



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Response of the Northern Ireland Human Rights Commission
to the Housing (Amendment) Bill.
NIA Bill 58/11-16**

Summary

The Northern Ireland Human Rights Commission:

(para 2.3) suggests the Committee asks whether the Department conducted their own exercise in considering the proportionality of the proposed arrangements for disclosure of information related to anti-social behaviour and; if so, what conclusions were reached.

(para 2.4) advises the Committee for Social Development to ask the Department to set out the basis for the statement of compatibility.

(para 4.17) advises that the definition of "person", "information" and "purpose" within the Bill are broad. As a result of the cumulative effect of this, and the lack of legal certainty, it appears that Clause 2 of the Bill may not meet the proportionality test under ECHR, Article 8. The Committee may wish to seek further clarity from the Department on this matter.

(para 4.18) suggests the Committee may wish to inquire as to what procedural safeguards will be put in place should a tenant wish to contest the accuracy or completeness of the information provided or wish to have an opportunity to set out what action has been taken to end the behaviour or conduct under scrutiny.



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1. Introduction

- 1.1 The Northern Ireland Human Rights Commission (NIHRC) pursuant to Section 69 (4) of the Northern Ireland Act 1998, is obliged to advise the Assembly whether a Bill is compatible with human rights. Accordingly, the following statutory advice is submitted to the Northern Ireland Assembly Committee for Social Development in relation to the Housing Amendment Bill (hereinafter the "Bill").
- 1.2 The NIHRC 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 (CoE) and United Nations (UN) systems. The relevant international treaties in this context include:
- the International Covenant on Civil and Political Rights, (ICCPR);¹
 - the International Covenant on Economic, Social and Cultural Rights, (ICESCR);²
 - European Convention on Human Rights (ECHR);³
- 1.3 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 and the provisions of the NI Act 1998⁴.

¹ Ratified by the UK in 1976

² Ratified by the UK in 1976

³ Ratified by the UK in 1951 and given further domestic effect by the Human Rights Act 1998.

⁴ NI Act 1998, Section 24(1) provides that; "A Minister or Northern Ireland department has no power to make, confirm or approve subordinate legislation, or to do any act, so far as the legislation or act- (a) is incompatible with any of the Convention [ECHR] rights". Section 26 (1) provides that:" If 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".

Compatibility

2.1 The Commission notes that paragraph 19 of the Explanatory and Financial Memorandum accompanying the Bill states the provisions of the Bill are compatible with the ECHR. The Commission notes guidance from Westminster government to departments about disclosure of views regarding Convention compatibility in the Explanatory Notes that accompany a Bill. In order to discharge the government's commitment to provide human rights assessment, departments should do one of the following:⁵

- state that the Department does not consider that the provisions of the Bill engage convention rights;
- in a case where any ECHR issues arise but are not significant, deal with the issues in a short paragraph or paragraphs in the explanatory notes;
- or where significant issues arise, state that issues arising as to the compatibility of the bill with convention rights are dealt with in a separate memorandum and provide a web address at which the memorandum can be accessed.

2.2 The Commission also notes the view of the Joint Committee on Human Rights (JCHR) which detailed the purpose of human rights memorandum, giving a full explanation of the view that a Bill is a compatible with human rights. The JCHR emphasised:⁶

The provision of detailed human rights memoranda to Parliament is an important means of demonstrating the Government's fulfilment of that responsibility. It also facilitates Parliament in fulfilling its responsibility in that regard.

2.3 The Commission suggests the Committee asks whether the Department conducted their own exercise in considering the proportionality of the proposed arrangements for disclosure

Section 26 (2) states that: "The Secretary of State may, by order, direct that an action be taken on a matter within the legislative competency of the Assembly as required for the purpose of giving effect to international obligations. Such action can include the introduction of a Bill into the Assembly".

⁵ Cabinet Office " Guide to making Legislation" July 2015,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450239/Guide_to_Making_Legislation.pdf

⁶ JCHR " Legislative Scrutiny: Welfare Reform Bill", para 1.11

<http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/233/233.pdf>

of information related to anti-social behaviour and; if so, what conclusions were reached.

2.4 The Commission advises the Committee for Social Development to ask the Department to set out the basis for the statement of compatibility.

3. Purpose of the Bill

- 3.1 The Commission notes the purpose of the Bill is to make provision for the better sharing of information relating to empty homes or to anti-social behaviour; and to enable the Housing Executive to register the amounts outstanding on statutory charges.
- 3.2 International human rights law imposes positive obligations upon the State to take reasonable measures to protect individuals from harm caused by others.⁷ This is particularly relevant to the present Bill, 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 by third parties.⁸
- 3.3 The Commission notes the empty homes and statutory charge provisions within the Bill do not appear to give rise to human rights considerations.

4. Disclosure of information relating to anti-social behaviour- Clause 2

- 4.1 Clause 2 provides that "a person may disclose relevant information about any other person to the [Housing] Executive or to a registered housing association, if the information is disclosed for a relevant purpose."
- 4.2 The Commission notes a similar narrower power already exists in regard to disclosure of information in respect of anti-social behavior in the Housing (Amendment) Act (Northern Ireland) 2011 and that the purpose of this Bill is to broaden that provision.
- 4.3 Under the proposed Bill "relevant information" is defined in Clause 2, subsections (3) to (7) and "relevant purpose" in Clause 2, subsection

⁷ ICCPR, Article 2; ECtHR, *Opuz V Turkey*, App No 33401/02 (9 September 2009), para 144.

⁸ *Ibid.*

(8). The definition of “relevant purpose” has been widened in the Bill to include the applying for (or deciding whether to apply for) certain injunctions and orders for possession in cases involving anti social behaviour.

- 4.4 Relevant information includes information about a tenant of a dwelling house if it "indicates" or "suggests" that the tenant or any other person "residing" or "visiting" the dwelling house:
- has used the dwelling for illegal purposes (whether or not the person has been convicted of an offence involving such use);
 - has been convicted of an indictable offence.
- 4.5 The Commission notes the legal definition of a ‘person’ includes “male and female persons, corporations (whether aggregate or sole) and unincorporated bodies of persons.”⁹
- 4.6 The right to privacy is protected by the ICCPR, Article 17 and ECHR, Article 8.¹⁰
- 4.7 The European Court of Human Rights (ECtHR) held in the cases of *Leander v Sweden* and *Hewitt and Harman* that the storage and use of information concerning a person’s private life in the files of a public authority amounts to an interference with the right to respect for private life under ECHR , Article 8.¹¹ In the more recent case of *L.H v Lativa*, the ECtHR reiterated that the protection of personal data, is of fundamental importance to the enjoyment of a person’s right to respect for private life.¹²
- 4.8 The NIHRC advises the Committee that the use of information as provided under the proposed Bill engages ICCPR, Article 17 and ECHR, Article 8.
- 4.9 Article 8 is a qualified right, so in certain circumstances public

⁹Interpretation Act (Northern Ireland) 1954, Section 37.

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. 2.2. Everyone has the right to the protection of the law against such interference or attacks. 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 in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the protection of health and morals, or for the protections of the rights and freedoms of others.

¹¹ *Leander v Sweden*, 9248/81, 26 March 1987 and *Hewitt and Harman* , 20317/92, 9 September 1992

¹² *L.H v Lativa*, 52019/07, 29 April 2014

authorities can interfere with the private and family life of an individual. These circumstances are set out in Article 8(2), and include circumstances such as those set out in the Bill, where action is needed to protect 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. Such interference must be proportionate and in accordance with the law.

- 4.10 "In accordance with the law" requires the law to be adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his or her conduct. For domestic law to meet these requirements, it must afford adequate legal protection against arbitrariness and accordingly indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise.¹³
- 4.11 The proportionality test, as applied the ECtHR provides that,
(1) the legislative objective must be sufficiently important to justify limiting a fundamental right; and,
(2) the measures designed to meet the legislative objective must be rationally connected to that objective – they must not be arbitrary, unfair or based on irrational considerations.
- 4.12 Further, the Committee on Economic, Social and Cultural Rights (CESCR) advises in ICESCR General Comment 7, that "[a]ppropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions."
- 4.13 In addition, ICESCR General Comment 7 on the right to adequate housing, the CESCR advises "[w]omen, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionality from the practice of forced eviction".
- 4.14 The Commission notes the definition of relevant purpose in Clause 2 is broad and includes applying or deciding whether to apply for

¹³ S and Marper v UK, 30562/04 and 30566/04, 4 December 2008

- an order for possession of a dwelling house- so far as it relates to behaviour causing annoyance;
- an order for possession of a dwelling house let under an introductory tenancy;
- deciding whether to allocate housing accommodation to any person- where the information is disclosed to the housing provider;
- deciding whether to take any other appropriate action as a consequence of the behaviour indicated or suggested by the information.

4.15 The Commission recognises the need for appropriate powers for the DSD, Housing Executive and for Housing Associations in respect of their responsibilities to manage their social housing properties including their responsibilities to all their tenants, and to the community at large; and for those bodies to be able to access information to enable them to discharge those responsibilities fairly and effectively. However it considers the phrasing in Clause 2.1 is drafted in very broad terms. The Commission questions what weight will be given to "relevant information" and what procedural safeguards are in place to protect the rights of a tenant.

4.16 The Commission emphasises the rights of tenants to contest any evidence against them and the need to avoid penalising tenants or members of their households who have not been guilty of antisocial behaviour.

4.17 The Commission advises that the definition of "person", "information" and "purpose" within the Bill are broad. As a result of the cumulative effect of this, and the lack of legal certainty, it appears that Clause 2 of the Bill may not meet the proportionality test under ECHR, Article 8. The Committee may wish to seek further clarity from the Department on this matter.

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