



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Written Evidence to the Committee for Social Development, Northern Ireland Assembly on the Caravans Bill

Summary

This is the Commission's submission to the Committee in the Northern Ireland Assembly currently examining the Caravans Bill. This Bill is a private members Bill introduced by John McCallister MLA, which will introduce tenancy rights for persons living in caravans. As well as the positive potential this has for caravan dwellers on 'Park Home' sites, the Commission has also looked at how the Bill can help Irish Travellers living on caravan sites provided by the Northern Ireland Housing Executive. Among the issues covered in the submission are:

- relevant human rights obligations (the right to housing, family life, non-discrimination)
- the accommodation situation of Travellers and human rights law
- the levels of protection in the bill for different types of caravan sites
- the Housing Executive and the duty to apply for site licences from local councils, and
- the opportunity to repeal the 'Unauthorised Encampments' law.

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland

law and practice relating to the protection of human rights,¹ providing legal advice and representation in human rights proceedings,² and advising on whether a Bill is compatible with human rights.³ In all of that work, the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies. In accordance with its mandate, the Commission also delivered advice to government on the content of a Bill of Rights for Northern Ireland on 10 December 2008.⁴

2. The Commission welcomes the invitation to provide written evidence to the Committee on the Caravans Bill which was introduced to the Northern Ireland Assembly on 26 April 2010 as a Private Members' Bill by John McCallister MLA.
3. The Commission views the Bill as having the potential to fulfil a number of positive human rights obligations by affording tenancy rights to persons residing in caravans.

Explanatory Notes

4. In providing advice the Commission cannot 'support' a Bill *per se*. Given our statutory independence, our role is limited to providing an assessment of the human rights compatibility of the proposed legislation. At present this is not fully reflected in the current explanatory notes and we would request that they be amended in due course.

Relevant human rights obligations

5. Rights to adequate housing are provided for in international human rights standards to which the United Kingdom is party, including the International Covenant on Economic, Social and Cultural Rights (ICESCR). The authoritative interpretation of a framework for 'adequate housing' under the ICESCR includes provision relating to legal security of tenure (referring to protection against forced eviction and harassment) for all

¹ Northern Ireland Act 1998, s.69(1).

² *Ibid*, s.70.

³ *Ibid*, s.69(4).

⁴ *Ibid*, s.69(7).

types of accommodation.⁵ This United Nations instrument is binding on the UK in international law, but not directly enforceable in the domestic courts.

6. The main provisions of the European Convention on Human Rights (ECHR) are directly accessible in local courts having been given further effect by the Human Rights Act 1998. That Act provides that legislation must be read and given effect in a manner compatible with ECHR rights. The ECHR does not include an explicit right to housing; however in particular circumstances duties in relation to housing can fall within the scope of ECHR rights, including the right to family life under Article 8, property rights under Article 1 of the First Protocol, and the right to protection from inhuman or degrading treatment under Article 3. These and other ECHR rights have to be read alongside the prohibition of discrimination in Article 14 of the ECHR which provides that the rights “shall be secured [to everyone within the jurisdiction of the State] without discrimination on any ground”, meaning that differential treatment between protected groups has to be objectively justifiable.
7. The purpose of the Bill is to improve legal security of tenure (including protection from eviction and harassment) for persons residing in caravans on caravan sites. The Commission welcomes this intent which can positively contribute to the right to housing for all caravan dwellers. In addition to progressing security of tenure for all caravan-dwellers the Commission’s particular interest in the Bill is its relationship with the accommodation needs of members of the Irish Traveller community. The Commission has identified this as a priority issue in relation to human rights compliance, and the accommodation situation for Travellers in Northern Ireland has been highlighted by United Nations and Council of Europe experts in the monitoring of compliance by the UK with its international treaty obligations.
8. In 2009 the United Nations body overseeing the UK’s compliance with obligations under the ICESCR raised concerns regarding the present situation of Travellers and urged the provision of sufficient, adequate and secure sites. The Committee also commented on the discriminatory effect of the

⁵ Committee on Economic, Social and Cultural Rights (13 December 1991), *General Comment 4: The Right to Adequate Housing*, UN Document number E/1992/23.

Unauthorised Encampments (Northern Ireland) Order 2005 and urged its review.⁶

9. The Council of Europe, in relation to compliance with the UK's obligations under the Framework Convention for the Protection of National Minorities (FCNM), has also singled out the accommodation situation of Irish Travellers. In response to observations on the subject by the FCNM treaty monitoring body the UK stated that in Northern Ireland there was adequate funding for accommodation for Travellers but conceded that there were 'constraints' in obtaining the suitable sites needed. The UK argued this was a problem being actively addressed by the Department for Social Development and the Northern Ireland Housing Executive (NIHE).⁷ Subsequently the Council of Europe's Committee of Ministers adopted a resolution in relation to the UK's compliance with the FCNM, which included among its issues of concern:

Hostility among some people within the local population and the resistance of certain local authorities to improving the availability of authorised sites have contributed to the fact that a number of Gypsies and Travellers continue to live on unauthorised sites and may face eviction orders.⁸

10. Caravans legislation therefore, as well as addressing housing conditions for non-Travellers residing in caravans, has the potential to make a considerable impact on the accommodation situation for Travellers.
11. The Commission notes that the present situation, where there is a marked differential between tenancy rights of those residing in houses and caravans, is unsatisfactory and engages human rights compliance. As this will impact disproportionately on members of the Traveller community living in caravans, it could constitute indirect racial discrimination in the right to housing. In addition, within the non-Traveller caravan resident population, if particular groups of persons, for example older persons, are strongly

⁶ Committee on Economic, Social and Cultural Rights (22 May 2009), *Concluding Observations on the United Kingdom*, UN Document number E/C.12/GBR/CO/5, paragraph 36.

⁷ *Comments of the Government of the United Kingdom on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities* (26 October 2007), Council of Europe document GVT/COM/II(2007)003, page 14.

⁸ Council of Europe Resolution CM/ResCMN(2008)7 (Adopted by the Committee of Ministers on 9 July 2008), page 2.

represented there could also be a similar disproportionate impact on them. As there appears to be some evidence of this differential it is likely that the present situation also engages protections against indirect age discrimination.

12. The UK courts, and legislators operating within a framework of ECHR compliance, must have regard to case law from the European Court of Human Rights. This includes, of particular relevance to this Bill, *Connors v the UK*.⁹ In *Connors* the lack of protection against eviction afforded to Traveller sites in England, which contrasted unfavourably with the levels of protection afforded to other tenants, was found to breach Article 8 of the Convention. The UK is yet to satisfactorily discharge measures it needs to take to implement the judgement.¹⁰ In England and Wales legislation was introduced in 2008 to amend the definition of a “protected site” in the Mobile Homes Act 1983 to cover local authority Gypsy and Traveller sites. This provision is still awaiting commencement and will not cover Northern Ireland, for which the Caravans Act 1963 is the equivalent legislation. Hence to discharge the obligation to implement the judgement legislation is required in Northern Ireland, and this can be dealt with by the present Bill.
13. The Commission is aware that the present Bill has been introduced largely in response to matters relating to security of tenure in the non-Traveller caravan site sector. However the Bill must also afford protection to sites used by Travellers. Any unjustified differential between the levels of protection between sites largely used by Travellers and those not could constitute discrimination on racial grounds. This is in addition to the need to justify objectively any differential between the protections afforded to caravan residents and those in ‘bricks and mortar’ accommodation (houses, apartments etc.), a differential that the Bill clearly intends to narrow or eliminate.¹¹

⁹ Application no. 66746/01, 40 EHRR 9.

¹⁰ Once a judgement has been made by the European Court of Human Rights responsibility to ‘execute’ the judgement passes to the Council of Europe’s Committee of Ministers. The Committee of Ministers will oversee the response of the judgement both in terms of ‘individual measures’, e.g. compensation to the victims, and ‘general measures’, e.g. changes in legislation to prevent a recurrence of the violation to others. The Committee of Ministers most recently met to examine compliance in this case at its 1072nd (December 2009) meeting. The Committee will again review progress at its 1086th meeting (June 2010).

¹¹ There are still some differentials in the Bill worthy of greater examination. Paragraph 8(9) of the Schedule sets out that the site owner ‘shall be entitled’ to a 10 per cent commission on the sale fee of a caravan. This is considerably higher

14. This paper will look at a number of specific provisions in the Bill. Whilst the Commission has not provided commentary on every clause of the draft Bill, we will be happy to provide further commentary on request.

Protected sites and seasonal sites

15. Parts 1 and 2 of the Bill provide for different levels of protection between Residential Occupiers on protected sites and seasonal sites. These are defined in the Bill as follows:
- **Residential Owners on a protected site:** caravan owners (whose caravan is their main or only residence) and are entitled to station the caravan on a protected site for more than three months. A protected site is any site that is not a seasonal site.¹²
 - **Seasonal Site:** is a site in which the planning permission or site licence is expressed for holiday use only or is subject to the condition that no caravan can be used on the site during particular times of the year. The protections apply to persons entitled to occupy the caravan for a period of over 28 days.¹³
16. Part 3 of the Bill then provides for protection against eviction and harassment for persons who are entitled to station or occupy (as their only or main residence) a caravan on a protected site. There is no length of agreement limitation on these protections.
17. It would be helpful if the applicability of these definitions to the present categories of Traveller sites provided by the Northern Ireland Housing Executive could be placed on the record and made explicit. It would appear that Travellers on NIHE 'serviced sites', who have entitlements of more than three months, will be afforded the protections of residential owners on protected sites under part 1 and the protections against eviction and harassment set out in part 3 of the Bill. Travellers moving on to transit and halting sites where licences are for less than three months may be able to avail of the protections under part 3 of the Bill on eviction and harassment (or in theory part 2 of the Bill as to 'seasonal

than the percentage that an estate agent would usually levy for a house sale (which itself would only apply if the estate agent had been involved in the sale). The rationale for the differential should be further explored with a view to assessing if the entitlement is reasonable at all or at the stipulated level.

¹² Clause 1 and clause 15.

¹³ Clause 7(2).

sites' – if the terms of the planning permission were 'seasonal'). As there is no statutory definition of serviced, transit etc. sites the intended applicability of the provisions is difficult to assess.

18. The Minister for Social Development (Alex Attwood MLA) touched on this issue in his comments during the Second Reading of the Bill, and indicated his understanding that part 3 applied to all Travellers on NIHE sites, and that part 1 protections would only apply to Travellers residing permanently on NIHE sites. Mr Attwood suggested that the matter be further considered at Committee stage.¹⁴
19. It is important that no loopholes exist whereby Travellers on Housing Executive sites could fall between definitions and hence not be afforded protections foreseen for caravan dwellers in the Bill. To this end the Commission recommends that the applicability to types of NIHE-provided Traveller site be placed on the record or made explicit in the legislation.

Matters not covered in the Bill: Additional Clauses¹⁵

Exemption from site licences for NIHE sites

20. The Commission recommends that a clause be added to the Bill to amend paragraph 11 of Schedule 1 of the Caravans Act 1963 to exempt the Housing Executive, alongside district Councils, from the site licence requirement. This matter is within the competency of the Department of Environment.
21. The 1963 Act exempted local authorities from the need to apply for site licences for their own sites. The Act had been amended to state that district councils would not have to apply for site licences from themselves, which included, until 1 December 2003, provision of Traveller sites. Under the Housing (Northern Ireland) Order 2003 this power was transferred from councils to the Housing Executive. However an amendment was not made to reflect this, hence the Housing Executive, in addition to its own statutory requirements, can still be required to have a site licence. Not only does this appear to defeat the purpose of transferring

¹⁴ Hansard, Northern Ireland Assembly, 24 May 2010, Private Members Business, Caravans Bill Second Stage.

¹⁵ This submission has also been copied to the Justice and Environment Committees respectively, as the suggested additional clauses fall within their competence.

these powers: it may also constitute, or could be used as, an unnecessary additional impediment to the NIHE discharging its function to provide sites. In theory this could be used to include conditions which would impact on the protections afforded by the present Bill.¹⁶

Unauthorised Encampments Order

22. The Commission opposed the introduction of the Unauthorised Encampments (Northern Ireland) Order 2005, which came into force in mid-2006. The Commission regards the legislation as actively adding to the disadvantage facing the Traveller community, running counter to obligations under equality and human rights legislation. The Order is under the competency of the Department of Social Development.
23. Under the Order, a police officer is empowered to direct a person to leave land and to remove any vehicle or other property from that land. The Order creates an offence of non-compliance with the officer's directions and empowers the officer to seize the belongings of the persons being directed to leave. The maximum penalty for non-compliance is three months' imprisonment, a fine of £2,500, or both.
24. There is no question that the primary impact of this Order has been on the Irish Traveller community, as the only indigenous minority with a traditionally nomadic or partly nomadic lifestyle. The objection of the Commission and others was on the basis that, in the absence of government action to ensure the provision of suitable accommodation schemes for Travellers, the legislation was likely to have a very serious adverse impact on an already disadvantaged and marginalised minority. In short, the UK has introduced measures whereby Travellers can become liable to criminal prosecution for following their traditional lifestyle as best they can in the context of the inadequate provision of halting sites and other authorised accommodation. They are liable to be evicted from their homes, to have them destroyed and then to be imprisoned and/or fined.

¹⁶ The definition of a 'caravan site' within the Bill encompasses, and hence affords protection to, both sites requiring licences and those which do not by virtue of paragraph 11 of the Schedule to the 1963 Act. This provision is referenced under clause 11(6)b of the present Bill as pertaining to district councils only, so if the 1963 Act were amended as we suggest that would require a consequential amendment to the present Bill.

25. As the purpose of the present bill includes due process protections against eviction the Commission would urge consideration of the repeal of the Unauthorised Encampments (Northern Ireland) Order 2005 through the present legislation.

June 2010

Northern Ireland Human Rights Commission

Temple Court, 39 North Street

Belfast BT1 1NA

Tel: (028) 9024 3987

Textphone: (028) 9024 9066

SMS Text: 07786 202075

Fax: (028) 9024 7844

Email: information@nihrc.org

Website: www.nihrc.org