

PPR Response to Proposed Housing (Anti-Social Behaviour) Bill (Northern Ireland)

1. Participation and the Practice of Rights (PPR) organisation provide tools and support to marginalised groups actively asserting their right to participate in economic and social decisions which affect their lives. PPR's work was recognised by the UN Office of the High Commissioner for Human Rights in 2012 as an example of international best practice in supporting disadvantaged communities to claim rights¹.
2. Since 2006, PPR has been working with social housing residents in the north Belfast area, an area marked by high levels of religious inequality in the provision of social housing and since 2012 we have worked in partnership with Simon Community Northern Ireland to support people affected by homelessness across Northern Ireland. It is on this basis that PPR is responding to the current proposals.
3. The current proposals are to introduce legislation to create a new type of social housing tenancy (a short secure tenancy) which will be specifically for those tenants who have been involved in anti-social behaviour. The proposals also seek to amend existing legislation to provide that individuals who engage in anti-social behaviour following an assessment under homelessness legislation can be treated as ineligible at any stage before they are allocated a tenancy of social housing.²
4. **PPR wish to stress the importance of protecting international human rights regarding security of tenure as a key component of the right to adequate housing as contained within Article 11 of the International Covenant on Economic, Social and Cultural Rights. It is our view that the current proposals will have the effect of weakening this core right for many and as such PPR wish to register from the outset our serious concerns regarding the proposals contained in the proposed bill .**
5. **PPR believes that there are significant disparities in terms of the actions proposed against those who are priority need homeless, those who are homeless and those who are already socially housed for engaging in anti-social behaviour are discriminatory and that these further contravene the state's human rights obligations both in respect of non-discrimination³ and the protection of vulnerable groups⁴.**
6. PPR have previously raised objections to proposals regarding anti-social behaviour which represent the weakening of security of tenure rights on multiple occasions. In 2012, the current proposals were first referred to in the Facing the Future Housing Strategy consultation to which PPR responded. Prior to this, in 2010 PPR expressed concern in a consultation response to the Housing Bill that demotion orders could potentially become a back door to unfair evictions since they can be granted on comparatively low grounds, following which the tenant has an unsecure tenancy and

¹ UNOHCHR (2012) "Human Rights Indicators: A guide to Measurement and Implementation" available to view here

<http://www.ohchr.org/EN/NewsEvents/Pages/IndicatorsestablishmenttoolsinrealizationofHR.aspx>

² DSD (2013) Proposed Housing (Anti-Social Behaviour) Bill (Northern Ireland) Consultation document p.4

³ Article 2 of the International Covenant on Economic, Social and Cultural Rights

⁴ UNCTESCR General Comment 3. The Nature of the State's Obligations (Art 2, para.1) Fifth Session 1990, paragraph 12

can be evicted with significantly less protection. The proposal was subsequently removed from the proposed legislation in 2010. PPR view the current proposals contained in the proposed bill as effectively recycling these proposals and wish to restate those same concerns here.

Specific concerns

Short secure tenancies

7. The current proposals seek to give landlords in Northern Ireland the ability to convert current 'secure tenancies' into 'short secure tenancies' in cases where in the last three years, the tenant or a member of their household has either been engaged in antisocial behaviour or has had a court order, such as an ASBO, made against them. The proposals state that if such a tenancy conversion takes place, the landlord would be required to provide support to the tenant. No further detail is given on the nature of this support except vague references outlining that when the support is effective, the need for "*protracted and expensive possession procedures*" is avoided. However, when the support is not effective, "*the landlord would be in a position to take possession within a fixed timescale and with a minimum of litigation*".⁵
8. **PPR is concerned about any proposals that weaken security of tenure rights.** As has been recently highlighted by the UN Special Rapporteur on the Right to Adequate Housing in a global study on security of tenure, "*due process, reasonableness and proportionality*" as well as the exploration of "*all feasible alternatives*"⁶ must be considered before any policies which could lead to the weakening of this right are put in place, or the state may be in breach of its international duty to progressively realise this right. In this instance since the provision of support could result in a weakening of the high standards of proof generally required in order to secure an eviction in that a stated benefit of these proposals is listed as allowing the landlord "to take possession ... with a minimum of litigation"⁷ in cases where the support is not effective. PPR believe this could enable a potential 'backdoor' eviction process which will benefit landlords but weaken the protection afforded to tenants. It could be argued that a short secure tenancy would amount to little more than a 'stay of execution', after which a tenant could face homelessness without entitlement to statutory homelessness assistance.

The provision of support

9. The proposals identify that in cases where a tenancy is converted from a secure tenancy to a short secure tenancy, the landlord will be required to provide support to the tenant. **It is unclear from the proposals, however, as to what type of support will be offered and by whom.** It is further unclear how this provision will be regulated in order that those entitled will be able to *access it and that it will be suitable for their needs*. The provision of support *should also be freely available* to all tenants in order to prevent the occurrence of antisocial behaviour and it should not merely be available once an applicant's secure tenancy has been converted to a short secure tenancy.

⁵ DSD (2013) Proposed Housing (Anti-Social Behaviour) Bill (Northern Ireland) Consultation document p.20

⁶(2014) Global Principles on the Right to Security of Tenure, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, Twenty-fifth session A/HRC/25/54

⁷ DSD (2013) Proposed Housing (Anti-Social Behaviour) Bill (Northern Ireland) Consultation document p.20

Appropriate measures must also be put in place to hold landlords accountable for failure to provide adequate and timely access to such support.

10. Additionally, in a context of resource scarcity for service providers, very close attention must be given to what constitutes a genuine and viable “offer” of appropriate support. The proposals state that where a tenancy has been converted, the landlord “will be required to offer appropriate support to help the tenant to sustain the tenancy”⁸. Without any information relating to how offers of support will be monitored to ensure that tenants have genuine opportunity to accept these offers, it is not clear if appropriate safeguards to protect the tenant’s rights and ensure that a possession order is not issued inappropriately, will be put in place. Steps must be taken to ensure that support offers are not reduced to a ‘tick box’ exercise in order to effectively provide an alibi to the erosion of tenancy rights.

Changes to eligibility for homeless assistance

11. PPR are further concerned that proposals regarding what PPR regard as punitive measures towards people who are homeless and who have engaged in antisocial behaviour will result in even more severe retrogression of security of tenure rights. In order to amend existing legislation for legal clarity, it is proposed that Article 7(a)(5) of the Housing (Northern Ireland) Order 1988 is amended to enable the Executive to “*treat a person as ineligible for homelessness assistance at any stage before they are allocated a tenancy of social housing*”.⁹ In contrast to the provisions made for those who are already housed, a homeless person will not be entitled to the provision of support and no indication is given regarding a right of appeal to this decision- the applicant would simply become ineligible for assistance.
12. The Department must use opportunities to amend existing legislation to strengthen protection for people who are homeless in line with international human rights obligations to give “due priority to vulnerable groups”¹⁰. The Department must not put in place measures which weaken protection.
13. PPR note that the Department acknowledge that “*homelessness is a highly stressful experience*” and that the DSD intends to issue guidance to the Housing Executive which emphasises that the Executive should give “*due consideration to whether a homeless person’s behaviour is a consequence of their homelessness, or is due to the fact they are unsuitable to be a tenant*”¹¹.
14. However, for this guidance to mitigate against an increase in homelessness and anti-social behaviour, extensive engagement with people who have experienced homeless and those service providers best-placed to contribute to a proper analysis of homelessness would be required.

Equality

⁸ DSD (2013) Proposed Housing (Anti-Social Behaviour) Bill (Northern Ireland) Consultation document p.18

⁹ DSD (2013) Proposed Housing (Anti-Social Behaviour) Bill (Northern Ireland) Consultation document p.22

¹⁰ UNCtESCR General Comment 3. The Nature of the State’s Obligations (Art 2, para.1) Fifth Session 1990, paragraph 12

¹¹ DSD (2013) Proposed Housing (Anti-Social Behaviour) Bill (Northern Ireland) Consultation document p.22-23

15. PPR are disappointed with the scant analysis given to these alarming proposals in the Equality Screening exercise carried out by the Department. It does not, on the face of it, seem that Section 75 statutory obligations to identify existing inequalities across the nine grounds, engage with people experiencing inequality, and develop proposals to **promote** equality of opportunity have been considered. **Given that the proposed bill will result in a significant deterioration in the rights to security of tenure for the most vulnerable, PPR calls for a full Equality Impact Assessment to be conducted.**
16. For example, the Department identify that “*young men are likely to be the victims of ASB involving violence*”. The screening exercise also identifies that the policy may impact on social tenants with dependents. In this assessment, three Section 75 categories are identified as being impacted; age, men and women generally, and; dependents.¹² In each case the Department assess the level of impact as minor since in all cases the impact on each group is proposed to be negated by the fact that each of these categories are also likely to be victims of antisocial behaviour and thus it is suggested will be aided by these proposals.
17. This limited analysis and the categorisation of impact as ‘minor’ in these cases is indicative of the Department’s approach to Equality Screening of this bill. The identification of potential inequality is not sufficiently addressed by suggesting that of those impacted negatively by the proposals; a corresponding number in the same category will be benefited. The purpose of equality screening is to identify groups who will likely be impacted by the proposals and then take measures to positively promote equality of opportunity for these groups – not to state this impact is somehow ‘cancelled out’ through other groups benefitting.
18. PPR are further concerned that children, as a particularly vulnerable group who are likely to be impacted by this proposal, are not assessed in a more meaningful manner. Children should be assessed under the category of ‘age’, as individuals with their own rights rather than to suggest that their situation as ‘dependents’ may involve them committing or becoming victims of antisocial behaviour. For example, what inequalities do children experiencing homelessness currently experience? What are their educational and health outcomes compared to children with adequate housing? Additionally, the only mention of children is in reference to dependents of “social tenants”. No assessment is made of the increased vulnerability facing children who live with their parents in a hostel for example.
19. **PPR recommend that the equality screening exercise is repeated, that major impacts are identified appropriately and that a full equality impact assessment exercise which accounts for the views of those likely to be impacted by these proposals is carried out before progressing the proposals in this bill.**
20. Part Four of the Screening Form refers to the need for effective monitoring of the proposals. Proposed monitoring arrangements are identified as involving the maintenance of records by the Housing Executive on the numbers of Short Secure Tenancies granted, cases where additional support is rejected, and numbers of short secure tenancies terminated.¹³ PPR note however that the number of offers of support, made and the nature and quality of this support are not monitored. As such PPR view these arrangements as inadequate as they will not capture whether vulnerable people are being offered appropriate support. . Further issues impacting vulnerable groups

¹² DSD (2013) Section 75 Screening Form, p12

¹³ Ibid., p.17

which require monitoring would also be identified in a more rigorous equality impact assessment.

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