour, as well as adequately managing housing stock and housing provision for other beneficiaries.⁹
16. The Commission notes that the creation of the Short Secure Tenancy (SST) will allow social landlords to ask the court to make an order for possession without proving any grounds if a tenant continues to engage in anti-social behaviour while on a SST. The consultation document notes that the court would then be "*required to grant such a request*", although it would not take effect until the expiration of the SST term. This language does not indicate the court's ability to examine the proportionality of the measure.
17. The Commission further notes that, in accordance with the principle of legal certainty, the legislation must provide clarity and ensure the courts may give effect to the procedural safeguards required by human rights law.
- 18. The Commission advises that to be in compliance with the principle of legal certainty, the legislation must ensure procedural safeguards and permit the court to examine the proportionality of both the decision to convert a secure tenancy to a SST, as well as a subsequent request for order of**

⁷ *Manchester City Council v Pinnock* [2011] 2 AC 104.

⁸ ECtHR, *Soering v UK*, App No 14038/88 (07/07/1989), para 120.

⁹ ECtHR, *Pinnock and Walter v UK*, App No 31673/11 (24/09/2013), inadmissibility decision, paras 30, 33.

possession, according to the rights to private life and to an effective remedy.

19. The measure further affects not only the anti-social person or the person who committed the crime, but other individuals in the household as well. In this respect the Commission highlights that the rights of vulnerable persons must be protected and considered when making any decisions that affect them. For example, CRC, Article 2(2) requires States to ensure that:

the child is protected against all forms of discrimination or punishment on the basis of the (...) activities (...) of the child's parents, legal guardians, or family members.

Similarly, the measures should not disproportionately affect other protected groups.¹⁰

20. **The Commission advises that, in accordance with the principle of proportionality of restrictions under the right to private life, any decisions on evictions must take into account all individuals affected by the decision. Thereby, the State must ensure that the penalty does not disproportionately impact vulnerable persons and members of the household who did not commit the relevant crime or who were not subject to an anti-social behaviour order or injunction.**
21. Concerning the procedural aspects of an individual's right to have their case heard before an independent tribunal, the right to a fair hearing (ICCPR, Article 14 and ECHR, Article 6) must be guaranteed.
22. ICCPR, Article 14(1) states:
- 1. All persons shall be equal before the courts and tribunals. In the determination of (...) his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*
23. ECHR, Article 6 states:
- 1. In the determination of his civil rights and obligations (...), everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.*
24. The right to a fair hearing includes the 'principle of equality of arms', which "requires each party to be given a reasonable opportunity to

¹⁰ ICESCR, General Comment 4: Right to Adequate Housing (1991), para 8(e); General Comment 20: Non-discrimination in economic, social and cultural rights (2009), para 27.

*present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent”.*¹¹

25. In addition, the right to a fair hearing implies a right to adversarial proceedings, providing the parties the “*opportunity not only to be made aware of any evidence needed for their claims to succeed, but also to have knowledge of, and comment on, all evidence adduced or observations filed, with a view to influencing the court’s decision*”.¹²
26. The consultation document notes that “certain orders of the court” such as anti-social behaviour orders or injunctions served against the tenant or a member of their household within the previous 3 years would allow a social landlord to convert a secure tenancy to a short secure tenancy. A detailed list of applicable orders has not been included.
27. The Commission notes that before determining the application for an order, the court may also make an interim order (e.g. interim anti-social behaviour orders). However, “an application by a relevant authority for an order under this Article may be made without notice being given to the defendant”.¹³ The imposition of an interim order is thus made without the defendant presenting their case. In subsequent hearings to determine the principle application for an order, the court may conclude that the conditions required for making an order are not fulfilled.
28. **The Commission advises that interim orders (e.g. interim anti-social behaviour orders) should be excluded from the list of possible orders, to ensure the process of conversion complies with the right to a fair hearing.**
29. In addition, the consultation document does not provide clarity on the extent to which a defendant could present their case within the conversion proceedings and the evidential burden imposed on the social landlord. In relation to the evidence brought forward, the three year period within which a request for conversion could be submitted also raises concerns. It further is unclear, whether the requirement upon landlords to provide support and the tenant or their family member’s progress within that process factor into the decision-making procedures to grant an order for possession.
30. **The Commission advises that the procedures of conversion and order for possession should require all relevant evidence to be examined and provide the defendant with the possibility to present their case and contest the evidence brought against them in accordance with the right to a fair hearing.**

¹¹ ECtHR, *Hudakova and others v Slovakia*, App No 23083/05 (27/07/2010), para 25.

¹² *Ibid*, para 26.

¹³ Anti-social Behaviour (Northern Ireland) Order 2004, Article 4(1A).

Eligibility requirements for homelessness assistance

31. ICESCR, Article 11 contains a right to adequate housing providing basic protection to all individuals without discrimination. These protections are enhanced by the obligation to ensure the right to social security (ICESCR, Article 9; European Social Charter, Article 12; ILO Convention No 102, Article 42(b) and the European Code of Social Security, Article 42(b)).
32. The UN Committee for ICESCR has stated that:

59. States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant. This requires the State party:

*(a) To ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.*¹⁴
33. Additionally, destitution and evictions leading to homelessness have also been confirmed to fall within the ambit of the right to freedom from torture, cruel, inhuman or degrading treatment or punishment (ICCPR, Article 7 and ECHR, Article 3),¹⁵ which is an absolute right “irrespective of the circumstances or the victim’s behaviour”.¹⁶
34. In *Moldovan and others v Romania*, a case concerning evicted and subsequently homeless Roma, the ECtHR found that the living conditions amounted to a violation of Article 3, stating that:

*the applicants' living conditions in the last ten years, in particular the severely overcrowded and unsanitary environment and its detrimental effect on the applicants' health and well-being, combined with the length of the period during which the applicants have had to live in such conditions and the general attitude of the authorities, must have caused them considerable mental suffering, thus diminishing their human dignity and arousing in them such feelings as to cause humiliation and debasement.*¹⁷
35. With regard to the adequacy of benefits, the ECtHR noted in *Larioshina v Russia* that, in principle, “a wholly insufficient amount of (...) social

¹⁴ CESCR, General Comment No 19: The right to social security (Art. 9) (2007), para 59(a).

¹⁵ Human Rights Committee, *Chiti v Zambia* 1303/2004, para 12.4.

¹⁶ ECtHR, *Moldovan and others v Romania (No.2)* App No 41138/98 64320/01 (12/07/2005), para 99.

¹⁷ *Ibid*, para 110.

benefits may (...) raise an issue under Article 3 of the Convention".¹⁸
The ECtHR added that this decision would be based on an assessment of whether the damage caused to the individual's "*physical or mental health [was] capable of attaining the minimum level of severity falling within the ambit of Article 3*".¹⁹

36. The Commission notes that under current and proposed legislation a person can be declared ineligible for homelessness assistance, if "*he, or a member of their household, has been 'guilty of unacceptable behaviour' (...)*".²⁰ Additionally, where the applicant does not have a priority need, the Executive is to "*furnish him with advice and such assistance as it considers appropriate*".²¹ In such circumstances therefore, an individual without priority need does not retain their entitlement to be provided with accommodation and could be left without shelter.
- 37. The Commission advises that the application of the current and proposed provision must ensure legal certainty and guarantee, in conformity with the right to freedom from torture, cruel, inhuman and degrading treatment, that no decision results in the individual's or their family's destitution. Equally, the minimum core obligation of the rights to adequate housing and social security, which afford a right to all individuals to basic shelter, must be maintained.**
- 38. In summary, the Commission advises the Department to review its proposal to introduce new legislation taking into consideration the applicable human rights laws and its particular obligations in this regard. The Commission recommends the Department to include a human rights assessment in all its future proposals.**

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¹⁸ *Larioshina v Russia*, Application No 56869/00, Judgment of 23 April 2002, para 3.

¹⁹ *Ibid*, para 3.

²⁰ The Housing (NI) Order 2003, Article 7A(5) as amended by the Housing (Amendment) Act (Northern Ireland) 2010.

²¹ The Housing (Northern Ireland) Order 1988, Article 10(4).