



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

12 June 2009

Minister for Social Development
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
Belfast BT7 2JB

Dear Minister

The Housing (Amendment) Bill

The Commission welcomes the introduction of the Housing (Amendment) Bill in the Northern Ireland Assembly on 9 June 2009. The Commission understands that the Bill is the result of a consultation led by the Working Group established by the Department in 2004 to promote the social inclusion of homeless people. However, as the Commission is currently concluding an investigation into homelessness for persons with no recourse to public funds, we would appreciate the opportunity to draw on its investigation findings to suggest additions that will strengthen the human rights protections in the Bill.

Before turning to the specific provisions within the Bill, I would draw your attention to the Concluding Observations of the United Nations Committee on Economic, Social and Cultural Rights published on 22 May 2009. Following its examination of the UK Government's Periodic Report, the Committee welcomed as a positive development the enactment of the Homelessness, etc (Scotland) Act 2003 (the 2003

Act). As you may be aware, the background to the 2003 Act comes from the Homelessness Taskforce, which recommended the following:

[...] over time, the rights possessed by those assessed as being in priority need under the 1987 Act should be extended to all those assessed as homeless and that therefore the priority need distinction should be eliminated. This will however need to be managed and phased so that accommodation and services are made available to those who do not currently come within the definition of priority need and so that those who are in the greatest need are not disadvantaged.¹

The 2003 Act requires local housing authorities to progressively realise the right to housing for all persons assessed as homeless through abolition of the 'priority need' test by 2012. This means that, from such day as the Scottish Ministers appoint, the local authority shall secure that permanent accommodation becomes available for those who are found homeless or threatened with homelessness whether or not they have priority need. From the Commission's perspective, since progressive realisation is a key concept in economic and social rights, we would very much like to see this model adopted in the Northern Ireland legislation.

In addition, the 2003 Act amends 'intentionality' provisions. Whereas before local authorities were required to investigate whether or not the applicant was intentionally homeless, they are no longer under a duty to do this. However, in most instances, where it is determined that the applicant is intentionally homeless, the local authority is required to secure a short term tenancy with the aim of converting this to a long term tenancy within the period of one year.

The Commission is of the view that similar provisions should be included in the current Housing (Amendment) Bill. In this way, the Bill would provide a mechanism allowing the Housing Executive to progressively realise the right of all homeless persons to homelessness assistance in Northern Ireland.

In terms of the provisions within the Housing (Amendment) Bill, the Commission will at present restrict its comments to those areas most relevant to its current investigation.

¹ The Homelessness Taskforce (2002) *Helping Homeless People: An Action Plan for Prevention and Effective Response*, Scottish Executive, para 27. Available: <http://www.scotland.gov.uk/library5/housing/htff.pdf>.

Clause 1: Homelessness Strategy

Clause 1 is a positive development insofar as it creates a statutory duty for the Executive to formulate and publish a homelessness strategy every 5 years. Given the Commission's particular concerns in relation to homeless non-UK nationals, many of whom are ineligible for homelessness assistance, the remit of the strategy is particularly welcome as it applies to persons in Northern Ireland without exclusions based on nationality or immigration status. The Commission therefore expects that the homelessness strategy will refer to all those at risk of homelessness or assessed as homeless in Northern Ireland.

Clause 3: Eligibility for housing assistance

The Commission is pleased at the requirement in the Bill that the decision and reasons for ineligibility be given in writing. However, it would also be useful if this is accompanied by written information on the applicant's right to request review and the right of appeal to the county court (rights that are proposed in clause 5 of the Bill). In addition, the written information should refer to sources of support, for example, the contact details for the relevant unit within the Housing Executive and for those external organisations funded by the Housing Executive to provide advice. The Commission's recent investigation has found that there is a language barrier for some non-UK nationals in Northern Ireland and therefore recommends that the format and content of all correspondence takes account of the language needs of the applicant. For example, while it may not be possible to translate the decision and reasons for ineligibility in every case, it may be feasible to include a standard statement in several languages (ideally in the applicant's first language, if known) explaining how to make contact with the Housing Executive for further information, for translation or interpretation assistance, or for other help.

Clause 4: Power of the Department to prescribe form of advice and assistance

The Commission reiterates the need for the format and content of any correspondence, which includes advice and assistance, to take account of the needs of the applicant in terms of language and understanding.

While the Commission welcomes the power of the Department to prescribe the form of advice and assistance, the Bill could go further and set out a minimum that this advice and assistance should entail. For homeless applicants who are ineligible for homelessness assistance, a statutory minimum level of advice and assistance would ensure that they were not left destitute without any form of support. For example, clause 4 could require that, as a minimum, the Housing Executive refer ineligible homeless applicants to social services so that they can be assessed to establish whether or not they are entitled to support under the Health and Personal Social Services (NI) Order 1972 and/or the Children (NI) Order 1995.

Clause 5: Review of decisions in relation to homelessness and Right of appeal to the county court on points of law

The Commission welcomes clause 5 introducing a statutory right of review of the Housing Executive's decisions and a right of appeal to the county court on points of law. In the course of its investigation, the Commission found that relatively few non-UK nationals had requested review, or had appealed, negative homelessness decisions. The Commission therefore emphasises the need to ensure that information about, and mechanisms for, review and appeal are accessible particularly for persons who are experiencing language barriers.

I hope that these comments are helpful and look forward to further engagement on this issue. You may wish to know that we have written in similar terms to the Chair of the Social Development Committee. Should you or your officials require any further information, please do not hesitate to contact either myself or Investigations Workers, Roisin Devlin or Sorcha McKenna.

Yours sincerely

Professor Monica McWilliams
Chief Commissioner